



September 11, 2019

BY EMAIL AND CERTIFIED MAIL

Mr. Sohail Ashraf Kahn  
Rizco, Inc.  
499 East Halsey Road  
Lake Parsippany, NJ 07054

Re: Supplier Disagreement Resolution No.: SDR19-VDIE-02

Dear Mr. Kahn:

This letter responds to the business disagreement (the "Disagreement") that you lodged on behalf of Rizco, Inc. ("Rizco") on July 20, 2019 with the Supplier Disagreement Resolution Official ("SDRO"). The disagreement concerns Solicitation No.: 3D-19-A-0117 for vehicle maintenance services for the Parsippany, Lake Hiawatha, and Montville, NJ Post Offices (the "Solicitation"). For the reasons set forth below, I sustain the Disagreement and direct the contracting officer to reevaluate the proposals.

### **Procedural History**

On May 6, 2019, the Postal Service issued the Solicitation, seeking proposals for the issuance of an ordering agreement for vehicle maintenance services for the Parsippany, Lake Hiawatha, and Montville, NJ Post Offices. The Solicitation specified that offers were due on May 24, 2019 at 4:00 p.m. ET. Prior to the deadline for submission of offers, no potential offerors submitted disagreements alleging improprieties in the solicitation. See 39 C.F.R. § 601.107(b). Accordingly, any objections to alleged improprieties in the solicitation and its evaluation criteria have been waived. *Blue & Gold Fleet v. United States*, 492 F.3d 1308 (Fed. Cir. 2007).

The Postal Service received timely proposals from Rizco and Peace of Mind Automotive. From the SDRO's review of evaluation documentation, it appears that a Vehicle Operation and Maintenance Assistant ("VOMA"), Joseph Hymas, was a past performance reference for Rizco, Peace of Mind, and a third potential offeror, [REDACTED] and apparently provided past performance information on or about June 2, 2019, although there is no record of [REDACTED] having submitted a proposal. According to Rizco's initial disagreement, it received a notice of award dated May 31, 2019 via email on June 25, 2019 and by mail on June 27, 2019, informing it that the Postal Service had awarded an ordering agreement to Peace of Mind. On July 1, 2019, Rizco purported to contest a decision not to accept or consider a proposal in accordance with 39 C.F.R. § 601.105, which the contracting officer treated as an initial disagreement under 39 C.F.R. § 601.107. On July 11, 2019, the contracting officer denied Rizco's initial disagreement.

On July 20, 2019, Rizco timely lodged its Disagreement with the SDRO within 10 days of receipt of the notification of the contracting officer's resolution.

### **The Disagreement**

Rizco's Disagreement asserts that multiple bases exist to sustain the Disagreement. Rizco first asserts that the contracting officer improperly ranked Rizco's past performance lower than Peace of Mind's past performance. Rizco asserts, among other things, that alleged deficiencies in its past performance were anecdotal, insufficiently documented, and contrary to reference statements from postmasters at the Mountain Lakes, Lake Hiawatha, and Montville, NJ Post Offices. Rizco thus asserts that its past performance ranking below Peace of Mind's ranking was flawed, arbitrary, and without a factual basis.

Second, Rizco asserts that its ranking in price below Peace of Mind was improper, claiming that Rizco has "offered the lowest price in the region for its services for the past 15 years." Moreover, Rizco "questions the credibility of the contracting officer's assertion that its offer is greater than Peace of Mind's offer when the contracting officer made baseless allegations of Rizco's past performance."

Third, Rizco broadly questions the "integrity of the bid review process" based largely upon its allegedly disputatious prior working relationship with the VOMA. Rizco further notes that the date on the award notification was May 31, 2019, but the Postal Service informed Rizco on or around June 6, 2019 that no award decision had been made at that point.

Rizco seeks an award of the ordering agreement, a reevaluation of the award decision, or the issuance of a new solicitation.

### **Discussion**

As set forth below, I find that there is a sufficient basis for requiring the reevaluation of proposals. While I find that certain of Rizco's arguments lack merit, *e.g.*, questioning the integrity of the contracting officer in evaluating Rizco's price proposal, there are nonetheless deficiencies in the evaluation process and documentation that can and should be remedied through a new evaluation.

#### **1. Price Evaluation**

The Solicitation stated that "[t]he 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: past performance, supplier capability. Price is equal to the evaluation factors."

The Proposal Evaluation Strategy further stated with respect to pricing:

Estimated repair times (ERT) may be used to evaluate repair costs and labor rates.

Commercial market rate pricing will be researched to determine competitiveness.

The ranking used in this evaluation will be a number ranking where (1 is Good, 2 is Average and 3 is Poor). The rankings will be shown in a descending order showing best to worst.

Based upon the anticipated spend, there will be no evaluation team. This will be in-house evaluated with final approval from the contracting officer.

At the outset, the procurement documentation provided to the SDRO does not reflect market research regarding commercial rate pricing, notwithstanding the evaluation strategy's statement that such research would be used to determine price competitiveness.

When evaluating Rizco and Peace of Mind's price proposals, the adjectival ratings set forth in the Proposal Evaluation Strategy were not used. Rather, the ratings "(1) Excellent, (2) Good, and (3) Fair" were used. Rizco received a rating of (2) Good, and Peace of Mind received a rating of (1) Excellent. Looking to the specific comparison of the price proposals, the offerors' proposed unit prices for inspections, fluids such as automatic transmission fluid by quart, repair labor rates, and miscellaneous services such as the cost of towing by mile, were multiplied by estimated quantities, hours, or miles. Although the solicitation did not provide estimated units required for fluids or miscellaneous services, the price evaluation spreadsheet assigned estimates to these unit prices for evaluation purposes. In light of the fact that Rizco's unit prices for certain miscellaneous services were higher than Peace of Mind's and lower for others, assigning different estimated quantities to these miscellaneous services could result in either increases or decreases to either offerors' respective prices for evaluation purposes. It is unclear how estimated quantities for these unit prices were determined. Moreover, one of the line items, price per mile for towing over a base price, was assigned a quantity of 0, *i.e.*, it was apparently not included in the price evaluation at all.

Based upon the estimated quantities used for the evaluation – in some instances as noted above not specified in the solicitation – Rizco's evaluated price was \$250,395.00, and Peace of Mind's evaluated price was \$249,204.45, a difference of \$1,190.55. Stated differently, while Rizco's evaluated price was greater than Peace of Mind's, the difference was 0.5%.

Notwithstanding the foregoing, the Best Value Determination states that "Risco [*sic*] Costal was the lower priced vendor for services[.]"

Particularly in light of the fact that the offerors' evaluated prices could vary based upon the quantities of miscellaneous line items – which quantities were not specified in the solicitation

– and the contradictory statements regarding price in various evaluation documents, I cannot sustain the determination that Rizco’s price was materially greater than Peace of Mind’s price. In my view, the prices were substantially equal.

## 2. Past Performance

With respect to past performance, the evaluation documentation is contradictory. For example, the price evaluation worksheet addresses past performance, stating that “[t]he CORs has [sic] used Both [sic] Peace of Mind and Rizco . . . in the past with very good results.”

Supplier evaluation worksheets, which were dated June 2, 2019 and apparently completed by the VOMA, include a section under the heading “Comments: (Pro & Con) Why this Supplier should/should not be considered for a VRMA.” The comment for Peace of Mind states, “[t]his supplier will work to our needs and has several service and tow trucks.” With respect to Rizco, this section is blank. Although [REDACTED] did not submit a proposal, a supplier evaluation worksheet was completed for it, stating “I don’t believe they can perform to our needs.”

The Best Value Determination states that “[t]he above [Post Offices] have used all three of the vendors. Each vendor has provided excellent service for the above Post Offices.” The same Best Value Determination states that the VOMA and VMF Manager “would rather go with Peace of Mind Automotive over Rizco Costal based on their previous experience with Rizco with repeated calls for the same services.”

In light of the multiple contradictory statements regarding past performance in the record, I cannot sustain the determination that Rizco’s past performance was correctly ranked lower than Peace of Mind’s past performance.

## 3. Best Value Determination

As noted above, the Best Value Determination contains contradictory statements with respect to the offerors’ past performance and states that Rizco was the lower priced offeror, again contradicting Rizco’s adjectival price ranking and the price evaluation spreadsheet. In addition, the Best Value Determination lacks a discussion of price reasonableness or comparisons to market pricing, as indicated would be considered in the Proposal Evaluation Strategy.

## 4. Award Decision

The notice of award to Rizco is dated May 31, 2019, which predates various evaluation documentation. Although Rizco states that the notice of award was mailed in late June, I have received no documentation indicating when the decision to make an award to Peace of Mind was actually reached.

## **SDRO Decision**

Although the foregoing is not an exhaustive discussion of the ways in which the proposal evaluation process was flawed, I conclude that the contracting officer has not appropriately documented a rationale for making a best value selection or award decision, nor do I find that the contracting officer followed the evaluation factors or definition of best value set forth in the Solicitation. I therefore sustain Rizco's Disagreement and direct the contracting officer to reevaluate the award on the basis of the proposals received and the evaluation factors contained in the Solicitation. In accordance with 39 C.F.R. § 601.108(g), this is my final and binding resolution of this matter.

Sincerely,

E-SIGNED by ROBERT D'ORSO  
on 2019-09-11 15:03:38 CDT

Robert D. D'Orso, CPSM  
Supplier Disagreement Resolution Official  
Acting Manager,  
Supply Management Infrastructure

cc: Contracting Officer