



September 10, 2018

BY EMAIL AND CERTIFIED MAIL

Ms. Rea Johnson  
CREA Construction, Inc.  
161 N. Clark St. - Suite 1600  
Chicago, IL 60601

Re: Supplier Disagreement Resolution No. SDR-18-FA-03

Dear Ms. Johnson:

This letter responds to CREA Construction, Inc.'s ("CREA") business disagreement submitted on July 4, 2018 to the Supplier Disagreement Resolution Official ("SDRO") concerning Solicitation Number 482263-18-A-0053 for the Paving Upgrade Project at the La Porte, Indiana Main Post Office ("Solicitation").

### **Background**

The Solicitation for the project was issued on March 28, 2018, your firm's proposal was received prior to the April 26, 2018 closing date, technical and cost proposal evaluations of all offers received were completed by the Purchase Team, and Contract 482263-18-B-0065 ("Contract") was awarded to Diversified Maintenance Systems, Inc. ("DMSI") on June 1, 2018. Your firm was provided a debriefing of the evaluation of your proposal on June 7, 2018. Subsequent to that meeting, you attempted to submit a protest to the General Accounting Office ("GAO"). You then lodged a business disagreement with the contracting officer ("CO") on June 13, 2018. The CO's written resolution of the disagreement was emailed to you on June 25, 2018, and you timely lodged the subject disagreement with my office (the SDRO) on July 4, 2018.

### **The Disagreement**

Your July 4, 2018 disagreement contends that the selection of DMSI lacks a reasonable basis and asserts that "before an agency can select a higher-priced proposal that has been rated technically superior to a lower-priced but acceptable proposal, the award decision must be adequately documented and supported by a rational explanation of why the higher-rated proposal is, in fact, superior, and explain why its technical superiority warrants paying a price premium." Your disagreement requests that your proposal be "re-evaluated to be reconsidered for [the] award."

Additionally, you requested access to the awardee's proposal and the ratings and technical evaluation report prepared by the evaluation team. These requests for documents are denied because they contain sensitive and confidential business information, which the Postal Service protects from disclosure.

### **Discussion**

Your disagreement contains four rebuttal statements to responses made by the contracting officer in her June 25, 2018 decision. Specifically, you disagreed that (1) your initial disagreement

acknowledged that the selected supplier had a superior rating to that of CREA; (2) that you correctly provided the Schedule of Values (Attachment 10) for evaluation with your proposal; (3) that you correctly provided your Experience Modification Ratio ("EMR") rating within the proposal; and (4) that the Postal Service erred in its evaluation of past performance/comparable experience of your asphalt and concrete capabilities, based on CREA being a general contractor, in lieu of a firm specializing in concrete and paving.

#### 1. Whether CREA Acknowledged the Awardee had a Superior Technical Rating

With regard to whether CREA implied that it agreed or acknowledged that the selected offeror had a superior technical rating within its initial disagreement letter, this point is not determinative as to the resolution of the matter and does not need to be decided by this office.

#### 2. Schedule of Values

CREA contends that it submitted a correct Schedule of Values in its proposal for evaluation. CREA did not submit the version of Attachment 10 (Schedule of Values) which was contained within the RFP, but did however submit the version which was contained within the Emptoris eSourcing tool used for the acquisition. Irrespective, the record is clear that the data provided by CREA within the Schedule of Values was fully evaluated and scored by the technical evaluators. Additionally, there is no evidence that CREA's evaluation was lowered or otherwise affected by the fact that CREA submitted a Schedule of Values which differed in format from that of Attachment 10 to the Solicitation. In summary, the Schedule of Values version submitted by CREA had no impact on the evaluation or best value determination for the requirement.

#### 3. Experience Modification Ratio (EMR) Rating

CREA argues that it correctly provided its EMR rating within its proposal. However, as concerns the EMR rating, the file demonstrates, consistent with the CO's response to your disagreement, that CREA provided within its proposal its rating for last year of 0.95 (Country Financial). Your disagreement to this office contained an attached letter from NCCI dated April 26, 2018, with your current EMR rating of 1.0. While it would appear from the date that the NCCI letter existed and could have been submitted at the time of proposal submission, CREA's proposal did not include the NCCI letter.

#### 4. Past Performance/Comparable Experience

CREA asserts that the Postal Service evaluators erred in evaluating the strength of its past performance/comparable experience submissions. Specifically, CREA asserts that as a general contractor, it was incorrectly evaluated against competitors whose work may be only concrete/asphalt. Further, CREA contends that the award "holds back minority and women owned businesses from gaining opportunities and thriving in the construction industry." The contract file and selection decision demonstrates that neither assertion is accurate. A review of the scored evaluations from all evaluators demonstrates that the differences in scoring between the selected offeror's proposal and CREA's proposal are attributable to the thoroughness of responses, level of detail provided, and comparable strengths in asphalt and paving work contained within the submissions. There is no evidence that contractor type or business classification played any role in the best value determination. In fact, this office notes that contrary to CREA's assertion of rating bias on the basis of business classification, award in this matter was made to a general contractor that is a women-owned small business.

### **Review of Best Value/Selection Decision**

Best value is the basis of all Postal Service sourcing decisions. The determination of best value involves several factors: (1) the trade-off judgment between price and the value offered in an

offeror's proposal; (2) the relative value offered by an offeror in relation to the competition; and (3) whether a lower price is worth the lesser technical value (and potentially higher risk), or whether a higher price is worth the increased technical capabilities (and potentially lower risk). Provision 4-2(a) of the Solicitation stated:

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: supplier capability, past performance and price. Price is more important than supplier capability and past performance. The Postal Service will make the selection for an award based on principles on best value.

In addition, Provision F-301(b)(1) of the Solicitation stated that, "Award will be made to the responsible offeror whose proposal contains the combination of technical and price offering the best value to the Postal Service. An award will not necessarily be made to the lowest price offered if the associated technical merits of that proposal are considered acceptable." Said differently, the basis for award was not the lowest price, technically acceptable offer.

The technical proposals were evaluated on a numeric and adjectival basis within an established scale of Excellent, Very Good, Good, Fair, Poor, and Unacceptable. These adjectival values each contain a numeric range from low to high. While CREA's price proposal was lower than that of the awarded offeror, the difference in technical scoring was significant. CREA's technical evaluation score was scored within the low "Good" range, but the selected offeror's score was within the "Very Good" range.

CREA asserts that the contracting officer's selection decision was unreasonable and lacked a reasonable basis. I reviewed the solicitation/evaluation file documentation and have determined that the award decision was based upon applying the evaluation factors identified in the Solicitation to each proposal, that the technical scores were properly based upon the evaluation factors, that the contracting officer appropriately considered the tradeoff between price and the technical scores in determining best value, and that the awarded price was fair and reasonable. On this basis, I find that the award decision was clearly reasonable.

#### **SDRO Decision**

I conclude that there were no improprieties in the evaluation of the proposals, that the contracting officer appropriately documented her best value selection and award decision, that her decision was made as a result of reasonable judgement, and that her decision followed the evaluation factors and definition of best value set forth within the Solicitation. Therefore, I affirm the original contract award of the contracting officer. In accordance with 39 C.F.R. § 601.108(g), this is my final and binding resolution of this matter.

Sincerely,



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

cc: Erika Ramirez