

DISTRICT OF COLUMBIA CONTRACT APPEALS BOARD

PROTEST OF:

PROGRESSIVE EDUCATIONAL EXPERIENCES)	
IN COOPERATIVE CULTURES)	
)	CAB No. P-0889
Solicitation No: DCCF-2011-R-3562 SDA 2)	

For the Protester: Sara Stone, *pro se*. For the District of Columbia Government: Janice N. Skipper, Esq., Assistant Attorney General, Office of the Attorney General.

Opinion by Administrative Judge Monica C. Parchment, with Chief Administrative Judge Marc D. Loud and Administrative Judge Maxine E. McBean, concurring.

OPINION

Filing ID 40712511

The protester, Progressive Educational Experiences in Cooperative Cultures (“PEECC”), challenges the evaluation and resulting awards made by the District of Columbia under Request for Proposal No. DCCF-2011-R-3562 SDA 2 (“Solicitation”) for year-round youth workforce development programs in the District. The protester alleges that the District’s award decision was improperly based upon a number of ethical and procedural irregularities during the evaluation which form the basis of its protest allegations. The District has moved to dismiss this protest as untimely and has also asserted that the protester lacks legal standing to pursue this protest before the Board.

The Board also finds that the present allegations were untimely filed and, for this reason, dismisses this protest.

BACKGROUND

The Solicitation was first issued by the District’s Office of Contracting and Procurement, on April 8, 2011, on behalf of the Department of Employment Services (“DOES”) and sought a contractor to provide quality year-round youth workforce development programs to meet the needs of the District’s youth and the requirements of the District of Columbia Youth Employment Services Initiative Amendment Act of 2005 and the Workforce Investment Act of 1998. (Agency Report (“AR”) Ex. 2.) In particular, the Solicitation specified that the successful offeror would design and implement a year round youth program that would provide services to eligible out-of-school youth, ages 16-21 years old, including alternative education opportunities, career exploration and work readiness, placement, case management and follow-up services. (*Id.*)

The Solicitation further stated that the awardee would provide the required services for two distinct Service Delivery Areas (“SDA”) to include SDA District 1 (Wards 1, 2, 3, 4) and SDA District 2 (Wards 5, 6, 7, 8). (*Id.*) The District stated in the Solicitation its intent to award

at least one contract for each SDA. (*Id.*) Several amendments were issued by the District to the original Solicitation after it was issued. (AR Ex. 3.)

In total, the District received 22 proposals in response to the Solicitation including the proposal of the protester, PEECC. (*Id.*) The District convened a technical panel which conducted independent and consensus evaluations and scoring of these 22 proposals. (*Id.*) The Contracting Officer also conducted a separate and independent evaluation of each proposal received by the District. (*Id.*)

Based upon the evaluation and scoring of these proposals, 13 of the 22 offerors were determined to be within the competitive range based upon the fact that the District determined that they met the minimum mandatory requirements of the Solicitation. (AR Exs. 3, 6.) Accordingly, these competitive range offerors were directed to submit best and final offers to the District. (AR Ex. 3.) The other remaining 9 offerors, including the protester, PEECC, were excluded from the competitive range based upon their lower assigned technical scores. (*Id.*) Additionally, these same 9 offerors were also issued letters from the Contracting Officer on July 28, 2011, stating that their proposals had been determined not to be in the competitive range and that they were no longer being considered for award. (AR Exs. 3, 7.) The record in this protest reflects that this notice of exclusion from the competitive range was, in fact, sent by email to PEECC on July 28, 2011. (AR Ex. 7.)

However, despite its receipt of notice of its exclusion from the competitive range on July 28, 2011, PEECC did not file this protest with the Board until August 23, 2011. The protester generally alleges in this bid protest that: 1) the District compromised the integrity of the procurement process during its conduct of this procurement; 2) the District issued excessive modifications, communication lags, leadership changes, and irregular extensions beyond the official Solicitation closing date thereby providing an unfair competitive advantage to certain offerors; 3) the District inappropriately disclosed its preferred pricing ceiling and other pertinent information thereby providing an unfair competitive advantage to certain offerors; 4) the District improperly made awards to offerors with no significant past performance experience for the services sought under the Solicitation; and 5) the District failed to receive and fully evaluate and score the protester's complete proposal.

On September 23, 2011, the District filed a motion to dismiss the protest as untimely and also asserted that the protester lacks standing. The protester opposed the motion and further alleged that its ability to obtain information regarding the underlying evaluation to support its protest allegations was impeded despite its numerous Freedom of Information Act ("FOIA") requests and other requests for information that it made to the District.

DISCUSSION

We exercise jurisdiction over this protest and its underlying allegations pursuant to D.C. Code §2-360.03(a)(1).

D.C. Code §2-360.08(b) mandates that protests be filed with the Board "not later than 10 business days after the basis of protest is known or should have been known, whichever is earlier." The Board has clarified this by stating that the 10 business days begin to calculate when

the bidder or offeror knows or should have known both the basis of the protest and that the District has taken an adverse action towards it. *Sigal Construction Corporation*, CAB No. P-0690, Nov. 24, 2004, 52 D.C. Reg. 4243. The Board has also established that notice to a bidder that it is not in the competitive range constitutes knowledge of adverse action by the District against the bidder. *Community Bridge, Inc.*, CAB No. P-0848, Jan. 13, 2011. This 10 day time limit may not be extended by the Board, even in instances where the bidder is waiting for information from a FOIA request. *SAGA Adventures, Inc.*, CAB No. P-0704, June 17, 2005, 54 D.C. Reg. 1936.

The protester has alleged that, between October 25, 2010, and June 8, 2011, it observed pervasive irregularities in this procurement process which it believed to be inappropriate and prejudicial to its company. Protester Response to Motion to Dismiss, p. 1. However, the protester failed to file a single protest challenging any of these alleged, ongoing, irregularities within 10 business days after they supposedly occurred between October 25, 2010, and June 8, 2011.

Similarly, PEECC also did not timely protest its exclusion from the competitive range in this procurement within 10 business days notwithstanding this adverse action by the District. Specifically, the protester did not file the instant protest until August 23, 2011, which was 18 business days subsequent to the District notifying PEECC that its proposal would not be considered for award as it was not within the competitive range.

Consequently, we now find that PEECC's present protest is untimely with respect to both challenging its alleged observation of evaluation irregularities occurring between October 25, 2010, and June 8, 2011 and, more significantly, its exclusion from the competitive range upon which PEECC certainly knew, or should have known, that it had a basis of protest and that it had been subject to adverse action by the District. Further, having found these protest allegations to be untimely filed, the Board finds it unnecessary to determine the issue of whether the protester would otherwise have legal standing in this case under the relevant circumstances.

CONCLUSION

For the reasons discussed above, we hereby dismiss the present protest as untimely.

SO ORDERED.

DATED: November 3, 2011

/s/ Monica C. Parchment
MONICA C. PARCHMENT
Administrative Judge

CONCURRING:

/s/ Marc D. Loud, Sr.
MARC D. LOUD, SR.
Chief Administrative Judge

/s/ Maxine E. McBean
MAXINE E. MCBEAN
Administrative Judge