



August 8, 2017

VIA PRIORITY MAIL W/DELIVERY RECEIPT

Mr. Erik Meis
405 1st Street West
Havre, MT 59501-3411

Re: Supplier Disagreement Regarding HCR 59534; SDR Case # SDR15TR-02

Dear Mr. Meis:

This letter responds to the April 1, 2015 Supplier Disagreement ("Disagreement") that you lodged with the Supplier Disagreement Resolution Official ("SDRO") relating to Highway Contract Route ("HCR") 59534.

Background.

As background, you lodged a disagreement with the contracting officer ("CO"), Howard Bruner, by e-mail on March 30, 2015, with the subject "Disagreement of Intended Award of HCR 59534." You alleged that during March 2015, the Postal Service twice solicited offers for HCR 59534 and that you were the sole offeror on each occasion. You further alleged that the incumbent contractor used deficient equipment and drivers who were not properly screened for handling mail. You asked the Postal Service to award HCR 59534 to you.

A Postal Service Purchasing and Supply Management Specialist responded via e-mail on March 31, 2015, with the following explanation: Prior to the solicitations, the incumbent had indicated he would not extend the contract beyond its March 31, 2015, expiration. The Postal Service did not intend to award HCR 59534 based on either of the two March solicitations because your \$47,401.43 offer on the first solicitation was 185% above the market value of \$27,536.81 and your offer on the second solicitation was even higher. The Postal Service then asked the incumbent to extend the term of the contract and the incumbent agreed to a three-month extension ending June 30, 2015. The Specialist's response also said the contract extension was not an award and the Postal Service hoped you would bid when the Postal Service re-solicited for the contract in June.

By letter dated April 1, 2015, you lodged an expanded version of your disagreement with the then designated Supplier Disagreement Resolution Official (SDRO), the Postal Service contracting officer designated to perform the functions established under 39 C.F.R. § 601.108.

Analysis.

I am the current SDRO designated to resolve your disagreement. At the outset, I note that the Postal Service is not obligated to make an award following a solicitation, if the prices offered do not represent the best value to the Postal Service. I also note that the Postal Service and an incumbent may agree to extend an HCR contract.

Below I have addressed the eight concerns you listed in your April 1 letter. In sum, most of your concerns allege inequities in the Postal Service's conduct of the March solicitations. I have determined the Postal Service properly cancelled the March solicitations based on its assessment of your offer

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relative to its determination of best value for the Postal Service. I also have determined the Postal Service properly extended the incumbent contract by agreement with the incumbent. Further, the Postal Service conducted a June 2015 solicitation and the result supported the Postal Service's earlier determination that your offer was not the best value for the Postal Service because the offer of the awardee (which was not the incumbent) was lower than your prior offer. Because the Postal Service properly cancelled the March solicitations, any alleged inequities in the Postal Service's conduct of the cancelled March solicitations, even if determined to be true, would not warrant the award of any remedy to you.

Your other concerns alleged the incumbent's non-compliance with the prior contract. Because the Postal Service replaced the prior contractor and awarded a new contract following the June 2015 solicitation, I have determined that any non-compliance with the former contract does not warrant the award of any remedy to you.

Concerns and SDRO Response.

1. Meis: The disagreement response should have been issued by the CO, but it was issued by a Contract Specialist without any indication that the CO had reviewed the matter or had in fact made the decision.

SDRO decision: Whether or not your allegation is correct, the disagreement was not resolved at the responsible contracting officer level; therefore, the Postal Service is following the process in 39 C.F.R. § 601.108 to resolve your disagreement.

2. Meis: The disagreement response ignored the concern I raised about the current contractor failing to use the required equipment.

3. Meis: The disagreement response ignored the concern I raised about the use of an unscreened driver.

4. Meis: It is not surprising that a contractor who does not comply with key contract requirements is able to bid substantially lower than a contractor who is bidding on a compliant basis. The disagreement response showed no awareness of this unequal playing field and its impact on the integrity of the USPS procurement system.

SDRO decision: Regarding concerns 2 – 4: Even assuming your concerns were valid, they do not warrant the award of any remedy to you for two reasons. First, the Postal Service replaced the contractor. Second, your concerns pertain to a March 2015 solicitation, but the Postal Service cancelled that solicitation and agreed with the incumbent to extend the existing contract. Any alleged inequities in the Postal Service's conduct of the March solicitations, even if determined to be true, would not warrant any award because the Postal Service cancelled the solicitations. Because the Postal Service replaced the contractor, cancelled the March solicitations, and awarded a new contract following a June 2015 solicitation, I have determined that any non-compliance with the former contract does not warrant the award of any remedy to you.

5. Meis: The incumbent's contract expired on March 31, 2015, so the USPS's action to "extend" the contract was a procurement action. Instead of "extending" the contract for a 3-month period, the procurement office could have issued an emergency contract to my company for the same 3-month period. Regardless of the term of the contract, the Postal Service cannot ignore non-compliance with key contract requirements.

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SDRO decision: The Postal Service and the incumbent properly agreed to extend the contract, as was their right. Please see the response above concerning contract compliance.

6. Meis: The USPS response confuses the concept of "best value" with lowest price. While my price was higher than the current contractor's price, I offered to provide compliant equipment and screened drivers who can meet USPS security clearance requirements, something the incumbent was not and is not providing. I also have a better record of performance than the incumbent contractor. My price was reasonable based on utilizing the required equipment and paying the prevailing wage determination. Properly considered, my proposal was the only compliant proposal the Postal Service received and was also the best value to the Postal Service.

SDRO decision: The Postal Service determined that your offer was not only higher than the incumbent's contract rate, but also higher than market value and not the best value for the Postal Service. Moreover, your concern pertains to the March 2015 solicitation and, as I explained above, because the Postal Service cancelled the solicitations and extended the existing contract, any alleged inequities in the Postal Service's conduct of the March solicitations, even if determined to be true, would not warrant any award because the Postal Service cancelled the solicitations.

7. Meis: Because the incumbent contractor is not meeting the terms of the contract or the terms of the solicitation that I responded to, and because the procurement office has ignored those concerns and improperly equated best value with lowest price, I request that the SDRO direct the Postal Service to terminate the extension and issue a contract to me for the 3 month period of the extension, as I am the only compliant offeror.

8. Meis: Alternatively, if the Postal Service no longer requires the equipment specified in the contract, the use of screened drivers who can meet USPS security clearance requirements, or payment based on the prevailing wage determination then I should be offered the opportunity to submit a bid based on the same relaxed requirements.

SDRO decision: Regarding concerns 7 – 8: As explained above, your concerns pertain to the March 2015 solicitation and because the Postal Service cancelled the solicitations and extended the prior contractor's contract, any alleged inequities in the Postal Service's conduct of the March solicitations, even if determined to be true, would not warrant any award because the Postal Service cancelled the solicitation.

SDRO Decision.

I have obtained the required information, materials, and advice to render this decision. My decision is to deny your disagreement. This decision fully resolves your disagreement and is final and binding, pursuant to my authority in accordance with 39 C.F.R. §601.108(g).

Sincerely,

A handwritten signature in black ink, appearing to read "Robert D. D'Orso". The signature is fluid and cursive, with the first name "Robert" being more prominent.

Robert D. D'Orso

Supplier Disagreement Resolution Official