



March 4, 2008

Paul L. Ross, Jr., Esq.
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RE: Supplier Disagreement Resolution Case No. SDR08SR-04
Solicitation Number: 2WSNOW-08-A-0003

Dear Mr. Ross:

Your letter of January 18 presented a disagreement as defined in 39 CFR Part 601 on behalf of J.J. Phelan & Sons Co., Inc. (Phelan) with respect to the referenced solicitation. You oppose Tufts Transportation's (Tufts) alleged failure to comply with the solicitation and the Postal Service's failure to award the contract to the lowest offeror, Phelan. You request that the award to Tufts be overturned and awarded to Phelan.

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. Although, I find that your disagreement was untimely based on my examination of the facts, there were extenuating circumstances in your favor in that you were expecting a response from the contracting officer to your disagreement and were led to believe that such a response would be forthcoming. Therefore I have considered your disagreement. However, after consideration of all of the facts and documentation presented to me your disagreement is denied.

With regard to your disagreement, you contend that Tufts failed to comply with the solicitation requirements and therefore should be disqualified. You allege that the solicitation required rejection of any offeror failing to arrange for a site visit prior to submitting their offeror. You further allege that all potential offerors were clearly notified of the site visit requirement contained in the statement of work as well as on Attachment 1 of the solicitation, which states that "All prospective bidders are required to schedule an on-site visit to examine in detail the physical requirements of the statement of work. Visits are to be scheduled with the contracting officer's representative (COR) listed in Attachment 1. Failure to schedule an on-site visit will invalidate any subsequent bids received from the accountable prospective bidder." You contend that Tufts failed to make a site visit and therefore their offer should have been invalidated. In support of your position, you provided documentation from Thomas J. Abbasoiano, the COR for the contract, which stated that only two potential offerors had scheduled a site visit with him — MFB, Inc. and Phelan. Accordingly, on these reasons, you request that I invalidate contract award to Tufts. For the foregoing reasons, I disagree.

The contract file clearly indicates that Tufts made a minimum of eight telephone calls and three site visit attempts in an effort to contact the COR. After these failed attempts to contact the COR to arrange for the site visit, the contract file shows that Tufts contacted Bruce Lee, purchasing specialist at the Western Service Category Management Center—Chicago Office. After being contacted by Tufts, Mr. Lee gave permission to Tufts to make their own site visit which they have asserted on the

record to have made. Furthermore, the solicitation states that site visits are to be scheduled with the COR and does not invalidate offerors from consideration because they did not meet with the COR onsite prior to the submission of their offer. Based on the evidence before me, Tufts exercised due diligence in its attempts to contact the COR for an on-site visit. Multiple telephone calls and visits were made in support of the requirement; and although not arranged with the COR, there is sufficient evidence in the record that Tufts did in fact visit the site prior to submitting their offer for me to reject your argument that Tufts' offer should be rejected because it failed to conduct a site visit.

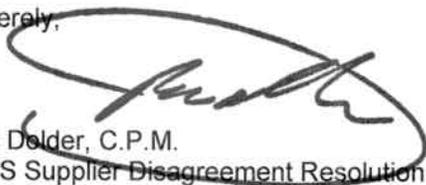
Secondly, you contend that the Postal Service failed to award the contract to the lowest offeror, and failed to make a best value decision. You allege that Mr. Lee confirmed that Phelan was indeed the lower offeror during the online auction. However, after conclusion of the auction, the record clearly shows that Mr. Lee requested additional price reductions from you and Tufts. The best value determination was based on comparing the scores from technical evaluation with the final prices offered Mr. Lee. As documented, in the contract file, both you and Tufts received the same total technical evaluation score. However, when the second round of pricing was submitted in response to Mr. Lee's request, Tufts' price was lower than yours. Solicitation provision 4-2 clearly states that the technical evaluation factors and price are of equal value in determining the best value for the Postal Service. As such the contracting officer was correct in awarding the contract to Tufts based on the fact that, with the technical evaluation scores being equal, price was the determining factor. My review of the contract file did not show any evidence which would lead me to overturn contract award. Accordingly, I believe that a sound business decision was made using the solicitation's stated best value criteria. As such, the contract award to Tufts stands.

You also stated in your disagreement that on December 10, 2007, Tufts failed for over eight hours to respond to a significant icing event, and, upon receiving the COR's call requesting sanding, Phelan, who no longer held the contract, responded within 15 minutes to provide sanding and salting for the parking lot. This is a matter of contract administration and as such, is outside my jurisdiction and is not for my consideration. See 39 CFR § 601.107(a)(2).

I find that the award to Tufts was properly made by the CO and it represented the best value to the Postal Service; therefore, your disagreement is denied.

This is the Postal Service's final decision on this disagreement regarding Solicitation No. 2WSNOW-08-A-0003 under 39 CFR 601.108(g).

Sincerely,



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

cc: Yolanda Richmond, Contracting Officer