



November 9, 2007

Ms. Robyn S. Hankins, P.L.
4600 Military Trail
Suite 217
Jupiter, FL 33458

RE: Supplier Disagreement Resolution Case No. OM07MT-10
Solicitation No. 300-539-07/Highway Contract Route (HCR) No. 331M6

Dear Ms. Hankins:

Your letter of August 31 presented a disagreement as defined in 39 CFR Part 601, on behalf of JEM Transport, Inc. (JEM), with respect to the above referenced solicitation. You requested a review of the Contracting Officer's best value determination and a reversal of the Contracting Officer's contract award to Postal Carrier Corporation (PCC), and that award be made to JEM.

According to your disagreement, JEM timely submitted a proposal for services relating to HCR 331M6. You raise numerous concerns regarding the Contracting Officer's best value determination to award the contract to PCC. Among the concerns offered in your disagreement, you state that JEM was in a unique position to assume HCR 331M6 as it had operated most of it on behalf of PCC from the time it was awarded (on an emergency basis) on February 17, 2006 through February 23, 2007. You contend that as a result of the emergency contract, JEM was familiar with the routes and had sufficient personnel and resources to operate the contract. You state that during the entire time period that JEM operated the contract, it had almost no performance deficiencies and had all equipment necessary to provide services relative to the contract; whereas you argue PCC had numerous performance deficiencies, other operational problems and did not have the resources to fulfill the terms of the solicitation. You further state that the Contracting Officer gave credit for the operation of the emergency contract to PCC because it was the company that technically held the contract. Additionally, you assert that JEM was not awarded the contract because of a previous termination for default. You argue that if, in fact, such past performance were taken into consideration, the contract never should have gone to PCC, which also had a termination for default on a previous contract. You also state that the offer accepted by the Contracting Officer was priced considerably higher than that of JEM's. PCC's offer was \$1,505,503 whereas JEM's offer was \$1,250,921 (a difference of \$254,581 per year and \$1,101,825 over the life of the contract). You stated that the Contracting Officer's justification is inconsistent in that why would the Contracting Officer award a contract to PCC for an additional million dollars when it had lost a contract for default more recently than JEM and yet use that reason as rationale to deny an award to an offeror with a lower price.

I have examined the disagreement lodged with me as well as the information you provided. I have also examined the contracting officer's administrative file, spoken with the Postal Service's Manager of Surface Transportation CMC, and reviewed documentation submitted by PCC. As a result of that review, I have determined that the decision to award HCR 331M6 to PCC was arbitrary and did not clearly represent the best value for the Postal Service.

According to Provision 4-2 (Evaluation) of the solicitation, the award was to be made on the following factors:

- a. General. The Postal Service will award a contract to the offeror whose offer is deemed to offer the Postal Service the best value, price, and other factors as specified. The following performance evaluation factors will be used in the evaluation of offers:
 1. Schedule
 2. Equipment
 3. Supplier Capability
 4. Past Performance

The following must be in the supplier's offer:

Proposed annual rate, trip rate, round-trip rate, cost per hour, or rate per mile, as specified in the solicitation.

Price factors (section 3.1.2a) will be considered more important than performance evaluation factors.

As indicated in the administrative file, the Contracting Officer states that the best value award decision was based on a combination of price and the single technical factor of past performance. The Contracting Officer further states that PCC's exemplary record of past performance, including on the specific route in question, was far superior to JEM's record, which included a recent default termination. The Contracting Officer offers that this was enough to overcome JEM's price advantage in the best value analysis. The Contracting Officer then states that "putting the best value analysis in context requires consideration of all responsive proposals." However, after a thorough review of the administrative file and additional information submitted upon my request, the Contracting Officer failed to demonstrate that this "best value analysis" was indeed performed. According to the solicitation, the prospective offerors were to be evaluated on four factors: Schedule, Equipment, Supplier Capability and Past Performance. The contents in the administrative file did not lead me to believe that each offeror was evaluated on all four factors. The Contracting Officer did offer a Pre-Award Analysis and Recommendation, however, the recommendation failed to show that a thorough best value analysis of each of the evaluation factors was performed on each offeror. The Contracting Officer also states in his reply to JEM's disagreement that contrary to JEM's claim, its proposed annual rate of \$1,250,922 was not the lowest but the second-lowest with PCC being the third lowest. The Contracting Officer states "weighing those prices against the documented record of recent past performance I considered PCC's offer to represent the best value to the Postal Service. A lower price is no bargain if the supplier's capability, as measured by how it has performed on comparable work in the recent past, has been deficient." However, this statement contradicts that which is stated in the solicitation. According to the solicitation "price factors will be considered more important than performance evaluation factors." Both JEM and PCC had termination for defaults on previous contracts. If price was considered to be more important than performance, I fail to see the rationale for penalizing JEM more harshly than PCC. Again, there was no documentation in the administrative file that convinced me otherwise that JEM's past performance was egregious enough to ignore the evaluation terms outlined in the solicitation. According to the solicitation, price was to be more important than performance. From all indications in the administrative file, past performance was considered more important than price.

Under these circumstances, I find that the determination of best value was not performed in accordance with the terms of the solicitation. My review of the administrative file raised significant

concerns about whether the Postal Service received best value in this instance and these concerns were not eliminated during my review of the facts relating to this purchase. Therefore, I have decided that the Contracting Officer must promptly resolicit HCR 331M6 and properly evaluate proposals within 60 days in accordance with the new solicitation's stated evaluation criteria to determine best value for the Postal Service. The current contract with PCC should be terminated as provided in Clause 2.3.3b, Termination for the Postal Service's Convenience, with a 60 day notice.

This is the Postal Service's final decision on this disagreement regarding HCR 331M6 under 39 CFR 601.108(h).

Sincerely,

A handwritten signature in black ink, appearing to read "Pete Dolder", enclosed within a large, loopy oval flourish.

Pete Dolder, C.P.M.
USPS Supplier Ombudsman

cc: Bobby Mays, Contracting Officer
Garry M. Glickman, Postal Carrier Corp.