

SUPPLY MANAGEMENT



July 10, 2013

Mr. Nathan Kottkamp
Mr. Anand V. Ramana
McGuireWoods, LLP
2001 K Street, NW
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RE: Supplier Disagreement Resolution Case No. SDR13SR-03(II)
Solicitation No. 2B-12-A-0013

Dear Messrs. Kottkamp and Ramana:

This letter responds to the supplier disagreement ("Disagreement") you lodged with the Supplier Disagreement Resolution ("SDR") Official on behalf of Coventry Health Care Workers Compensation, Inc. and its subsidiary, First Script Network Services ("Coventry"), with respect to United States Postal Service ("USPS") Solicitation No. 2B-12-A-0013 ("Solicitation"), Pharmacy Benefits Management ("PBM") Program. Coventry lodged an initial disagreement regarding this Solicitation and award with the contracting officer ("CO") on November 8, 2012. The CO denied the initial disagreement on November 19, 2012. You then lodged this Disagreement with the SDR Official on November 19, 2012, and supplemented the Disagreement on November 29, 2012. I issued a decision in Supplier Disagreement Resolution Case No. SDR13SR-03 on February 21, 2013. However, I rescinded the decision on February 26, 2013, when it came to my attention that the CO did not provide the notice required by 39 C.F.R. § 601.108(e) to all interested parties. On February 26, 2013, the CO issued the required notice to the interested party who had not been previously notified. I received a response from that party on March 5, 2013, and considered that response, along with the response I had previously received from another interested party, prior to issuing the instant decision, which I will refer to as Supplier Disagreement Resolution Case No. SDR13SR-03(II).

Background

The PBM Program is a non-mandatory program through which USPS employees injured on the job may receive prescription medications. The PBM Program supplier assists USPS in managing costs nationwide for injured workers requiring prescriptions and who have an approved claim through the Department of Labor's Office of Workers' Compensation Programs.

The Disagreement

Your Disagreement is based on the following three assertions: (1) USPS' evaluation of Coventry's offer was inconsistent with the Solicitation's stated evaluation criteria; (2) USPS' evaluation and criticisms of Coventry's offer were substantively flawed and unreasonable; and (3) none of the differentiators that clearly demonstrate why Coventry provides the "best value" to USPS were appropriately considered by USPS in evaluating Coventry's proposal.

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The Solicitation and Amendments

The Solicitation

The Solicitation was issued on April 3, 2012. Solicitation Provision 4-2, Evaluation, stated, in part:

a. General. 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: Initially, price will be evaluated separately from the performance evaluation factors. The following technical criteria are listed in descending order of importance. Technical Approach is significantly more important than the Management Plan; the Management Plan is more important than Personnel; and Personnel is slightly more important than Understanding the Challenges of USPS. As previously stated, the USPS will evaluate each proposal against the technical criteria considering benefits, viability, risk, flexibility, and responsiveness to meet or exceed the objectives set forth in the Statement of Work (SOW). In the interest of economy and efficiency in conducting the source selection process, our goal is to select the four highest rated proposals for Oral Presentations.

Solicitation, USPS PBM CLAUSES_03282012, Part 2-Provisions, Provision 4-2 Evaluation (March 2006), p. 7.

Statement of Work

The Solicitation included an attachment describing the Statement of Work ("SOW") for the Solicitation. The SOW included a section titled, "Pharmacy Benefits Management Program Requirements" which listed seventeen requirements and requested that offerors "respond to each requirement confirming capability."

Solicitation, Attachment 1, United States Postal Service Pharmacy Benefits Management Program Workers' Compensation Statement of Work, pp. 2-5.

Request For Proposal ("RFP") Questionnaire and Scorecard

A letter from the CO that accompanied the Solicitation included a section titled, "Evaluation", which stated, in part:

The prospective Suppliers will be evaluated based upon their response to the RFP Questions. A Scorecard will be utilized which will consist of the categories within the RFP Questionnaire where each category is worth 100 points. Each category will be weighted and based upon the applied score of each category (0-100) will have the weighted score calculated, and a total score computed by adding the weighted score of each category.

Each Evaluator will have their [sic] own Scorecard and all the Scorecards will be averaged to arrive at a final composite score.

Letter from CO Accompanying Solicitation, p. 1.

The RFP Questionnaire was provided to offerors as an attachment to the Solicitation. The RFP Questionnaire included the following nine evaluation categories, with specific questions listed under each:

- 1.1 Pharmacy Operations
- 1.2 Pharmacy Network
- 1.3 Mail Order Service
- 1.4 Clinical
- 1.5 Reporting
- 1.6 Government Affairs and Legal
- 1.7 Technology
- 1.8 Pricing
- 1.9 Statement of Work

RFP—USPS PBM Program—Solicitation.

The scorecard referenced in the letter from the CO accompanying the Solicitation (“Scorecard” or “RFP Scorecard”) was provided to offerors on April 23, 2012, as part of the questions and answers the CO sent directly to each prospective offeror. The Scorecard set forth the relative weights for each of the nine evaluation categories listed on the RFP Questionnaire and for a tenth category, “Oral Presentations”, not listed in the RFP Questionnaire. The Scorecard included the following evaluation categories and percentage weights:

- Pharmacy Operations (15%)
- Pharmacy Network (10%)
- Mail Order Services (5%)
- Clinical (10%)
- Reporting capabilities (5%)
- Government Affairs and Legal (10%)
- Technology (10%)
- Pricing (10%)
- Statement of Work (10%)
- Oral Presentations (15%)

Scorecard, Questions-Responses April 23, 2012.

Oral Presentations

Nine suppliers submitted proposals in response to the Solicitation. The four suppliers with the highest scores based on the Scorecard results were invited to give an oral presentation. Those presentations were conducted in Washington, D.C. on June 18 and 19, 2012.

A separate scorecard for the oral presentations was released to the four offerors who were invited to give an oral presentation ("Oral Presentation Scorecard"). According to a letter from the CO accompanying the Oral Presentation Scorecard, the final composite score from an offeror's Oral Presentation Scorecard would be added to the offeror's RFP Scorecard under the Oral Presentation category, which had a weight of 15%. The categories included on the Oral Presentation Scorecard differed from those included on the RFP Scorecard. The Oral Presentation Scorecard included the following nine evaluation categories and percentage weights:

- Program Management (15%)
- Pharmacy Network Penetration (15%)
- Pricing Model (15%)
- Calculation of Pricing (10%)
- Reporting capabilities (10%)
- Discount Rate (10%)
- Experience and/or the capability to communicate with OWCP (10%)
- Financial stability (10%)
- Mail Order (5%)

Oral Presentation Scorecard.

The five offerors who were not selected to give an oral presentation never received points in the "Oral Presentations" category of the RFP Scorecard. In the Award Recommendation, the CO stated, "Prior to conducting the Comparative Evaluation and based on discussions held with each offeror during Oral Presentations, each of the four remaining Suppliers were given 3 days to revise their proposal after conducting the Oral Presentation." During my discussions with the CO, he further indicated that following the oral presentations, offerors could revise their proposals and make revisions to both their technical solutions and price proposals. In the letter accompanying the Oral Presentation Scorecard, the CO stated, "Suppliers can make as many [sic] changes to their proposals up to three days after their Oral Presentation."

Amendment I

Amendment I was issued on August 31, 2012, for the purpose of bringing "additional clarity to the Pricing Section within the RFP Questions, specifically section 1.8 Pricing." Amendment I explained the intent of Section 1.8: "to evaluate the Suppliers [sic] Pricing Methodology and Realism with respect to standard industry practices, the market, and the Postal Service's historical experience with PBM services, and not to evaluate the Suppliers [sic] actual program pricing for purposes of conducting a trade-off between technical and price in order to reach a best value decision and Supplier selection for contract award." Amendment I also renamed Section 1.8, stating:

Section 1.8 is now to be referred to as **1.8 Pricing Methodology**, in order to eliminate any confusion this may have caused, and is part of the Technical Evaluation Factors previously provided during the course of the source selection process. Section 1.8.4 which originally read "What is your proposed pricing to the USPS?" is to be reworded to "Submit your pricing-discounts and dispensing fees only for the purpose of evaluating price realism, and for the purposes of this Amendment.["]

Amendment I, Opportunity to Revise Technical/Business and Price Proposals, p. 1 (emphasis original).

Amendment I also clarified the relationship between price and technical criteria, stating, in part:

As part of the Solicitation and source selection process, pricing is evaluated separately from the Technical Evaluation Factors. Proposed pricing from the Suppliers will factor in the Discounts in addition to the FECA Schedule, Dispensing Fees, and proposed /committed Penetration Rates, and ultimately the proposal that offers best value to the USPS. This is a reminder that in reaching a best value decision, contract award will be made to the capable offeror who submits the best combination of Technical/Business and Price proposals. The technical solution is considered to be significantly more important than price for purposes of selection. However, USPS will not pay significantly more for marginal increases in technical value or merit and the perceived benefits of a higher priced proposal must warrant the additional cost.

Amendment I, Opportunity to Revise Technical/Business and Price Proposals, p. 1.

The prospective suppliers selected to participate in oral presentations were given the opportunity to ask individual email or telephone questions of the CO related to Amendment I. Further, based on Amendment I, prospective suppliers were:

permitted to revise their RFP responses submitted related to their pricing proposals **ONLY**, to include Base Period and Option Period pricing, and any adjustments to 1.8.4 as reflected in the new wording reflected above; and as deemed necessary until the close of the solicitation on **Thursday, September 6, 2012**.

Amendment I, Opportunity to Revise Technical/Business and Price Proposals, p. 1 (emphasis original).

Amendment II

Amendment II was issued on September 11, 2012, to provide written answers to the questions submitted in response to Amendment I and to provide "additional information concerning the technical evaluation process and final best value trade-off decision." As with Amendment I, the prospective suppliers selected to participate in oral presentations were given the opportunity to ask individual email or telephone questions related to Amendment II. Further, in the event the additional information in Amendment II prompted "any additional changes or modifications", prospective suppliers were:

permitted to revise their RFP responses submitted related to their pricing proposals **ONLY**, to include Base Period and Option Period pricing, and any adjustments to 1.8.4; and as deemed necessary until the close of the solicitation on **Thursday, September 13, 2012**.

Amendment II, Opportunity to Revise Technical/Business and Price Proposals, p. 3 (emphasis original).

A transmittal e-mail from the CO to suppliers that accompanied Amendment II included the following sentence, "Please understand we are not requesting you to make any changes to your proposal since this is further clarification to the initial Amendment to the Solicitation."

Material Reviewed

In my review of the record, I have had conversations with the CO, both by phone and by email, and have reviewed the following:

- The purchase plan;
- The SOW, Solicitation, and amendments;
- The initial disagreement;
- The CO's response to the initial disagreement;
- Coventry's and the awardee's proposals;
- The evaluation team's evaluations of the above proposals;
- The Award Recommendation;
- The Disagreement and supplement lodged with the SDRO; and
- The comments received in response to the notifications sent to interested parties.

Discussion

As detailed above, Coventry makes three assertions in this Disagreement: (1) USPS' evaluation of Coventry's offer was inconsistent with the Solicitation's stated evaluation criteria; (2) USPS' evaluation and criticisms of Coventry's offer were substantively flawed and unreasonable; and (3) none of the differentiators that clearly demonstrate why Coventry provides the "best value" to USPS were appropriately considered by USPS in evaluating Coventry's proposal. Because of my findings and decision with respect to assertion one, I do not reach the merits of assertions two and three.

Assertion 1: USPS' evaluation of Coventry's offer was inconsistent with the Solicitation's stated evaluation criteria.

In its first assertion, Coventry contends that USPS' evaluation of Coventry's offer was inconsistent with the evaluation criteria stated in the Solicitation. Specifically, Coventry argues that USPS failed to evaluate the offers in accordance with Provision 4-2 of the Solicitation and instead evaluated them using the criteria listed in the Scorecard and RFP Questionnaire. I find that USPS' evaluation of the offers was inconsistent with the Solicitation's stated evaluation criteria in Provision 4-2. I further find that the Solicitation failed to clearly establish the role of price, and that this failure, together with the failure to evaluate the proposals in accordance with the Solicitation's stated evaluation criteria, raises fundamental questions as to whether USPS effectively evaluated the proposals and received best value in this procurement, which is what I am tasked with determining.

In his November 19, 2012, decision, the CO, relying on 39 C.F.R. § 601.107(b), determined that Coventry's first assertion was untimely. Title 39 C.F.R. § 601.107(b) states:

For disagreements that concern alleged improprieties in a solicitation, the contracting officer must receive the disagreement before the time set for the receipt of proposals, unless the disagreement concerns an alleged impropriety that does not exist in the initial solicitation but which is subsequently incorporated into the solicitation, in which event the contracting officer must receive the disagreement no later than the next closing time for the receipt of proposals following the incorporation.

I disagree with the CO's determination that Coventry's first assertion was untimely. First, I view Coventry's challenge on this point as a challenge to the evaluation conducted by USPS, not a challenge to the terms of the Solicitation. Second, even if Coventry's challenge is construed as a challenge to the terms of the Solicitation, I find that any Solicitation "impropriety"—described by the CO in his initial decision as "any confusion about the relationship between the Questionnaire and the

SOW Objectives and the Evaluation criteria listed in 4-2”—was not an obvious, gross, or glaring error or inconsistency on the face of the Solicitation such as would obligate Coventry to rectify it by inquiring of appropriate parties before the time set for submitting proposals. In the Award Recommendation, the CO stated, “The original intent of the Scorecard was to encompass the four evaluation factors identified in Provision 4-2; ultimately, however, and to avoid any possible confusion among prospective suppliers, the 10-factor scorecard replaced the 4 factors in Provision 4-2 as well as the original Purchase Plan.” However, nowhere is it reflected in the record that the CO did anything to replace or revise Provision 4-2. Offerors first learned how their proposals were evaluated, and that USPS failed to apply the evaluation factors identified in Provision 4-2, when the post-award debriefing was conducted. USPS delivered the Award Notification Letter to Coventry on October 24, 2012 and conducted the debriefing with Coventry on October 30, 2012. Coventry subsequently filed its initial disagreement with the CO on November 8, 2012, which was within ten days from the date of the debriefing. Therefore, I find that Coventry timely filed its initial disagreement. As detailed above, I also find that USPS’ failure to apply the evaluation factors outlined in Provision 4-2 during the evaluation of offerors’ proposals was inconsistent with the Solicitation’s evaluation criteria stated in Provision 4-2.

The Solicitation also failed to clearly establish the role of price. The Solicitation itself never established the relationship between price and the technical solution. In fact, the relationship was first disclosed in Amendment I, which was issued on August 31, 2012, and stated, “This is a reminder that in reaching a best value decision, contract award will be made to the capable offeror who submits the best combination of Technical/Business and Price proposals. The technical solution is considered to be significantly more important than price for purposes of selection. However, USPS will not pay significantly more for marginal increases in technical value or merit and the perceived benefits of a higher priced proposal must warrant the additional cost.”

After the relationship between price and the technical solution was disclosed in Amendment I, the top four offerors—and only the top four offerors—were permitted to revise their submitted RFP responses, but only with respect to their pricing proposals and the portion of their technical solution related to Section 1.8 Pricing Methodology. The Response to RFP section included in Amendment I stated, “Based on this Amendment, prospective suppliers are permitted to revise their RFP responses submitted related to their pricing proposals **ONLY**, to include Base Period and Option Period pricing, and any adjustments to 1.8.4 as reflected in the new wording reflected above; and as deemed necessary until the close of the solicitation on **Thursday, September 6, 2012.**” Moreover, in a list of questions and answers that was sent to offerors on September 5, 2012, an offeror asked, “If after we have analyzed the amendment and we want to make a changes [sic] in the responses/offering – are we allowed to do so?” USPS responded, “Absolutely, but **ONLY** relative to Section 1.8 Pricing Methodology which would include your additional Discounts off the FECA Schedule or your Dispensing Fees. No changes will be allowed on any of the other RFP Sections.” Therefore, after learning that the technical solution would be considered “significantly more important than price for purposes of selection”, the top four offerors could not make revisions to their technical solution to reflect their best offer unless the revisions related to Section 1.8 Pricing Methodology. Moreover, nothing in Amendment I clarified what evaluation criteria (the factors outlined in Provision 4-2, the nine evaluation categories listed on the RFP Questionnaire, or the ten evaluation categories listed on the Scorecard), would be used to evaluate the technical solution. Additionally, the five offerors who were not selected to give an oral presentation were never told the role of price and never had an opportunity to revise their proposals.

As detailed above, Amendment II, issued on September 11, 2012, to the top four offerors, provided written answers to the questions submitted in response to Amendment I and sought to provide additional information concerning the technical evaluation process and the final best value trade-off decision. Question number four read, “If after we have analyzed the amendment and we want to

make a change in the responses/offering – are we allowed to do so?” In response, USPS stated: “Yes, but only relative to Section 1.8, Pricing Methodology, which would include your additional Discounts off the FECA Schedule or your Dispensing Fees. No changes will be allowed on any other technical responses (unless you can clearly demonstrate the relevancy of such changes). You are also permitted to revise your pricing proposal based on the clarifications set forth in the Amendment.” The Response to RFP section included in Amendment II stated, “If this additional information in this second Amendment prompts any additional changes or modifications, prospective Suppliers are permitted to revise their RFP responses submitted related to their pricing proposals **ONLY**, to include Base Period and Option Period pricing, and any adjustments to 1.8.4; and as deemed necessary until the close of the solicitation on **Thursday, September 13, 2012.**” Therefore, as with Amendment I, offerors could not revise their technical response (except for Section 1.8 Pricing Methodology) following the release of Amendment II.

Due to the failure to conduct the evaluation in accordance with the evaluation criteria established in the Solicitation and the failure to establish the role of price in the original Solicitation, offerors never had an opportunity to develop and submit informed – and responsive – proposals. Without the knowledge of the role of price, offerors could not effectively respond to the Solicitation. The problem was compounded when, once the role of price was established in Amendment I, offerors were not given an opportunity to revise their technical proposals, except with respect to Section 1.8 Pricing Methodology. In other words, at no point during the purchasing process were offerors provided a real opportunity to develop and submit effective proposals responsive to the Solicitation. Therefore, there are fundamental questions as to whether USPS obtained best value in this procurement, which is the ultimate goal of USPS’ supplying activities.

While what constitutes best value will depend on a particular purchase, the aspects of value are expressed in a solicitation’s evaluation factors. According to USPS Supplying Principles and Practices Section 2-26, Develop Proposal Evaluation Strategy, (“SPs and Ps”), evaluation factors can play two roles, in that they help clarify USPS’ objectives for a particular purpose and help suppliers develop their proposals. Additionally, the proper weighting of evaluation factors is essential to effective evaluation. Here, the aspects of what constituted best value in this procurement were not clearly communicated to offerors. The relationship among Provision 4-2, the Scorecard, and the RFP Questionnaire was never disclosed, and ultimately, the evaluation criteria stated in Provision 4-2 were never applied. Furthermore, the relationship between the role of price and the technical solution was never disclosed until after the offerors submitted their proposals. Once the relationship between price and technical was disclosed in Amendment I, it was only disclosed to the top four offerors, and those offerors were not provided a meaningful opportunity to revise their RFP responses after learning of the relationship. Therefore, offerors were unable to develop proposals responsive to the evaluation criteria. I note that according to the Award Recommendation, the ratings the PBM Evaluation Team assigned to the awardee and Coventry were very close (between 0.9 and 1.7 points apart) at all points during the evaluation process—after evaluation of written proposals, after oral presentations, and after incorporation of the oral presentation scores into the final Scorecard results. Therefore, I find there is a substantial chance that Coventry could have received the contract award but for the errors in this procurement. I further find that there are fundamental questions as to whether USPS effectively evaluated the proposals and received best value.

Decision

After considering the information provided to me by the CO, Coventry, and interested parties, and after having conducted a thorough review of the material listed above, I have determined that fundamental questions exist as to whether USPS obtained best value in this procurement. Coventry’s Disagreement is therefore sustained as to assertion one—that USPS’ evaluation of Coventry’s proposal was inconsistent with the evaluation criteria stated in the Solicitation. As a result, I hereby

direct the CO to conduct a resolicitation for these services and to do so in a proper, fair, and timely manner. A new solicitation should be issued to, at a minimum, the nine pre-qualified suppliers who participated in the original Solicitation. In the new solicitation, the CO must ensure that the evaluation methodology is clear, that the method for determining best value is clearly stated and includes a description of the relationship of price to other evaluation factors, and that offerors are evaluated in accordance with the stated evaluation methodology. During the resolicitation process, the current contract with the awardee should remain in place, in light of the need to avoid operational disruptions and impacts to USPS. If after a resolicitation the current supplier is not selected as the awardee, the current contract should be terminated.

In accordance with 39 C.F.R. § 601.108(g), this is my final decision.



Trent Ensley
USPS Supplier Disagreement Resolution Official

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