SUPPLY MANAGEMENT

UNITED STATES
POSTAL SERVICE

May 9, 2008

Ms. Robyn S. Hankins, P.L.
4600 Military Trail, Suite 217
Jupiter, FL 33458-4810

RE: Supplier Disagreement Resolution Case No. SDR08MT-06
Highway Contract Route (HCR) Number 331M8

Dear Ms. Hankins:

Your letter of March 3, 2008, presented a disagreement as defined in 39 CFR Part 601[1] on behalf of JEM Transport, Inc. (JEM) with respect to the referenced HCR. You object to the Contracting Officer's best value decision and request a review of the award of contract 331M8, a reversal of the Contracting Officer's award to MLM Trucking (MLM), and an award of that contract to JEM.

I have examined the disagreement lodged with me as well as the information you provided. I have also examined the Contracting Officer's contract file and information submitted by the awardee, MLM. I have also reviewed information submitted by interested parties: Postal Carrier Corporation, EDSCORP, Inc., and Sergio Morales. Based on my examination of the facts, your disagreement is denied. The Contracting Officer's decision issued to JEM on February 21, 2008, correctly applied the best value standard for the Postal Service and therefore, the Contracting Officer's decision will stand. The rationale for this decision follows.

The solicitation for HCR 331M8 was for mail transportation services from West Palm Beach to Miami, for the period February 2, 2008 to March 31, 2011. Nine offers were received in response to the solicitation with JEM offering the lowest rate. JEM requests reconsideration of the contract award to MLM and objects to the Contracting Officer's best value decision on the grounds that JEM was the lowest offeror.

JEM objects to the procedure by which the purchasing process was conducted. Specifically, JEM alleges that the person who accepted the late offer did not have the authority to extend the solicitation period, and that MLM, who was permitted to submit a late offer was subsequently awarded the contract. Additionally, JEM suggests that refusal to extend it a reasonable period to submit additional documentation as requested by the Contracting Officer taints the entire solicitation process. I disagree.

Solicitation Provision 3.1.1.d, *Late Offers*, states that late offers will not be considered unless determined to be in the best interests of the Postal Service. The Contracting Officer stated that he made a business decision to accept MLM's late offer on the grounds that it would not delay the evaluation process and as such was in the best interests of the Postal Service.

The Contracting Officer's decision to request additional information from offerors and impose deadlines on submitting such information is a separate issue that occurred at a later point in the process, that is, once the bids were in and being evaluated. Although JEM requested a six day extension, the Contracting Officer was only able to grant one additional day. As evident in the

[1] Although your disagreement also cites the *USPS Supplying Principles and Practices*, it must be noted that these principles and practices are guidelines and not regulatory in nature.

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contract file, other offerors were also asked to provide additional documentation and did so within the required timeframe. I did not see anything in the contract file to indicate that such action by the Contracting Officer jeopardized the purchasing process or that gave the appearance that the integrity of the purchasing process was jeopardized.

JEM contends that the Contracting Officer failed to award the contract according to the evaluation factors listed in the solicitation. As outlined in Provision 4-2, *Evaluation*, of the solicitation, "the Postal Service will award the contract to the offeror whose offer is deemed to offer the Postal Service the best value, price, and other factors as specified." The stated performance evaluation factors included schedule, equipment, supplier capability and past performance, with price factors being considered more important.

JEM alleges that the Contracting Officer incorrectly analyzed its proposed rates with regards to its driver hours, fuel estimate and supplier's wages. The Contracting Officer had taken issue with the fact that JEM only allocated 40 contingency hours above the estimated number of hours provided in the solicitation. JEM offers that it has "contingency" hours in that Gene Melchiori, the owner of JEM, can act as a driver in the event of emergencies. JEM also argues that since it owns the equipment it intends to use for the contract, this would allow it to absorb any additional costs that arise as a result of contingency hours. However, the Contracting Officer points out that this HCR requires 30,288 scheduled hours per year and a minimum of 14 drivers. Therefore, it would be improbable to expect that Gene Melchiori could provide all of the reasonably anticipated contingency hours for such a large requirement and that there will be occasions when more than one additional/replacement driver will be required.

JEM acknowledges that it had made a mistake in its fuel estimate of 7.6 MPG and that it should have been 6.6 MPG, but agreed to be bound by its original estimate or change it as the Contracting Officer suggested. The Contracting Officer states that this error results in an annual shortage of 14,971 gallons, which at the current Department of Energy average of $3.33 per gallon, reflects a shortage of almost $50,000 per annum, and when calculated over the life of the contract would equate to more than $150,000. Although JEM agreed to be bound by its original estimate, the Contracting Officer has indicated that this error, when compounded with the understated contingency hours, significantly increased the risk that JEM would be unable to perform the full term of the contract.

JEM challenges the Contracting Officer's evaluation of its proposed supplier's wages[2]. JEM proposed 8,760 hours at a rate of $3.31 per hour. However, the Department of Labor hourly wage rate for a driver on this contract is $17.58 per hour. In response, JEM has offered that "although the profit margin on this contract is lower than might be expected, JEM Transport is willing to undertake the obligations imposed under this contract at the stated price." However, this assurance does little to mitigate the additional risk that JEM would be unable to perform the full term of the contract.

JEM notes that the offer accepted by the Postal Service was considerably higher priced than its offer, costing the Postal Service an additional $239,969 per year. However, the Contracting Officer determined through the analysis of similar contracts, that in order to consistently provide the level of service required the successful offeror would need to expend more hours than those reflected in JEM's schedule. With respect to equipment, the Contracting Officer notes that JEM's list of trailer equipment was acceptable. However, the tractors that were proposed are single axle and the solicitation requires tractors with two axles. JEM stated that they would immediately convert the tractors to two axles upon award, but the Contracting Offices expressed reasonable concern that JEM may not be able to have all the tractors converted by contract start.

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[2] Wages for the supplier's personal operation of the route or part of it, including the supplier's supervision.

As part of the Contracting Officer's best value determination, he conducted a price realism analysis of JEM's proposal and as a result determined that JEM's offer was so low as to create an unacceptable risk to the Postal Service that JEM would be able to perform the full term of the contract.

Based on the aforementioned facts and my review of the contract file, I agree with the Contracting Officer's assessment. The Postal Service seeks to acquire goods and services that represent the best value to the Postal Service. Best value is defined as the outcome that provides the optimal combination of elements such as lowest total lifecycle cost, technology, innovation, efficiency, assurance of supply, and quality relative to the Postal Service's needs. Accordingly, offering the lowest price does not necessarily equate to providing the best value. In the instant case, the Contracting Officer performed a cost realism analysis. The emphasis of such an analysis is to determine whether costs may be overstated or understated and to help ascertain the potential risk of an offeror's inability to meet contract requirements. The analysis helps ensure that the cost or prices proposed fairly represent the costs likely to be incurred for the proposed services, given the supplier's technical and management approach. Here, the Contracting Officer's analysis was appropriate to ascertain the potential risk to the Postal Service as to whether JEM was able to meet the contract requirements. After performing this analysis, the Contracting Officer concluded that JEM's estimating methodology was flawed because it failed to plan for normal occurrences in a transportation contract. JEM's stated position to rely on manpower it would not be required to compensate, to absorb other costs, and to operate this contract at a lower than expected profit margin was insufficient to alleviate the Contracting Officer's concern that the that JEM would be unable to sustain its operations based on such practices that are contrary to industry norms. As such, I will not substitute my judgment for that of the Contracting Officer when the facts point to a reasoned determination of cost realism. Therefore, although JEM submitted the lowest offer and the solicitation states that price is more important than technical evaluation factors, in this instance the Contracting Officer has reasonably determined and supported his position that the lowest offer does not equal best value.

I find that the award of HCR 331M8 was properly made by the Contracting Officer and that it represented the best value to the Postal Service. Therefore your disagreement is denied and the award of HCR 331M8 stands.

In accordance with 39 CFR 601.108(g), this is my final decision on this disagreement.

Sincerely,

Pete Dolder, C.P.M.
USPS Supplier Disagreement Resolution Official

cc: Dwight Young, Manager Transportation Portfolio
Bobby Mays, Contracting Officer
Luis Martinez, President, MLM Trucking, Inc.