

**February 21, 1995**

**P.S. Protest No. 94-53**

## **NEIL DETERDING**

**Solicitation 020312-90-A-0062**

### **DIGEST**

Protest against the evaluation of offers for a Contract Postal Unit is sustained where evaluation was arbitrarily conducted on basis inconsistent with solicitation's evaluation criteria.

### **DECISION**

Mr. Neil Deterding protests the evaluation of offers for the establishment of a contract postal unit (CPU) for the community of Border, AK, under solicitation 020312-90-A-0062, issued September 28, 1994, by the Administrative Service office of the Alaska District, U.S. Postal Service.

The record reflects that the community of Border consists primarily of a compound of residential buildings maintained by the General Services Administration (GSA) at the Customs and Immigration port of entry on the Alaska-Canada border. The community also includes the protester's commercial facility known as the Border City Lodge, comprising a lodge, cafe, gift shop, and gasoline station, which is on the Alaska Highway about three miles from the port of entry. The postal facility nearest to Border is Northway, AK, some fifty miles away.

As originally issued, the solicitation described the area or location in which the CPU was to be located as follows:

Within one mile west on Alaska Highway from US Customs at the US Border AK.

As amended on October 19 by Amendment A01, that description was revised to read:

Within community of Border Alaska west on Alaska Highway from US Customs at the US Border AK.

The Border City Lodge was not within the initially described location; it is within the revised description.

The solicitation contemplated that the facility would occupy 100 square feet and would be open to the public ten and one-half hours a week (1:00 pm to 4:30 pm Monday, Wednesday, and Friday).

Section M of the solicitation indicated that offers would be evaluated on the basis of specified evaluation factors, called the business score,<sup>1</sup> and that award would be made on the basis of a weighted combination of the business score and the price score.<sup>2</sup>

Two offers were received. One was from Ms. Susan L. Schwartz, a resident at the port of entry compound, who was currently operating the CPU under an existing "emergency"

<sup>1</sup> The solicitation set out the three factors of the business score and their subfactors as follows:

	Maximum Points
1. Suitability of Location	25
Is the proposed facility--	
(a) Within the area designated by the solicitation?	
(b) Easily accessible to handicapped and other customers?	
(c) In a location likely to stimulate usage by customers?	
(d) An appropriate distance from the nearest Postal Service operated facility?	
2. Suitability of Facility	25
(a) Is the proposed facility attractive, well maintained, and in good repair?	
(b) Is parking sufficient?	
(c) Does the proposed facility have at least the square footage required by the solicitation?	
3. Ability to Provide Service	50
(a) Does the offeror have relevant experience?	
(b) Does the offeror have personnel sufficient to operate the facility or means of obtaining them?	
(c) Does the offeror have a good business reputation and good standing in the community?	
(d) Are any nonpostal services to be provided at the facility compatible with the postal services to be provided?	

<sup>2</sup> The points awarded to each business proposal were divided by the highest number of points received to arrive at the offeror's business score, and each offeror's annual rate was divided by the lowest annual rate proposed to arrive at its price score. The final score of each offer consisted of 40% of its business score and 50% of its price score.

contract. Her proposed facility was located in her residence within the compound. The other proposal was Mr. Deterding's, for a facility located within the Border City Lodge.

The offers were evaluated by the postmaster at Northway, AK. She gave Ms. Schwartz a business score of 95 (24 points for suitability of location; 25 points for suitability of facility; and 45 points for ability to provide service),<sup>3</sup> and she gave Mr. Deterding a business score of 64 (12 points for suitability of location; 16 points for suitability of facility; and 36 points for ability to provide service).<sup>4</sup> Ms. Schwartz had offered an annual rate somewhat higher than

<sup>3</sup> Each evaluation was accompanied by both hand-written and typed explanations for the scores. The explanation for Ms. Schwartz's evaluation is summarized below:

#### Suitability of Location

The location will better serve the majority of the community, the school, and the three Federal agencies which are located near the facility. It is easily accessed by transient customers after they pass through Customs. It is well marked and has adequate parking. The facility is not handicapped accessible, but the GSA "has indicated that any alterations necessary will be immediately taken care of to accommodate the Postal Service." The location will stimulate usage by postal patrons.

#### Suitability of Facility

The facility is attractive, well maintained, and in good repair. It presents an excellent image for the Postal Service. "[P]arking area is sufficient." The facility has more than the required square footage.

#### Ability to Provide Service

The offeror has been the emergency contractor since August 1, 1994, and previously worked for the earlier contractor. She previously worked as a leave replacement for the Northway post office. She is knowledgeable of postal procedures and has relevant experience. One trained replacement is available, and another is willing to train. The offeror has a good business reputation and standing. No other services will be provided at the facility.<sup>3</sup>

<sup>4</sup> The narrative explanation of Mr. Deterding's evaluation is summarized below:

#### Suitability of Location

The facility is within the designated area; it is handicapped accessible. "The proposed facility would be convenient to 8% of the population of the area, therefore in the opinion of the evaluator, it would not stimulate usage by the community members, school, service organization[s] or federal agencies dependent on postal services." The evaluator contends that the residents would use the facility only as needed for services such as Express Mail and registered mail, and would obtain other services from the highway contract route which serves the area. However, postage sales at the proposed location "would increase during the summer postal season."

#### Suitability of Facility

The building's exterior was unattractive due to gano stains from nesting birds. The interior area

Mr. Deterding, but received a higher total score under the formula set out in the solicitation. Award was made to Ms. Schwartz for service effective December 1.

Mr. Deterding's protest dated December 12 was received on December 14. The protester contends that his offer should have been evaluated more favorably, and that Ms. Schwartz's offer should have been evaluated less favorably. We summarize the points of the protest as follows:<sup>5</sup>

-- Both offerors should be given equal credit for being within the desired location; Mr. Deterding's location is not inconvenient to the residents of the compound, "the vast majority [of whom] travel considerably further for postal service" than the one-mile radius originally specified.

-- Ms. Schwartz's facility is not easily accessible to handicapped customers because it lacks a wheelchair ramp or lift and the hallway and doors leading to it "are not fitted to provide such access." The protester's facility is handicapped accessible.

-- Ms. Schwartz's facility will not "stimulate use by customers" since it is within a fenced compound marked with signs such as "Do Not Enter" and "Authorized Personnel Only."<sup>6</sup> Visitors will not know that the facility is available for postal transactions. The protester's facility, on the other hand, is fully available to travellers.

-- Ms. Schwartz's facility has little provision for parking; "once [a customer] enters the compound, he is in the residents' driveways." While the available parking may be sufficient for the residents of the compound, it is not adequate for a facility intended to stimulate postal use. The protester's facility, on the other hand, includes ample parking.

was cluttered with packing materials and building materials from ongoing building activity. The evaluator was shown three proposed locations for the postal facility by the offeror's representative, who assured the evaluator that the facility would meet appearance criteria. The facility has adequate parking and offers more square footage than is required.

#### Ability to Provide Service

The offeror has sales experience, but no postal experience; the offeror has another person available to serve as a replacement. The offeror has a good business reputation and standing in the community. The nonpostal services are compatible with the postal services provided, although the evaluator also expresses concern that the offeror's time would be divided between the postal and non-postal services.

<sup>5</sup> When the protest was filed, Mr. Deterding had been furnished the evaluation scores, but had not been furnished the explanations which accompanied them. We omit from the discussion of the protest points which were raised on the basis of assumptions which were not borne out by those explanations.

<sup>6</sup> The protester contends that the only sign outside the compound referring to the postal facility has been covered.

- Ms. Schwartz and Mr. Deterding should be evaluated similarly with respect to relevant experience. While Ms. Schwartz has had three months' experience running a postal facility, Mr. Deterding's business experience as owner of the Border City Lodge is more than sufficient to meet the requirement.
- The non-postal services provided at Mr. Deterding's location are fully compatible with the postal services to be provided, as they will increase the number of persons exposed to the postal services.<sup>7</sup>
- The personnel assigned to the port of entry are on fixed tours; awarding the CPU contract to one of them requires frequent resolicitation. Mr. Deterding, on the other hand, wishes to be a long-time provider of postal services in the community.

The contracting officer's statement includes the following points:

- Border, AK, is a small community; in 1991 it was estimated that the census area within which it is located was comprised of only 29 individuals and only ten housing units, eight or nine of which were within the port of entry compound. The port of entry was established in or about 1988; since at least 1990, the CPU has been located within the port of entry compound.
- The evaluator did not penalize the protester's offer for being outside the community area.
- While the protester's facility is currently handicapped accessible, Ms. Schwartz's facility can be made so. While some Alaskan post office facilities have obtained waivers for accessibility, the Postal Service does require that the Border facility be accessible and has advised the contractor accordingly.
- While the protester's facility would benefit from some unquantifiable volume of summer tourist revenue,<sup>8</sup> the contracting officer contends, as did the evaluator, that the residents at the port of entry compound would not travel to the protester's facility except for postal services not otherwise available from the HCR contractor. "Mr. Deterding's location would not provide the day-to-day service for the majority of the community to be served by the [CPU]."
- Parking is sufficient for the business transacted by the four or five customers per day who use the Border CPU.<sup>9</sup>

<sup>7</sup> The protester surmises that the evaluator assumed, incorrectly, that his facility had a liquor license; it does not.

<sup>8</sup> The contracting officer notes, however, that postal facilities are also available to tourists "at every organized city along the [Alaska] highway," and she questions how many would stop at the Border City Lodge after just having stopped at the port of entry.

<sup>9</sup> FY 1992 revenue for the facility was \$4,537; FY 1994 revenue was \$2,644. Revenue figures for the summer months of 1994 show average revenues of between \$6 and \$13 per day. The contracting officer contrasts these figures with the revenue figures for Northway, AK, and Tok, AK, 95 miles to the north,

- The protester understates the extent of Ms. Schwartz's previous experience and the differences between private sector bookkeeping experience and that required for "Government fund accounting."
- Both offerors provided adequate personnel.
- The protester's score was not diminished for the noncompatibility of the nonpostal products offered.
- GSA's involvement in providing facilities is a "non-issue."
- The majority of Alaska's population is transient; the potential length of the contract was not an evaluation criterion.

The contracting officer finds no basis to revise the evaluation scores and recommends that the protest be denied.

Replying to the contracting officer's statement, the protester makes the following points:

- Both offers should have been evaluated equally for location as being within the designated area.
- That Ms. Schwartz's facility may be made handicapped accessible does not mean that it is accessible, and her score should have been diminished more substantially than it was for that failing. Given the volume of tourists at this location, it is unrealistic to consider only the local residents with respect to the requirement for accessibility.
- With respect to customer usage, it was improper to consider principally the residents, given the considerable summer tourist traffic.<sup>10</sup> If only a small portion of this traffic used the postal facility, significant revenue would be gained. (The protester notes that the Border City Lodge sells approximately 25,000 postcards per year.) It is the inaccessibility of the Border CPU within the port of entry compound which occasions its limited use by transient individuals. It was "ludicrous" for the evaluator to suggest that the residents would not travel three miles to obtain postal services when the next nearest postal facility is fifty miles away.
- The evaluator based her evaluation of the attractiveness and suitability of the protester's facility on incomplete information because she did not speak to Mr. Deterding in the course of the evaluation. Had she done so, she would have known that upon completion of the pending construction work, it was to be repainted. The

each of which increased from FY 1992 to FY 1994. He attributes the increases to tourist use of postal facilities at Northway and Tok, each of which has more tourist facilities than Border.

<sup>10</sup> According to the protester, approximately 1,500 travellers enter Alaska from Canada each summer day; no records are kept on southbound traffic.

evaluation was also incorrect in suggesting that the offeror did not have a specific area intended to house the postal facility.

-- The contracting officer's figures regarding revenue demonstrate the inaccessibility of CPU sites within the compound and its underutilization.

-- While the protester concedes some disparity between the offerors' relevant experience, that disparity should not have been disproportionately considered in the evaluation. The evaluator misstated the number of employees available at the protester's location in addition to Mr. Deterding. Two are available during winter, and as many as ten are available during the summer.

-- The protester's score should have been increased for the availability of compatible non-postal services.

The protester also submitted the affidavit of a resident of the port of entry compound supporting the protester's contentions about the inadequacy of parking within the compound and its inaccessibility to transients. The affiant complains about the extent of the service provided by the CPU and opines that the location of the facility at the Border City Lodge would not deter its use by the local community. The affiant notes that the Customs and Immigration installations receive their mail directly, not through the CPU, and thus would not be affected by the change. The affiant suggests the possibility of the evaluator's bias against Mr. Deterding and in favor of Ms. Schwartz.

Ms. Schwartz has submitted comments contending that the residents of the compound historically have been considered to comprise the Border community and that the evaluation should not be revised. The comments were accompanied by a letter from the Immigration and Naturalization Service Port Director commending the current facility and contending that its relocation would inconvenience and impact the mission of the INS.

The protester and his counsel participated in a telephonic protest conference, and counsel subsequently submitted conference comments. Those comments responded to this office's suggestion that even if the evaluation of offers was not in accordance with the solicitation's requirements, re-evaluation might not produce meaningful relief, because the requirement might be restated in a manner consistent with the evaluator's reflection of the actual requirement. The protester notes that an underlying purpose of the protest process is to maintain the integrity of the procurement process, a purpose which will be served if the protest is sustained. The protester also proffers recently acquired information that GSA "has denied Ms. Schwartz' request for . . . installation of handicapped access" in the absence of funds for that purpose.

## **DISCUSSION**

Contract postal units are procured pursuant to Postal Service Handbook AS-707F, July, 1989 (hereafter "handbook"). That handbook establishes the standard evaluation factors for inclusion in the CPU solicitation package, although the points to be assigned to each of the three factors and the relationship of the business score to the price score are to be proposed by the administrative post office requesting the CPU (Handbook 2.2.2, 2.4). The

handbook also offers guidance concerning some of the issues involved in evaluation.<sup>11</sup>

In the negotiated acquisition of contract units, the successful contractor is to be selected in accordance with the evaluation formula set out in the RFP. The assignment of a numerical score by the evaluator is an attempt to quantify essentially subjective judgments. Our review of such an evaluation is limited to whether the evaluation was arbitrary or in violation of any applicable procurement regulations. We do not substitute our judgment for that of the evaluator or redo the evaluation. *Illeana M. Pierluissi*, P.S. Protest No. 87-02, March 19, 1987.

In the instant case, it appears that the evaluator scored the competing offers on a basis inconsistent with the evaluation scheme set out in the solicitation. For example, the location factor had four subfactors (see footnote 1). Mr. Deterding's facility was within the area designated by the solicitation, easily accessible to handicapped and other customers, and an appropriate distance from the nearest Postal Service facility. It was faulted on only one subfactor, that its location was not likely to stimulate usage by customers, and in that regard its score for location was diminished by more than half. Since subfactors which are not assigned specific weights are to be considered of approximately equal weight, *Stone and Webster Engineering Corporation*, Comp. Gen. Dec. B-255286.2, April 12, 1994, 94-1 CPD 306, citing *Informatics, Inc.*, Comp. Gen. Dec. B-194734, Aug. 22, 1979, 79-2 CPD 144, the deduction of so many of the points for this subfactor was inappropriate. Further, the evaluator downrated Mr. Deterding's offer as less satisfactory for the residents of the Border, AK, compound, without considering the site's attractiveness for non-resident postal customers, and without fully justifying her conclusion that its location three miles from the compound would make it significantly inconvenient for the compound's residents.<sup>12</sup> We

<sup>11</sup> For example, sections 2.3.2 and 2.3.3 provide as follows:

#### 2.3.2 Location

The requesting office must specify location[] as precisely as is deemed necessary. The best potential locations are in or adjacent to existing business, working or shopping areas, and at sites where customers, including the handicapped, have convenient access to parking or mass transit.

#### 2.3.3 Accessibility to the Handicapped

It is Postal Service policy to attempt to insure that all post offices, including contract postal units, are readily accessible to all. Contractors selected should be in locations readily accessible to the handicapped. If a contract is awarded to a contractor whose premises are not accessible, the contracting officer must document the contract file to describe the attempts made to find other contractors with accessible locations and describe the reasons for making the award.

<sup>12</sup> The downrating for remoteness seems inconsistent with the fact that the Border City Lodge was within the area specified by the amended solicitation. While an offered facility within the designated area may be evaluated as less satisfactory than another location also within the designated area, the lower rating should relate to factors other than location. See, e.g., *Illeana M. Pierluissi, supra*.

take notice of the fact that the residents of the scattered small communities of Alaska commonly are required to travel significant distances to obtain goods or services. In those circumstances, it is less than clear why Mr. Deterding's facility, which appears on this record to be the closest commercial facility to the port of entry compound, is seen as so inconvenient.

The size of the deduction assessed the protester for this subfactor seems particularly inconsistent with the slight penalty (only one point) assessed against the Schwartz proposal for the same factor for its admitted failing with respect to handicapped accessibility. Such accessibility was a requirement of equal weight with a site's potential for customer usage, and the offeror's failure to offer a compliant facility was a failing which the applicable directive (footnote 11, *supra*) suggests should have all but disqualified it from consideration given the availability of an accessible site.

Similarly, the protester's offer was downrated for its appearance under the second factor, suitability of facility, despite the advice of the offeror's representative that the facility, then under expansion or renovation, "would meet appearance criteria." Neither the evaluator's written explanation nor the contracting officer's statement satisfactorily explain why that advice was apparently afforded no weight.<sup>13</sup>

Finally, neither the evaluator's explanation nor the contracting officer's statement adequately account for the discrepancy in the two offeror's scores for the ability to provide service. We gather that both offerors provided sufficient personnel, had appropriate business reputations, and provided no incompatible nonpostal services.<sup>14</sup> If so, the nine point difference between the offeror's scores must relate to the remaining subfactor, the ability to provide service. While Ms. Schwartz's previous postal and contract experience no doubt afforded her full credit for that element, neither the evaluator nor the contracting officer have effectively established any reason to downrate Mr. Deterding in that respect. Contrary to the contracting officer's suggestion, nothing in the CPU contract or the handbook suggests the need for accounting or bookkeeping skills in excess of those commonly used in the conduct of a retail business.

For the reasons stated, we conclude that the evaluation was arbitrary and inconsistent with the evaluation scheme of the solicitation.<sup>15</sup> Accordingly, we turn to the matter of remedy. In

<sup>13</sup> The protester's offer received only two-thirds of the available points for the second factor. If it received full points for the second and third subfactors, as to which the evaluator acknowledged the adequacy of the facility's parking and square footage, it must have received no points for the first subfactor, appearance.

<sup>14</sup> We agree with the contracting officer that this last subfactor warrants deductions for incompatible services, not credits for compatible ones.

<sup>15</sup> In the absence of an evaluation factor for potential length of the CPU contract, we reject the protester's suggestion that that issue is relevant to the evaluation. Similarly, we do not reach the suggestion of bias or favoritism in the evaluation. "Prejudicial motives will not be attributed to individuals on the basis of inferences or supposition." *Luther Benjamin and Associates*, P.S. Protest No. 87-99, December 31, 1987.

an appropriate circumstance, we may direct the re-evaluation of offers on a basis consistent with the evaluation scheme set out in the solicitation. *Handling Systems, Inc.*, P.S. Protest No. 89-70, December 19, 1989.<sup>16</sup>

Nothing in the record before us suggests that the evaluator and the contracting officer could not have rationally concluded in the circumstances of this particular procurement that matters such as the convenience of the residents of the Border port of entry compound were of such significance as to outweigh other factors, such as convenience to transient postal customers or the provision of accommodations for disabled individuals.<sup>17</sup> A solicitation consistent with that intent would not have included a desired location as broad as that provided by the amended solicitation, would have discussed usage by customers in terms relating to local residents to the exclusion of transient customers, and would not have required immediate accessibility by the handicapped.

All but the first of these suggested revisions would require deviations from the handbook's established evaluation scheme. Such deviations may be made when circumstances require.<sup>18</sup> The contracting officer is directed to consider whether the Postal Service's needs

<sup>16</sup> While an error in the weighting of evaluation factors need not require re-evaluation of the offers if the offeror was not prejudiced by the error, *Stone & Webster Engineering Corporation, supra*, prejudice can be shown here. If each proposal had been scored appropriately for its deficiency under the location factor (that is, if the protester's offer lost one-fourth of the available location points for its perceived remoteness, and Ms. Schwartz's offer similarly lost one-fourth of the location points for its lack of access) the protester's proposal would have been more advantageous than Ms. Schwartz's proposal under the evaluation scheme of the solicitation.

Where award has already occurred, so that contract termination may be necessary to afford relief, we also apply the following factors in determining the appropriateness of a remedy:

Whether to require termination action in a given case depends on consideration of such factors as the seriousness of the procurement deficiency, the degree of prejudice to unsuccessful offerors or to the integrity of the competitive procurement system, the good faith of the parties, the extent of performance, the cost to the Government, the urgency of the requirement, and the impact of termination on the accomplishment of the agency's mission.

*TPI International Airways, Inc.*, P.S. Protest No. 87-40, October 30, 1987.

Here, while the record suggests the good faith of the parties, the other factors, including the fact that CPU contracts may be terminated on notice in a manner which will not affect the provision of service, support termination and remedial action.

<sup>17</sup> Given the limited hours of operation which the solicitation sought, it seems clear that the CPU is not intended to serve transient customers, and that even the protester's offered facility would likely be of limited usefulness to travellers.

<sup>18</sup> CPU contracts are one of the structured contracts authorized by PM 8.6 which are under the control of the Vice President, Purchasing. PM Exhibit 8.1.2. PM 1.4 discusses deviations from the requirements of the Procurement Manual, and authorizes the Vice President, Purchasing, and others to approve them in appropriate circumstances.

with respect to the Border CPU require such revisions to the solicitation, and (with the acquisition of any appropriate deviations) to resolicit the requirement in accordance with the Postal Service's actual needs. Should the contracting officer conclude that no such revisions are required, the existing offers should be re-evaluated on a basis consistent with the criteria set out in the existing solicitation.

The protest is sustained to the extent indicated.

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