



October 28, 2008

Ron Sulchek, CPA/ABV, MST
Gowen Motor Service, Inc.
1185 Mount Aetna Road
Hagerstown, MD 21740-6832

RE: Supplier Disagreement Resolution Case No. SDR08MT-08
Solicitation No. 200-252-08; Contract No. HCR217A4

Dear Mr. Sulchek:

Your September 22 letter presented a disagreement as defined in 39 CFR Part 601 on behalf of Gowen Motor Service, Inc. (Gowen) with respect to the referenced solicitation. You requested that the contract award under the solicitation be terminated and that the contracting officer conduct good faith negotiations with Gowen so that the solicitation may be awarded on the basis of best value to the Postal Service. The award in question was made to Kevin Baldwin on September 13, 2008.

I have examined the disagreement you lodged with me as well as the additional information you provided. I have also examined the contracting officer's contract file. After consideration of all of the facts and documentation presented to me, your disagreement is denied. The following responses address the issues you raised in your disagreement to me:

(1) The solicitation's hourly estimate is inaccurate and should have been revised.

You contend that the schedule of estimated hours for one of the "runs" contained in the referenced solicitation should have included "waiting time" and that certain other mail "runs" take longer to drive than the Postal Service's estimate provided in the solicitation. These hourly estimates are provided in Section B of the solicitation entitled, "Statement of Work (SOW) and Specifications." While the Postal Service's estimated hours may differ from those of Gowen's, they are nonetheless reasonable estimates and were not presented as actual or maximum allowed hours. Paragraph B.1.3 further clarifies that these are estimated minimum hours and that they are approximately the number of hours needed to operate the trips as they are shown in the schedule. The "Special Note" at the end of the paragraph further instructs offerors that any additional hours or miles which may result from the supplier's unique operations should be included in the proposed price. Offerors must use their own judgment and expertise in estimating the hours they will require when developing their proposals.

(2) The USPS should have terminated the contract with Baldwin Express due to non-compliance with the Service Contract Act (SCA).

Your assertion that the previous contract awarded to Baldwin Express for this route should have been terminated for non-compliance with the SCA is not a valid issue for my consideration under the current solicitation and award. Non-compliance with the SCA is a matter of contract administration and as such does not fall under the purview of 39 CFR 601. In addition, the previous contract file shows that Benny Baldwin was the owner of Baldwin Express and that contract was terminated for reasons other than alleged non-compliance with the SCA on August 31, 2008. The current contract is awarded to Kevin Baldwin as an individual and owner-operator and, as such, is not subject to the SCA minimum wage rate requirements. While Benny and Kevin are related (father and son), they are different business entities.

(3) The contracting officer should have negotiated in good faith with the incumbent contractor, Gowen Motor Service, Inc., pursuant to USPS's incumbent policy before soliciting this service.

You assert that the contracting officer, after terminating the previous award to Baldwin Express, should have again attempted to negotiate this service with Gowen as the incumbent. The contract file reflects that the contracting officer, after receiving my earlier decision of February 6, 2008, entered into and conducted negotiations with Gowen to add the Northern Service run to its existing contract (HCR21734). However, those negotiations were not successful in arriving at a mutually agreeable price and the contracting officer subsequently issued a competitive request for proposal which resulted in the award to Baldwin Express. Your assertion that the contracting officer did not negotiate in good faith when attempting to add the Northern Service run to contract HCR21734 is not an appropriate issue for my consideration under the subject solicitation and resultant award. It should also be noted that neither the Postal Service's Supplying Principles and Practices nor 39 CFR 601 requires the Postal Service to negotiate with incumbent suppliers prior to issuance of a competitive proposal.

(4) The Postal Service should not have awarded a contract to a supplier it knew did not follow the SCA.

As indicated in my response to the second issue you raised, the previous contract for this route was awarded to Baldwin Express, owned by Benny Baldwin. The current contract has been awarded to a different entity, Kevin Baldwin as an individual and owner-operator. While the Postal Service was required to incorporate SCA wage rates in this solicitation, upon award of the contract the enforcement of those rates is the responsibility of the Department of Labor (DOL). The contracting officer has not been contacted by the DOL indicating that there are any violations of the SCA under this contract. In addition the contracting officer has made a reasonable inquiry and confirmed that Kevin Baldwin is indeed driving the route.

Finally, it should also be noted that had the contracting officer eliminated Kevin Baldwin's proposal from consideration as a result of the above allegations or for another reason, Gowen, as the seventeen low offeror out of 37 received, would still not have been in a favorable position for award.

In conclusion, I find that the award to Kevin Baldwin was properly made by the contracting officer and that it represented the best value to the Postal Service. Therefore, your disagreement is denied and the award of HCR217A4 stands.

In accordance with 39 CFR 601.108, this is my final decision.

Sincerely,



Pete Dolder, C.P.M.
USPS Supplier Disagreement Resolution Official

cc: Contracting Officer