

Supply Management



February 26, 2013

Mr. Nathan Kottkamp  
Mr. Anand V. Ramana  
McGuireWoods, LLP  
2001 K Street, NW  
Suite 400  
Washington, DC 20006-1040

RE: Supplier Disagreement Resolution Case No. SDR13SR-03  
Solicitation No. 2B-12-A-0013  
Pharmacy Benefits Management Program

Dear Messrs. Kottkamp and Ramana:

Postal Service purchasing regulations require that the Contracting Officer notify "interested parties" that a disagreement has been lodged with the Supplier Disagreement Resolution (SDR) Official. 39 C.F.R. §§ 601.107(a)(3) and 601.108(e). It has come to my attention that the Contracting Officer for Solicitation No. 2B-12-A-0013, Pharmacy Benefits Management Program, did not provide the required notice to all interested parties.

Therefore, my February 21, 2013 decision in Supplier Disagreement Resolution Case No. SDR13SR-03 is hereby rescinded. The Contracting Officer informs me that he has now issued the required notice to the interested party who was not previously notified. I will consider any response I receive prior to issuing a new decision in Supplier Disagreement Resolution Case No. SDR13SR-03.

Sincerely,

A handwritten signature in cursive script that reads "Trent Ensley".

Trent Ensley  
USPS Supplier Disagreement Resolution Official

cc: Brian Ray  
Kelly Feuerer  
Matt Padden  
Allen Wise  
Tom Zielinski  
Hopewell Darneille III  
David Hendel

SUPPLY MANAGEMENT



February 21, 2013

Mr. Nathan Kottkamp  
Mr. Anand V. Ramana  
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2001 K Street, NW  
Suite 400  
Washington, DC 20006-1040

RE: Supplier Disagreement Resolution Case No. SDR13SR-03  
Solicitation No. 2B-12-A-0013

Dear Messrs. Kottkamp and Ramana:

This letter responds to the supplier disagreement ("Disagreement") you lodged with the Supplier Disagreement Resolution ("SDR") Official on behalf of Coventry Health Care Workers Compensation, Inc. and its subsidiary, First Script Network Services ("Coventry"), with respect to United States Postal Service ("USPS") Solicitation No. 2B-12-A-0013 ("Solicitation"), Pharmacy Benefits Management ("PBM") Program. Coventry lodged an initial disagreement regarding this Solicitation and award with the contracting officer ("CO") on November 8, 2012. The CO denied the initial disagreement on November 19, 2012. You then lodged this Disagreement with the SDR Official on November 19, 2012, and supplemented the Disagreement on November 29, 2012.

### **Background**

The PBM Program is a non-mandatory program through which USPS employees injured on the job may receive prescription medications. The PBM Program supplier assists USPS in managing costs nationwide for injured workers requiring prescriptions and who have an approved claim through the Department of Labor's Office of Workers' Compensation Programs.

### **The Disagreement**

Your Disagreement is based on the following three assertions: (1) USPS' evaluation of Coventry's offer was inconsistent with the Solicitation's stated evaluation criteria; (2) USPS' evaluation and criticisms of Coventry's offer were substantively flawed and unreasonable; and (3) none of the differentiators that clearly demonstrate why Coventry provides the "best value" to USPS were appropriately considered by USPS in evaluating Coventry's proposal.

## **The Solicitation and Amendments**

### The Solicitation

The Solicitation was issued on April 3, 2012. Solicitation Provision 4-2, Evaluation, stated, in part:

a. General. The Postal Service will award a contract resulting from this solicitation to the offeror whose offer conforming to the solicitation is deemed to offer the Postal Service the best value, price and other factors as specified considered. The following performance evaluation factors will be used in the evaluation of offers: Initially, price will be evaluated separately from the performance evaluation factors. The following technical criteria are listed in descending order of importance. Technical Approach is significantly more important than the Management Plan; the Management Plan is more important than Personnel; and Personnel is slightly more important than Understanding the Challenges of USPS. As previously stated, the USPS will evaluate each proposal against the technical criteria considering benefits, viability, risk, flexibility, and responsiveness to meet or exceed the objectives set forth in the Statement of Work (SOW). In the interest of economy and efficiency in conducting the source selection process, our goal is to select the four highest rated proposals for Oral Presentations.

Solicitation, USPS PBM CLAUSES\_03282012, Part 2-Provisions, Provision 4-2 Evaluation (March 2006), p. 7.

### Statement of Work

The Solicitation included an attachment describing the Statement of Work ("SOW") for the Solicitation. The SOW included a section titled, "Pharmacy Benefits Management Program Requirements" which listed seventeen requirements and requested that offerors "respond to each requirement confirming capability." Solicitation, Attachment 1, United States Postal Service Pharmacy Benefits Management Program Workers' Compensation Statement of Work, pp. 2-5.

### Request For Proposal ("RFP") Questionnaire and Scorecard

A letter from the CO that accompanied the Solicitation included a section entitled, "Evaluation," which stated, in part:

The prospective Suppliers will be evaluated based upon their response to the RFP Questions. A Scorecard will be utilized which will consist of the categories within the RFP Questionnaire where each category is worth 100 points. Each category will be weighted and based upon the applied score of each category (0-100) will have the weighted score calculated, and a total score computed by adding the weighted score of each category.

Each Evaluator will have their [sic] own Scorecard and all the Scorecards will be averaged to arrive at a final composite score.

Letter from CO Accompanying Solicitation, p. 1.

The RFP Questionnaire was provided to offerors as an attachment to the Solicitation. The RFP Questionnaire included the following nine evaluation categories, with specific questions listed under each:

- 1.1 Pharmacy Operations
- 1.2 Pharmacy Network
- 1.3 Mail Order Service
- 1.4 Clinical
- 1.5 Reporting
- 1.6 Government Affairs and Legal
- 1.7 Technology
- 1.8 Pricing
- 1.9 Statement of Work

RFP—USPS PBM Program—Solicitation.

The Scorecard referenced in the Solicitation Instructions was provided to offerors on April 23, 2012, as part of the questions and answers the CO sent directly to each prospective offeror. The Scorecard set forth the relative weights for each of the nine evaluation categories listed on the RFP Questionnaire and for a tenth category, "Oral Presentations," not listed in the RFP Questionnaire.

#### Oral Presentations

Nine suppliers submitted proposals in response to the Solicitation. The four suppliers with the highest scores based on the Scorecard results were invited to give an oral presentation. Those presentations were conducted in Washington, D.C. on June 18 and 19, 2012.

In the Award Recommendation, the CO stated, "Prior to conducting the Comparative Evaluation and based on discussions held with each offeror during Oral Presentations, each of the four remaining Suppliers were given 3 days to revise their proposal after conducting the Oral Presentation." During my discussions with the CO, he further indicated that following the oral presentations, offerors could revise their proposals and make revisions to both their technical solutions and price proposals.

#### Amendment I

Amendment I was issued on August 31, 2012, for the purpose of bringing "additional clarity to the Pricing Section within the RFP Questions, specifically section 1.8 Pricing." Amendment I explained the intent of Section 1.8: "to evaluate the Suppliers [sic] Pricing Methodology and Realism with respect to standard industry practices, the market, and the Postal Service's historical experience with PBM services, and not to evaluate the Suppliers [sic] actual program pricing for purposes of conducting a trade-off between technical and price in order to reach a best value decision and Supplier selection for contract award." Amendment I also renamed Section 1.8, stating:

Section 1.8 is now to be referred to as **1.8 Pricing Methodology**, in order to eliminate any confusion this may have caused, and is part of the Technical Evaluation Factors previously provided during the course of the source selection process. Section 1.8.4 which originally read "What is your proposed pricing to the USPS?" is to be reworded to "Submit your pricing-discounts and dispensing fees only for the purpose of evaluating price realism, and for the purposes of this Amendment.["]

Amendment I, Opportunity to Revise Technical/Business and Price Proposals, p. 1 (emphasis original).

Amendment I also clarified the relationship between price and technical criteria, stating, in part:

As part of the Solicitation and source selection process, pricing is evaluated separately from the Technical Evaluation Factors. Proposed pricing from the Suppliers will factor in the Discounts in addition to the FECA Schedule, Dispensing Fees, and proposed /committed Penetration Rates, and ultimately the proposal that offers best value to the USPS. This is a reminder that in reaching a best value decision, contract award will be made to the capable offeror who submits the best combination of Technical/Business and Price proposals. The technical solution is considered to be significantly more important than price for purposes of selection. However, USPS will not pay significantly more for marginal increases in technical value or merit and the perceived benefits of a higher priced proposal must warrant the additional cost.

Amendment I, Opportunity to Revise Technical/Business and Price Proposals, p. 1.

The prospective suppliers selected to participate in oral presentations were given the opportunity to ask individual email or telephone questions of the CO related to Amendment I. Further, based on Amendment I, prospective suppliers were:

permitted to revise their RFP responses submitted related to their pricing proposals **ONLY**, to include Base Period and Option Period pricing, and any adjustments to 1.8.4 as reflected in the new wording reflected above; and as deemed necessary until the close of the solicitation on **Thursday, September 6, 2012**.

Amendment I, Opportunity to Revise Technical/Business and Price Proposals, p. 1 (emphasis original).

#### Amendment II

Amendment II was issued on September 11, 2012, to provide written answers to the questions submitted in response to Amendment I and to provide "additional information concerning the technical evaluation process and final best value trade-off decision." As with Amendment I, the prospective suppliers selected to participate in oral presentations were given the opportunity to ask individual email or telephone questions related to Amendment II. Further, in the event the additional information in Amendment II prompted "any additional changes or modifications," prospective suppliers were:

permitted to revise their RFP responses submitted related to their pricing proposals **ONLY**, to include Base Period and Option Period pricing, and any adjustments to 1.8.4; and as deemed necessary until the close of the solicitation on **Thursday, September 13, 2012**.

Amendment II, Opportunity to Revise Technical/Business and Price Proposals, p. 3 (emphasis original).

A transmittal e-mail from the CO to suppliers that accompanied Amendment II included the following sentence, "Please understand we are not requesting you to make any changes to your proposal since this is further clarification to the initial Amendment to the Solicitation."

## Material Reviewed

In my review of the record, I have had conversations with the CO, both by phone and by email, and have reviewed the following:

- The purchase plan;
- The statement of work, Solicitation, and amendments;
- The initial disagreement;
- The CO's response to the initial disagreement;
- Coventry's and the awardee's proposals;
- The evaluation team's evaluations of the above proposals;
- The award recommendation;
- The Disagreement and supplement lodged with the SDRO; and
- The comments received in response to the notification sent to interested parties.

## Discussion

As detailed above, Coventry makes three assertions in this Disagreement: (1) USPS' evaluation of Coventry's offer was inconsistent with the Solicitation's stated evaluation criteria; (2) USPS' evaluation and criticisms of Coventry's offer were substantively flawed and unreasonable; and (3) none of the differentiators that clearly demonstrate why Coventry provides the "best value" to USPS were appropriately considered by USPS in evaluating Coventry's proposal. Because of my findings and decision with respect to assertion one, I do not reach the merits of assertions two and three.

### Assertion 1: USPS's evaluation of Coventry's offer was inconsistent with the Solicitation's stated evaluation criteria.

In its first assertion, Coventry contends that USPS' evaluation of Coventry's offer was inconsistent with the evaluation criteria stated in the Solicitation. Specifically, Coventry argues that USPS failed to evaluate the offers in accordance with Provision 4-2 of the Solicitation and instead evaluated them using the criteria listed in the Scorecard and RFP Questionnaire.<sup>1</sup> I find that USPS' evaluation of the offers was inconsistent with the Solicitation's stated evaluation criteria. I further find that the Solicitation failed to clearly establish the role of price, and that this failure, together with the failure to evaluate the proposals in accordance with the Solicitation's stated evaluation criteria, raises fundamental questions as to whether the Postal Service effectively evaluated the proposals and received best value in this procurement.

When the Solicitation was issued, the relationship among Provision 4-2, the Scorecard, and the RFP Questionnaire was not established. In the CO's November 19, 2012, response to Coventry's initial disagreement, he stated that, "Provision 4-2 gave only a general description of the best-value evaluation process, listing only four broad categories of evaluation factors (Technical Approach, Management Plan, Personnel, and Understanding the Challenges of the USPS), and explaining their relative importance." The CO further explained that the RFP Questionnaire was "a detailed roadmap as to how an offeror should prepare and submit a proposal that was responsive to the objectives of the Postal Service as stated in the SOW", and that in his opinion, the offerors were "provided sufficient information as to how to prepare and present a responsive and effective offer." In the Award Recommendation, the CO stated, "The original intent of the Scorecard was to encompass the four evaluation factors identified in Provision 4-2; ultimately, however, and to avoid any possible confusion

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<sup>1</sup> In his November 19, 2012 decision, the CO, relying on 39 C.F.R. § 601.107(b), determined that Coventry's first assertion was untimely. I disagree with the CO's determination; therefore, Coventry's first assertion will be considered and addressed in this decision.

among prospective suppliers, the 10-factor scorecard replaced the 4 factors in Provision 4-2 as well as the original Purchase Plan." However, the CO never deleted Provision 4-2 or otherwise communicated to offerors that the ten-factor Scorecard replaced the four evaluation factors outlined in Provision 4-2.

Despite the release of the Scorecard on April 23, 2012, and despite Amendments I and II to the Solicitation, which sought to further clarify the evaluation process, the relationship among Provision 4-2, the Scorecard, and the RFP Questionnaire was never disclosed to offerors. The evaluation of offerors' proposals using the Scorecard rather than Provision 4-2, was inconsistent with the Solicitation's stated evaluation criteria.

The Solicitation also failed to clearly establish the role of price, which further compounded the evaluation inconsistency. The initial Solicitation never established the relationship between price and the technical solution. In fact, the relationship was first disclosed in Amendment I, which was issued on August 31, 2012, and stated: "This is a reminder that in reaching a best value decision, contract award will be made to the capable offeror who submits the best combination of Technical/Business and Price proposals. The technical solution is considered to be significantly more important than price for purposes of selection. However, USPS will not pay significantly more for marginal increases in technical value or merit and the perceived benefits of a higher priced proposal must warrant the additional cost."

After the relationship between price and the technical solution was disclosed in Amendment I, the top four offerors—and only the top four offerors—were permitted to revise their submitted RFP responses, but only with respect to their pricing proposals. Therefore, after learning that the technical solution would be more important than price, the top four offerors could not make revisions to their technical solution, which was considered "significantly more important than price for purposes of selection," to reflect their best offer. Moreover, nothing in Amendment I clarified what evaluation criteria (the factors outlined in Provision 4-2, the nine evaluation categories listed on the RFP Questionnaire, or the ten evaluation categories listed on the Scorecard), would be used to evaluate the technical solution. Additionally, the five offerors who were not selected to give an oral presentation were never told the role of price and never had an opportunity to revise their proposals.

As detailed above, Amendment II, issued on September 11, 2012 to the top four offerors, provided written answers to the questions submitted in response to Amendment I and sought to provide additional information concerning the technical evaluation process and the final best value trade-off decision. Question number four read: "If after we have analyzed the amendment and we want to make a change in the responses/offering – are we allowed to do so?" In response, USPS stated: "Yes, but only relative to Section 1.8, Pricing Methodology, which would include your additional Discounts off the FECA Schedule or your Dispensing Fees. No changes will be allowed on any other technical responses (unless you can clearly demonstrate the relevancy of such changes). You are also permitted to revise your pricing proposal based on the clarifications set forth in the Amendment." Therefore, as with Amendment I, offerors could not revise their technical response following the release of Amendment II.

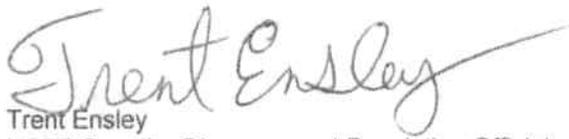
Due to the ambiguity regarding the evaluation criteria and the failure to establish the role of price in the original Solicitation, offerors never had an opportunity to develop and submit informed – and responsive – proposals. Without the knowledge of the role of price, offerors could not effectively respond to the Solicitation. The problem was compounded when, once the role of price was established in Amendment I, offerors were not given an opportunity to revise their technical proposals. In other words, at no point during the purchasing process were offerors provided a real opportunity to develop and submit effective proposals responsive to the Solicitation. Therefore, there are fundamental questions as to whether the USPS obtained best value in this procurement.

Because of my findings and decision with respect to assertion one of this Disagreement, I do not reach the merits of assertions two and three.

### **Decision**

After considering the information provided to me by the CO, Coventry, and interested parties, including the awardee, and after having conducted a thorough review of the material listed above, I have determined that fundamental questions exist as to whether the Postal Service obtained best value in this procurement. Coventry's disagreement is therefore sustained as to assertion one—that USPS' evaluation of Coventry's proposal was inconsistent with the evaluation criteria stated in the Solicitation. As a result, I hereby direct the CO to modify the contract with the awardee so that the contract terminates not later than four months after the issuance date of this decision. During the four-month period between the issuance date of this decision and the contract termination date, the CO and the purchase/supply chain management team should determine whether a Postal Service requirement still exists for the services contemplated in the Solicitation. If during this period, it is determined that a requirement for such services no longer exists, the CO must terminate this contract as soon as practicable. If such a requirement exists, a new solicitation for a supplier to perform such services should be issued to, at a minimum, the nine pre-qualified suppliers who participated in the original Solicitation. In the new solicitation, the CO must ensure that the evaluation methodology is clear, that the method for determining best value is clearly stated and includes a description of the relationship of price to other evaluation factors, and that offerors are evaluated pursuant to that evaluation methodology.

In accordance with 39 C.F.R. § 601.108(g), this is my final decision.



Trent Ensley  
USPS Supplier Disagreement Resolution Official

cc: Brian Ray  
Kelly Feuerer  
Matt Padden  
Allen Wise  
Tom Zielinski  
Hopewell Darneille III  
David Hendel