



June 20, 2017

Mr. Robby Richey, President
Alan Richey, Inc.
740 S. I-35
Valley View, Texas 76272-9733

Subj: Supplier Disagreement Resolution No. SDR17MO-06

Ref: (a) USPS letter dated December 13, 2016, Notice of Decision to Decline to Accept or Consider Proposals
(b) Husch Blackwell, LLP letter dated January 5, 2017, ARI Disagreement
(c) ARI Remedial Measures Submission dated February 21, 2017
(d) Office of the Inspector General (OIG) Report Re: Request for Debarment of Alan Richey, Inc., Robby Richey, and Lora Hinton, dated May 24, 2016

Dear Mr. Richey:

This correspondence responds to the disagreement that you lodged with the Supplier Disagreement Resolution ("SDR") Official on behalf of your firm Alan Richey, Inc. ("ARI") and its affiliates Robby Dale Richey (Ritchey) and Lora Jane Hinton (Hinton) on January 5, 2017. Your submission stated that you disagreed with the Postal Service's (USPS) decision to decline to accept or consider proposals from ARI and its affiliates Robby Dale Richey (Ritchey) and Lora Jane Hinton (Hinton) pursuant to 39 C.F.R. § 601.105, Business relationships, for a period of one year commencing on December 13, 2016. I have reviewed this matter and determined that based on the actions of ARI and your retained consultant during the period of June through August 2011, the action taken by the Postal Service through Reference (a) was fully warranted. However based on remedial organizational actions taken and completed by ARI, and which actions were not known or considered by the Postal Service prior to the issuance of Reference (a), I have determined that the period to decline to accept or consider proposals from ARI be reduced from a period of one year to a period of six months and one week ending upon the date of issuance of this resolution.

Basis of U.S. Postal Service Decision and Background

The decision of the Vice President, Supply Management to decline to accept or consider proposals from ARI or its affiliates as a prime contractor or subcontractor for a period of one year was based on ARI's conduct and the actions of ARI's retained consultant Mr. Russell Sykes (Sykes). During the period June through August 2011, ARI employed Sykes, a retired Postal PCES Executive previously employed within Supply Management's Transportation Portfolio, to directly contact Postal employees and managers on ARI's behalf immediately after his retirement in violation of his post-employment ethical restrictions. Through repeated contacts, Sykes obtained three non-public documents which he shared with ARI and which ARI did not disclose or return to the Postal Service. Reference (a) provided in part:

"The basis for this action is the failure of ARI, Ritchey, and Hinton to notify the Postal Service of their receipt of nonpublic Postal Service information, or to return that nonpublic information to the Postal Service, giving ARI an unfair competitive advantage. In addition, ARI contracted with a former USPS executive, Russell Sykes, to assist ARI in obtaining Postal Service contracts, despite being aware of Mr. Sykes' repeated direct contacts with USPS employees in violation of applicable government ethics regulations. Late last year, Mr. Sykes pled guilty to violating the law in connection with his engagement by ARI as a consultant.

Taken together, these actions of ARI, Ritchey, and Hinton constitute questionable business practices that do not meet the reasonable business expectations of the Postal Service and do not provide a high level of confidence about ARI and its affiliates' current and future business relations."

The Disagreement

ARI's disagreement is based on several points and is summarized as follows. ARI notes that the Postal Service's December 13, 2016 decision was made without a hearing from the parties concerning the substance of this matter and that the disagreement presents the first opportunity for the Postal Service to consider ARI's response to the allegations provided by the Postal Service's Office of Inspector General (OIG). ARI asserts that the Postal Service's exercise of 39 C.F.R. § 601.105 is tantamount to a *de facto* debarment because it excludes ARI from contracting with the Postal Service without providing advance notice and a hearing. ARI argues that the non-public information obtained by Sykes was not sought or requested by ARI, that upon disclosure it became public information, and that the information was not used to provide a competitive advantage to ARI. Further, ARI asserts that it was legal to hire Sykes and that it is improper to impute Sykes guilty criminal plea to ARI and that there is no evidence that ARI's principals engaged in a conspiracy to violate the law or act improperly. Finally, ARI asserts that Reference (a) did not consider the full record of ARI's performance as a Postal contractor including its fifty year history as a supplier, its on time performance record, or the remedial measures it has taken to revise its Code of Ethics and strengthen its internal employment policies and hiring procedures.

Discussion

A. The Business Relationships Process

ARI's contention that the Postal Service is required to provide for a hearing in advance of implementing a decision under 39 C.F.R. §601.105 and that a decision made pursuant to that regulation is a *de facto* debarment is incorrect. The Postal Service's business relationships regulation sets forth a specific process that the Postal Service must follow in providing notice when a decision to decline to accept or consider proposals is made. 39 C.F.R. § 601.105(c). That process was followed through Reference (a). Furthermore, the Postal Service's business relationships regulation provides for an opportunity to contest such a decision. 39 C.F.R. § 601.105(d). Specifically, the regulation allows for the person or organization to contest a decision not to accept or consider proposals with the SDRO, providing the person or organization with due process. The SDRO process allows the Postal Service to reconsider the matter and rescind or modify the decision, as appropriate.

ARI has exercised its right to such process, pursuant to 39 C.F.R. §§ 601.105(d) and 601.108. Thus, I find no merit in the argument that the Postal Service has imposed a *de facto* debarment. The Postal Service has followed its business relationships regulation and no advance hearing prior to decision is required.

B. Communications and Nonpublic Documents

Regarding the Sykes direct communications during his post-employment period and documentation obtained from Postal Service employees, it is undisputed that Sykes violated his ethical restrictions and that the information obtained and provided to ARI had not been previously released outside the Postal Service.

I have reviewed the nonpublic documents that ARI received from Sykes that were considered in the Postal Service's decision to decline to accept or consider proposals. ARI should have known from the transmission communications from Sykes that these documents were not public and had been obtained and provided to ARI to attempt to give ARI a competitive advantage. Reference (d) provides an email which Sykes transmitted to ARI on July 11, 2011 containing two attachments. In this email Sykes stated "I just wanted to give you a flavor for what the future plan is so that you can get a head start on preparing

for what may be happening.” In a second email provided on the same date, Sykes stated, “Pls [Please] keep these docs [documents] between me and you.” Each of these communications clearly indicate that these were not public documents. Not notifying the Postal Service of this material reflects poorly on ARI’s business practices and ethics. A review of two of these documents provide they are dated May 27, 2011. Sykes retirement date was May 31, 2011. The documents are general presentations concerning the advantages of a dynamic routing approach to network transportation. While inappropriately released, due to their content and Sykes exposure to this approach prior to his retirement, I view it unlikely that any actual competitive advantage accrued to ARI. This does not negate ARI’s unprofessional and unethical business practices in retaining the information, but it does impact the decision period discussed below.

C. ARI’s Hiring of Sykes

Concerning the position that ARI should not be held responsible for Sykes conduct while employed by ARI, this position fails completely as the record in Reference (d) provides that ARI purposely hired Sykes to help it “move things (renewals) through the system” and that ARI viewed Sykes as “well spoken.” The file unambiguously reflects that Sykes communicated to Mr. Richey information obtained from the Postal Service and relayed plans to contact Postal officials on ARI’s behalf. Each of these actions are clear ethical violations of his post-employment restrictions, and actions for which he ultimately plead guilty to a Federal felony offense, being sentenced on March 29, 2016. The action of the Postal Service under Reference (a) are based on ARI’s actions and the events occurring in 2011. Reference (a) notes Sykes guilty plea as a matter of confirmation of those events, but is not the basis of the action. Finally, the record does reflect that ARI may have made incorrect assumptions that certain communications from Sykes to the Postal Service were acceptable as long as they did not include “negotiations”. It is not necessary to categorize or seek to discern Sykes communications. They have been confirmed as ethical violations and illegally made while employed by ARI. In summary, ARI had direct accountability for the conduct of Sykes during his engagement and the Reference (a) decision was appropriately directed to ARI and its affiliates Robby Richey and Lora Hinton.

Relatedly, ARI violated its contracts with the Postal Service by failing to identify and obtain prior approval from the Contracting Officer for its hiring of Sykes. Clause 1-12 Use of Former Postal Service Employees (March 2006). This clause requires the supplier to identify any former Postal Service employees it proposes to engage, directly or indirectly, in contract performance. The clause required that Contracting Officer approval be received prior to the employee starting work on the contract. The record reflects that ARI had previously observed this notification and approval procedure with a different former Postal Service executive, but failed to do so in the hiring of Sykes. As ARI hired Sykes as a consultant almost immediately after his May 31, 2011 retirement to assist ARI with the renewals of a number of contracts, the lack of notification or obtaining approval exhibited questionable business practices and violated contract terms.

D. Historical Performance Record

Finally, ARI asks the Postal Service to consider its performance record as a supplier in determining whether Reference (a) was properly determined. The Postal Service does not dispute that ARI has a long history of supporting our Highway Contract Route (HCR) transportation needs. However 39 C.F.R. § 601.105 is focused on current or future business relations and not a historical evaluation of the relationship. The regulation protects the Postal Service by allowing it to not contract with suppliers that fail to meet reasonable business expectations or provide a high level of confidence in overall professionalism, amongst other qualities. 39 C.F.R. § 601.105(a). ARI’s record of contract performance is not directly related to its professionalism and business practices. Thus, this argument is not persuasive or responsive to the basis for the USPS action at issue.

E. Supplier’s Remedial Actions

While as discussed above, the Postal Service’s action under 39 C.F.R. § 601.105 was justified, it is my view that ARI has taken and completed important remedial actions to address the unprofessional conduct relating to the hiring of Sykes for three months, in violation of its contracts, and the retaining of nonpublic

information received from Sykes. The remedial actions were not known or considered by the Postal Service in determining the length of the decision to decline to accept or consider proposals from ARI in issuing Reference (a).

Reference (c) details that ARI has implemented a policy that prohibits it from hiring former Postal Service officers and PCES executives who have been separated from the Postal Service for less than two years. ARI has revised its internal policies and procedures to ensure that the Postal Service is promptly notified in writing whenever an offer of employment (either as an employee or consultant) is extended to a former USPS officer or PCES executive. ARI now requires a written employment agreement to hire a former USPS officer, PCES executive, or other USPS employee (except for individuals who would be considered service employees under the Service Contract Act). ARI has expanded its ethics training program for all employees to specifically address restrictions on hiring former USPS employees and the handling of nonpublic information. It has also updated its Code of Business Practice and Ethics to reflect the updated hiring practices and treatment of nonpublic information. Finally, ARI has noted that it intends to engage an independent third-party compliance auditor to monitor its hiring practices for no less than a one-year period.

Conclusion and Resolution

After considering all information provided to me and having conducted an extensive review of the material, remedial actions and findings noted herein, I have determined that the supplier has sufficiently acknowledged responsibility and taken appropriate remedial actions to justify a reduction in the period to decline to accept or consider proposals from a period of twelve months to a period of six months and one week ending upon the date of issuance of this resolution. Therefore, the effective period of decline to accept or consider proposals pursuant to 39 C.F.R. § 601.105, Business relationships, from ARI and its affiliates Robby Richey and Lora Hinton is revised to reflect a six month and one week period from December 13, 2016 to today's date of June 20, 2017.

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

Sincerely,



Mark A. Guilfoil
USPS Supplier Disagreement Resolution Official
Acting Manager
SM Infrastructure

cc: William P. Bennett, Alvarado & Bennett
Lora Hinton, ARI