



August 1, 2005

Mr. Howard N. Epstein, Esq.  
Marks Clare & Richards, LLC  
Post Office Box 542005  
Omaha, Nebraska 68154-8005

RE: Disagreement by Mr. Keith Dohse (Highway Contract 69364)

Dear Mr. Epstein:

This letter responds to the disagreement lodged on July 7, 2005, on behalf of Mr. Dohse pursuant to 39 C.F.R. Part 601. Mr. Dohse contends a contracting officer improperly failed to award Highway Contract 69364 to him on June 20, 2005, because his offer was \$6,000 lower than the successful offeror and because he (Mr. Dohse) had provided excellent service to the Postal Service in the past on another route. Mr. Dohse further contends postal dissatisfaction with his performance stemmed from unilateral changes made to his existing contract for another route by postmaster Michael Felton in Gordon, Nebraska, and the failure to award a new contract to him was due to retaliation in connection with Mr. Dohse's attempt to enforce the terms of his existing contract with the Postal Service.

I have examined the disagreement lodged with me as well as the information you provided to me on July 19, 2005. I have also examined the administrative/contract file, considered the prior performance of the competing offeror, Mr. Weldon L. Calkins, obtained information from the Gordon postmaster, and discussed the matter with the contracting officer. The following are my findings and conclusions:

1. Other than Mr. Dohse's personal, conclusory opinion, evidence that he was subjected to retaliation in making a contract award to his competitor because of the Gordon postmaster's concerns has not been provided to me, so I reject that contention due to lack of credible evidence. Mere allegations do not constitute evidence. In addition, the Gordon postmaster denied any improper retaliatory motive, pointed out he had never met Mr. Dohse, who had been barred from postal premises, as discussed further below, before Felton had assumed the postmaster position, and said the reports of irregularities in Mr. Dohse's performance (i.e., those hired by Mr. Dohse to perform the duties on the route under contract) were based on objective considerations. Further, the contracting officer, not the postmaster, made the decision to award the contract to another offeror, and the contracting officer had no improper retaliatory motive, as he applied best-value principles in making the award.

I also find the Postal Service did not breach Mr. Dohse's agreement to provide service to another highway-contract route by making improper unilateral changes, first because the contract gives the Postal Service the right to make the kinds of service schedule changes that were made and also because Mr. Dohse has not pointed to any specific change(s) that violated his contract. I make this finding with respect to Mr. Dohse's disagreement vis-à-vis awarding Highway Contract 69364 and in connection with whether poor performance on his existing contract was attributable to improper unilateral changes, and not with respect to any claim arising under the Contract Disputes Act.

I further find that Mr. Dohse did not perform his highway contract for another route satisfactorily. For example, on April 14, 2005, Mr. Dohse's employee (Ms. Doris Long) failed to follow postal policy and direct orders given by Postmaster Felton. Specifically, Ms. Long left her purse on the workroom floor, despite earlier direct orders not to do so due to safety considerations. Another example occurred the same day, when casing and pull-down procedures were not in accordance with minimum standards, as it took until 10:40 a.m. to pull mail out of the case and to leave for the route, which caused carriers to be late returning for dispatch. A third illustration occurred on April 16, 2005, when Ms. Long again was instructed by Postmaster Felton not to have her purse or handbag on the workroom floor. That was Ms. Long's third violation. On April 18, 2005, safety procedures were violated—a required yellow light was not operating on the vehicle when delivering mail on the route. In addition, turn signals were not used when the vehicle approached or left box delivery on 10 of 29 stops. Also, on the same day, casing and pull-down procedures were not performed at minimum standards. And on May 8, 2005, deliverable mail was mishandled. In addition, the contract schedule was not observed by late returns to the postal facility with the mail on April 28, April 29, April 30, May 3, May 4, May 5, May 6, May 7, May 9, and May 10, 2005. The foregoing illustrations show Mr. Dohse did not perform satisfactorily a postal contract for a route similar to the one in dispute in this disagreement, and that failure resulted in substantial dissatisfaction of his inadequate performance by postal officials.

Finally, I find that the competitor for Highway Contract 69364 had performed postal contracts for the route in question satisfactorily during an eight-year period preceding the award in this case.

2. In determining which competing supplier to choose to provide services to the Postal Service, contracting officers apply best-value principles, i.e., contracting officers select the potential supplier that can best be expected to provide services needed by the Postal Service at a reasonable price. The price a supplier offers compared to others who seek to perform the same contract is an important consideration, but not the only one. In this case, although Mr. Dohse's bid was lower than that of his competitor, other factors, i.e., schedule, equipment, supplier capability, and, prior performance, were properly taken into account.

As discussed above, Mr. Dohse's prior performance of a contract for a similar route was not satisfactory. Mr. Dohse had been counseled by issuance of written Form 5500 on at least 29 occasions about deficient performance, had been sent a letter on May 24, 2005, about unsatisfactory service (but the letter was unclaimed by Mr. Dohse, thus causing him to miss an important meeting to discuss his inadequate performance), and had been informed on June 14, 2005, that the Postal Service intended to terminate the contract for failure to perform unless satisfactory service was restored. The contracting officer in making the award in dispute properly took Mr. Dohse's record of poor performance into account, and that unsatisfactory record is dispositive in this case. The contracting officer reasonably chose not to award a service contract to an offeror with the lowest bid where the offeror had a poor record of performance with respect to a similar contract.

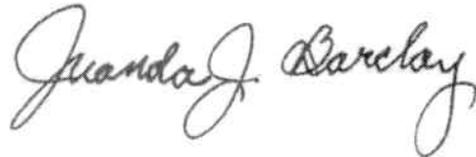
By contrast, the contracting officer determined the successful offeror had performed contracts for the route in question for a period of eight years, and had experienced no irregularities requiring corrective action. His satisfactory performance contrasts favorably with Mr. Dohse's poor performance.

Because Mr. Dohse had performed his contract for another route unsatisfactorily and the successful offeror had performed contracts for the route in question satisfactorily, the decision of the contracting officer on June 20, 2005, to award Highway Contract 69364 to the competitor is upheld and Mr. Dohse's disagreement is denied.

3. In addition, the disagreement is denied for a separate, independent reason. On May 9, 2003, Mr. Dohse was informed he would no longer have access to the mail and postal premises, with an exception not relevant to this disagreement, due to threats of violence toward postal personnel. That decision was made pursuant to the Postal Service's zero-tolerance policy vis-à-vis threats of violence, and although Mr. Dohse appealed the decision, the decision was sustained. For that reason also, the disagreement is denied. Even if Mr. Dohse's prior performance on another route had been satisfactory, the Postal Service reasonably may choose not to award a contract to a person who has been found to have threatened postal personnel.

This is the final decision by the Postal Service about the award on June 20, 2005, of Highway Contract 69364. You may appeal this decision to the United States Court of Federal Claims in Washington, DC.

Sincerely,

A handwritten signature in cursive script that reads "Juanda J. Barclay". The signature is written in black ink and is positioned above the typed name and title.

Juanda J. Barclay, C.P.M., A.P.P.  
USPS Supplier Ombudsman

cc: Keith Strange  
Dwight Young  
Russell A. Sykes  
Craig D. Partridge  
Bertrum T. Manchego  
Michael J. Felton  
Weldon Calkins