



September 28, 2018

BY EMAIL AND CERTIFIED MAIL

Rishi Khubani
Chief Executive Officer
ConducTV Brands
138 Fairfield Road
Fairfield, NJ 07004-2407

Re: Supplier Disagreement Resolution No. SDR-18-CPF-05

Dear Mr. Khubani:

This letter responds to the business disagreement received on September 6, 2018 on behalf of Dispenserless User Friendly Tape, LLC ("Dispenserless") by the Supplier Disagreement Resolution Official (the "SDRO") concerning Solicitation No. 2D-18-A-0043 for Expedited Packaging Supplies ("EPS") Printed Tape Products (the "Solicitation").

Background

The United States Postal Service (the "Postal Service") issued the Solicitation for EPS Printed Tape Products on June 22, 2018. Between July 2, 2018 and August 14, 2018, the Postal Service issued five amendments to the Solicitation. Dispenserless's proposal was received on or about July 14, 2018, prior to the July 31, 2018 closing date. On August 14, 2018, the Postal Service excluded Dispenserless's proposal from further consideration because Dispenserless was not a "commercial tape manufacturer" as required by the Solicitation. Dispenserless's August 15, 2018 email in response to the notice of exclusion was deemed a business disagreement by the Contracting Officer ("CO"). After an agreed extension of time, the CO's written resolution of the initial disagreement was mailed and emailed to Dispenserless on August 31, 2018, and you timely lodged the subject disagreement with my office on September 6, 2018.

Standing

At the outset, I must address the issue of whether you have standing to seek relief from the SDRO for Dispenserless's exclusion from the Solicitation. You lodged the September 6, 2018 disagreement as the Founder/Chief Executive Officer (CEO) of ConducTV Brands ("ConducTV"), stating that ConducTV owns Dispenserless and that Dispenserless is the "tape division of [your] company." Although ConducTV is not itself an "actual or prospective offeror" as defined in 39 C.F.R. § 601.107(a)(3), and therefore is not an "interested party" with regard to the Solicitation, I have deemed your September 6, 2018 letter as being submitted on behalf of Dispenserless, determining to accept the disagreement and proceed with evaluating the disagreement.

The Disagreement

You contend that the disqualification of Dispenserless on the ground that it is not a commercial tape manufacturer was "illegal." You further contend that Dispenserless intended to subcontract the manufacture of the products within your proposal to a corporation, [REDACTED], which was a current subcontractor to Dispenserless and that "[s]ub-contractors are permitted in [the] [S]olicitation." Your disagreement requests that the Postal Service review the Solicitation "to see that [Dispenserless] meet[s] all requirements."

Discussion

In essence, your disagreement asserts that Dispenserless satisfied the Solicitation's definition of a "commercial tape manufacturer" because Dispenserless intended to subcontract with [REDACTED] to perform the manufacturing requirements, and that Dispenserless would stand by [REDACTED] performance. In support, you cite to only one provision of the Solicitation of the several that address the manufacturing restriction, noting that, on page 2 of the PS Form 8203 dated June 22, 2018, the Solicitation states:

"Suppliers must have direct ownership and capability to perform all item manufacturing. Supplier will bear full responsibility for the product component substrates and materials meeting the performance requirements established under this contract."

This requirement cannot be satisfied, however, by subcontracting the manufacturing obligation to a separate entity; rather, its express language confirms that offerors must have "direct ownership and capability to perform all item manufacturing." In addition, the following Solicitation question response and terms of the Solicitation notified offerors that the Postal Service had restricted the Solicitation to manufacturers:

- "Question: Is this solicitation restricted to only manufacturers? Answer: Yes." (Solicitation Attachment 6, Q&A No. 2).
- "The purpose of this acquisition is to competitively source and award to a commercial tape manufacturer a single Indefinite Delivery - Indefinite Quantity (IDIQ) contract with a potential period of performance of seven years beginning approximately 8/31/2018." (emphasis in original) (Solicitation Attachment 1: Solicitation Announcement and Instructions to Offerors, p. 1).
- "Primary objectives of this solicitation are to ensure a continuous source of supply, provide proper consideration to potential offerors that manufacture these products, improve operational efficiencies, and drive USPS revenue." (Solicitation Attachment 1: Solicitation Announcement and Instructions to Offerors, p. 1).
- "How long has your organization been in the tape manufacturing industry? Define the types of products you manufacture that relate to the present USPS requirement." (Solicitation Attachment 1, Solicitation Announcement and Instructions to Offerors, p. 5 (Supplier Capability Question "b")).

Despite this restriction, Dispenserless's Technical & Price Proposal represented that a separate legal entity, [REDACTED], would perform the actual manufacturing of the EPS Printed Tape Products. The following are examples of those representations:

- "All of our tape is produced in [REDACTED] at [REDACTED] manufacturers and then affixes their labels to the rolls of tape..." (Technical & Price Proposal, p. 4).
- "Dispenserless User Friendly Tape LLC has a certified Commitment from [REDACTED] who is engaged as the [REDACTED] in supplying Melt Pressure Sensitive Adhesive Rolls of Tapes and Labels." (Technical & Price Proposal, p. 64-65).
- [REDACTED] ... is responsible for the manufacturing of EPS products." (Technical & Price Proposal, p. 69).

- Dispenserless responded to numerous evaluation factors from the perspective of [REDACTED], and did not include any information for some of these factors on behalf of Dispenserless as the offering entity. Notably, when asked to "[d]efine the types of products [it] manufacturer[s] that relate to the present USPS requirement," Dispenserless provided only information pertaining to [REDACTED] capabilities. (Technical & Price Proposal, p. 64-75).

As the Solicitation was restricted to manufacturers, on August 10, 2018, the Postal Service requested that Dispenserless clarify the roles that Dispenserless, ConducTV, and [REDACTED] played in this procurement. On August 10, 2018, Thomas Gelb, COO of Dispenserless, confirmed via e-mail that "Dispenserless User Friendly Tape, LLC division is [the] tape company applying for the program," ConducTV was Dispenserless's parent company, and "[REDACTED] ... is the [REDACTED] manufacturer of all [its] tape." Therefore, on August 14, 2018, the Postal Service excluded Dispenserless's proposal from further consideration on the grounds that Dispenserless was not a "commercial tape manufacturer" in accordance with the requirements of the Solicitation.

Thereafter, in response to Dispenserless's August 15, 2018 initial disagreement, the CO sent a letter dated August 21, 2018 that provided Dispenserless with a further opportunity to identify either: 1) manufacturing facilities owned by Dispenserless or ConducTV, or 2) any ownership or membership interest held by Dispenserless or ConducTV in [REDACTED]. In its e-mail response dated August 22, 2018, Dispenserless did not provide any information regarding manufacturing facilities owned by Dispenserless or ConducTV, nor any ownership interest that Dispenserless or ConducTV held in [REDACTED]. Rather, Dispenserless insisted that the Postal Service should permit Dispenserless to subcontract with [REDACTED] for manufacturing the EPS Printed Tape Products. As a result, the CO concluded that the Postal Service had correctly excluded Dispenserless from further consideration for award on the grounds that Dispenserless was not a "commercial tape manufacturer."

I am the current SDRO designated to resolve your disagreement. I have jurisdiction, pursuant to 39 CFR § 601.107(b) and 39 CFR § 601.108(a), to hear this disagreement. I have reviewed the matter and provide my decision herein.

Basis of SDRO Decision

The Postal Service restricted the award of a contract under this Solicitation to "commercial tape manufacturers." In several places, the Solicitation identified the Postal Service requirement that the awardee be a "commercial tape manufacturer." Furthermore, Amendment 1, Attachment 6, Q&A No. 2 clarified any potential ambiguity in the base solicitation documents because the Postal Service unequivocally responded "Yes" to the question: "Is this solicitation restricted to only manufacturers?"

At several points, Dispenserless's Technical & Price Proposal identified [REDACTED] as the proffered manufacturer of the EPS Printed Tape Products. Dispenserless confirmed in its responses to subsequent clarification questions that Dispenserless was the offeror entity, and that Dispenserless intended to subcontract with [REDACTED], a separate legal entity, to perform the actual tape manufacturing. Despite ample opportunity, at no point has Dispenserless identified its intent or capability to manufacture tape itself, nor any ownership interest in a company that performs manufacturing. Therefore, Dispenserless did not satisfy the definition of a "commercial tape manufacturer" as required by the Solicitation.

Dispenserless, however, asserts that it can satisfy the definition of a "commercial tape manufacturer" by subcontracting with a commercial tape manufacturer because the Solicitation permits subcontracting. While certain sections of the Solicitation's Terms and Conditions indicate that subcontracting portions of the Solicitation work may be permitted, the Postal Service also limited the Solicitation to offerors who could self-perform tape manufacturing in the Solicitation's PS Form 8023, Announcement and Instruction to Offerors, and Amendment 1. Therefore, the Solicitation's terms cannot be construed so as to permit the successful supplier to subcontract the tape manufacturing to another entity in order to satisfy the definition of a "commercial tape manufacturer." Finally, for the CO to consider Dispenserless's proposal

inconsistent with the Solicitation's terms would be unfair to other companies who did not pursue the business opportunity because they did not meet the definition of a "commercial tape manufacturer".

SDRO Decision

I conclude that Dispenserless was not a "commercial tape manufacturer," which was an express requirement of the Solicitation. Therefore, I affirm the decision to exclude Dispenserless from consideration for this contract award. In accordance with 39 C.F.R. § 601.108(g), this is my final and binding resolution of this matter.

Sincerely,



Mark A. Gullfoil
Supplier Disagreement Resolution Official
Manager, Supply Management Infrastructure

cc: Nathan T. Franklin, Contracting Officer
Tom Gelb, COO, Dispenserless User Friendly Tape, LLC