

In response to the Contracting Officers' allegations that PRI was not competitive based upon other quotations, the attached detailed substantiation is submitted. Our substantiation shows the rationale used in arriving at the price of \$20,000 for two

profession[al]s at the [pay grade 15] 5th step. PRI has been in the professional recruitment and placement business since 1974. Also, we have worked in the Washington, DC area since 1976. I would be happy to speak with you and or your officers to explain our proposal at your convenience. . . .

(AR Ex. 4). OCP apparently did not respond to Nelson's letter. On September 24, 2004, Professional Recruiters wrote to OCP, formally protesting OCP's rejection of its quote. The letter, with a subject line reading "Formal Protest to Disqualification of Proposal Submitted in Response to RFQ 158548," clearly protests OCP's September 3 rejection of its quote, arguing that its quote for professional recruitment services was reasonable under the criteria set forth in Federal Acquisition Regulation ("FAR") 31.201-3. (AR at 2, AR Ex. 5). Upon receiving a protest mistakenly sent to the OCP contracting officer, rather than to the Board, the OCP contracting officer should have immediately forwarded to us the misdirected protest. OCP erroneously notified Professional Recruiters on October 4 to file its protest with us. (AR at 2, AR Ex. 6). Professional Recruiters filed its protest directly with us on October 13, but as the District recognizes, we treat it as filed on September 24, the date the protest was received by the OCP contracting officer.

On November 3, 2004, the District moved to dismiss the protest as untimely filed. Professional Recruiters filed an opposition on December 10, 2004.

DISCUSSION

We exercise jurisdiction pursuant to D.C. Code § 2-309.03(a)(1).

The Procurement Practices Act provides the following in D.C. Code § 2-309.08 with regard to an award protest:

(a) This section shall apply to a protest of a solicitation or award of a contract addressed to the Board by any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of a contract.

. . . .

(b)(2) In cases other than those [based upon alleged improprieties in a solicitation] . . . , protests shall be filed not later than 10 business days after the basis of protest is known or should have been known, whichever is earlier.

We have recently restated that this 10-business day period begins when the bidder or offeror knows or should have known the basis of its protest *and* the party has become aggrieved in connection with the award by an official action adverse to that party. *Sigal Construction Corp.*, CAB No. P-0690, *et al.*, Nov. 24, 2004. In the present case, Professional Recruiters concedes that it received notice on September 3, 2004, that its quote would not be further considered for the award because the price was not reasonable. Professional Recruiters also agrees that its letter of September 13 was not intended as a protest and that it did not in fact submit its protest until September 24. Because it filed its protest more than 10 business days after September 3 when it received official notification of an action adverse to it in connection with an award, Professional Recruiters' protest is untimely.

We have reservations about the OCP contracting officers' determination to exclude the quote of Professional Recruiters without first requesting and evaluating the bidder's pricing information, particularly where, as here, contractors have significant latitude in how they price direct costs for these services. In addition, we have concerns that the contracting officers here did not appreciate that a bid price below the cost of performance is not objectionable for that reason alone. *M.C. Dean, Inc.*, CAB No. P-0654, July 30, 2002 50 D.C. Reg. 7447, 7449; *C.P.F. Corp.*, CAB No. P-0521, Jan. 12, 1998, 45 D.C. Reg. 8697, 8700. Whether the contract can be performed at a price below the cost of performance is a matter of bidder responsibility, but Professional Recruiters' responsibility did not seem to be considered by the contracting officers. Finally, contracting officers should notify bidders and offerors *in writing* and *without delay* when making determinations such as to award or not to consider further a firm's bid or offer.

Professional Recruiters' protest is dismissed as untimely.

SO ORDERED.

DATED: December 21, 2004

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

CONCURRING:

/s/ Matthew S. Watson
MATTHEW S. WATSON
Administrative Judge

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