

GOVERNMENT OF THE DISTRICT OF COLUMBIA
CONTRACT APPEALS BOARD

PROTEST OF:

SYSTEMS ASSESSMENT & RESEARCH, INC.)	
)	CAB No. P-0738
Under Solicitation No. GAGA-2006-R-0176)	

For the Protester: Julian H. Spirer, Esq., and Brian M. Lowinger, Esq., Spirer & Goldberg, P.C.
For the District of Columbia Public Schools: Erika L. Pierson, Esq., Deputy General Counsel, and Aaron E. Price, Sr., Esq., Attorney-Advisor.

Opinion by Chief Administrative Judge Jonathan D. Zischkau, with Administrative Judge Warren J. Nash, concurring.

OPINION

LexisNexis Filing ID 12431107

Systems Assessment & Research, Inc. (“SAR”), protests the award of a contract to Columbus Educational Services, LLC, as a special education services provider who would provide a variety of special education personnel to assist the District of Columbia Public Schools (“DCPS”) in the implementation of a consent decree entered in the federal class action lawsuit *Blackman v. District of Columbia, et al.*, 97-CV-1629 (D.D.C.) (“Blackman consent decree”). Columbus had the highest evaluated proposal, and SAR was scored a distant second. Although the evaluation record is poorly documented before us, perhaps because SAR did not frame its *pro se* protest particularly well, we conclude that the protest should be dismissed because the federal court in *Blackman* exempted the District of Columbia from the Procurement Practices Act for procurements implementing the *Blackman* consent decree, and the procurement at issue clearly is meant to implement the consent decree. Accordingly, we dismiss the protest.

BACKGROUND

On April 13, 2006, DCPS’s Office of Contracts and Acquisitions (“OCA”) issued Solicitation No. GAGA-2006-R-0176 for the procurement of special education instructional and related services to assist in the implementation of the *Blackman* consent decree. (Agency Report (“AR”) Exs. 1, 10). The special education personnel to be provided included physical therapists, occupational therapists, psychologists, speech language pathologists, master social workers, special education teachers, a project coordinator, and a project director.

On April 14, 2006, the *Blackman* court entered an order providing in pertinent part: “Ordered that pending final approval of the Consent Decree, in order to implement the preliminary approved Consent Decree, the [District of Columbia Government is] not bound by the D.C. Procurement Practices Act or any other District or federal law relating to procurement, or any regulations thereunder.” (AR Ex. 9).

The closing date for proposals was April 21, 2006. Five proposals were timely received. OCA conducted an initial screening of the proposals, determining that only three offers were within the competitive range: (1) Tai Pedro & Associates, (2) SAR, and (3) Columbus. On May 12, 2006, OCA began negotiations with these offerors. After negotiations had concluded, OCA requested best and final offers (“BAFOs”). The BAFOs were evaluated by a panel of agency personnel knowledgeable about special education, special education related services, and special education services providers. The panel ultimately selected Columbus for the award. The record, however, does not contain any evaluation score sheets, consensus reports of the technical evaluation team, or the independent evaluation and selection reports of the contracting officer. All the record contains are summary sheets of the initial technical evaluations and BAFO evaluations, listing simply the total technical evaluation scores of the evaluators which presumably were adopted by the contracting officer. (AR Exs. 6, 7). The Agency Report states that the “[evaluation] panel ultimately selected Columbus for the award.” (AR at 2).

In its efforts to begin immediate implementation of the consent decree’s terms, OCA issued a letter contract to Columbus on June 1, 2006, with instructions to begin performance. (AR at 2). Subsequently, OCA conducted a debriefing with SAR to review its proposal and evaluation. During the course of this debriefing, SAR was informed of the shortcomings in its proposal. On June 26, 2006, in the midst of the awardee’s performance under the letter contract, SAR, *pro se*, filed the instant protest. SAR asserts that DCPS: (1) eliminated the requirement for a resume and position description for the project director position; (2) discounted the protester’s proposal for lack of a subcontracting plan; (3) misread the SAR’s staffing ability; (4) unjustifiably credited Columbus with past performance experience; and (5) failed to include in the solicitation a local business participation requirement.

On June 30, 2006, the final consent decree was entered in the *Blackman* case, which provides in part: “Under this Consent Decree, the [District of Columbia Government is] not bound by the D.C. Procurement Practices Act, D.C. Code Section 2-301.01 et seq., any other District or federal law relating to procurement, and any regulation thereunder.” (AR Ex. 10).

DCPS filed its Agency Report on July 20, 2006, addressing each of the grounds raised by the protest. On July 27, SAR, represented by counsel, filed its comments on the Agency Report. In its comments, SAR dropped all of the initial protest challenges except for the ones relating to the evaluation based on the project director resume and the timing of staffing availability. SAR’s comments raised, for the first time, the failure of the contracting officer and the technical evaluation team to consider the evaluation factors, as reflected in the absence of records documenting how the evaluators arrived at the summary scores presented in the protest record. DCPS did not respond to SAR’s comments.

DISCUSSION

In its Agency Report, DCPS contends that it has fully complied with the District’s procurement laws. Before reaching the merits, however, we must decide whether we properly exercise jurisdiction pursuant to D.C. Code § 2-309.03(a)(1). DCPS states in the final sentence of its Agency Report, that “the United States District Court in [*Blackman*] waived the procurement laws of the District of Columbia as they apply to implementation of the [*Blackman*] Consent Decree.” SAR did not address

the consent decree exemption in its comments on the Agency Report.

We have carefully reviewed the language of the April 14, 2006 court order and the final consent decree of June 30, 2006, along with DCPS's record of the special education services procurement at issue. We conclude that the federal court order and consent decree in *Blackman* clearly exempt the protested procurement from the Procurement Practices Act. Accordingly, we dismiss the protest for lack of jurisdiction.

SO ORDERED.

DATED: September 21, 2006

/s/ Jonathan D. Zischkau
JONATHAN D. ZISCHKAU
Chief Administrative Judge

CONCURRING:

/s/ Warren J. Nash
WARREN J. NASH
Administrative Judge