

## DISTRICT OF COLUMBIA CONTRACT APPEALS BOARD

PROTEST OF:

|                                   |   |                |
|-----------------------------------|---|----------------|
| MICON CONSTRUCTIONS               | ) |                |
|                                   | ) | CAB No. P-0857 |
| Solicitation No: DCAM-2010-B-0133 | ) |                |

For the Protester, Micon Constructions, Inc.: Operations Director Steven D. Gray, *pro se*. For the District of Columbia Government: Alton Woods, Esq., Assistant Attorney General, Office of the Attorney General.

Opinion by Administrative Judge Warren J. Nash, with Chief Administrative Judge Marc D. Loud, Sr., concurring.

### OPINION

*Filing ID 37689892*

On June 30, 2010, Micon Constructions (“Micon”) protested a contracting officer’s determination that Micon’s bid was nonresponsive because the bid did not include information regarding Micon’s experience in meeting the special standards of responsibility set forth in Section C.5 of the solicitation. Micon contends that its failure to provide the information could have been corrected as a minor informality. The contracting officer subsequently rescinded the June 22, 2010, letter, and stated that as a result of bid reevaluation, Micon was nonetheless determined to be nonresponsive in accordance with 27 DCMR §§ 2200.1-2200.5, based on lack of appropriate experience, and nonresponsive, based on failure to provide an adequate subcontracting plan. Micon did not respond to the District’s motion to dismiss. As the District rescinded its nonresponsiveness determination of June 22, 2010, that effectively moots the basis of Micon’s protest. Moreover, Micon has not responded to the subsequent nonresponsibility determination issued by the contracting officer. Because the latter nonresponsibility determination violates neither the law nor the terms of the solicitation on the record before us, we sustain the contracting officer’s determination and deny the protest.

### BACKGROUND

On May 24, 2010, the District of Columbia’s Department of Real Estate Services (“DRES”) Contracting and Procurement Division (“CPD”) issued Solicitation No. DCAM-2010-B-0113 (“IFB”) in the open market, with a SBE subcontracting set-aside, for the construction of the Girard Street Family Shelter located at 1413 Girard Street, NW, in Washington DC. (Agency Report (“AR”); AR Ex.1). There were three amendments issued to the IFB. (AR Ex. 1).

On June 14, 2010, bids were publicly opened by CPD with six bidders responding to the IFB. (AR Ex. 4). Molina Construction (“Molina”) submitted the lowest bid of \$217,500.00 in section B.5 of the IFB, but in the Price Breakdown Form in section B.6, the lump sum price of Molina’s bid was \$1,032,750.00. (AR Ex. 4). The Contracting Officer could not determine Molina’s actual bid amount, and she rejected Molina’s bid as not responsive to the IFB. Molina’s bid also failed to provide the information requested in section C.5 of the IFB, and the Contracting Officer (“CO”) determined that the bid was not responsive. (AR Ex. 4).

The second low bid was submitted by Micon with a bid price of \$1,251,606.97. (AR Ex. 2). However, the CO initially rejected Micon's bid as nonresponsive for failing to provide all of the information required in section C.5 of the IFB. (AR Ex. 4). On June 23, 2010, the CO informed Micon by email and by letter that its bid had been rejected as nonresponsive. (AR Ex. 3).

On June 30, 2010, the CAB docketed this protest in which Micon challenged the CO's nonresponsiveness determination. On July 1, 2010, the CO, in a letter to Micon, rescinded the earlier determination that Micon's bid was nonresponsive. The CO determined that Micon's bid did not include any information regarding a minimum of two projects that were similar in size and scope to the Girard Street family shelter. The CO rejected the bid and found it nonresponsive. (AR Ex. 5). The CO also concluded that Micon's bid was not responsive to the solicitation because the bid failed to provide a completed subcontracting plan which included all of the required information. (AR Ex. 5). Micon's Subcontracting Plan submitted with its bid failed to include the contract value, the amount of the contract (excluding the cost of materials, goods, supplies and equipment), the amount of all subcontracts, LSDBE totals, and the percentage of set-asides. (AR Ex. 2). Micon did not respond to the CO's July 1, 2010, letter that rescinded the initial nonresponsive determination and found Micon to be nonresponsive.

## **DISCUSSION**

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

Because the contracting officer rescinded his June 22, 2010 determination that Micon was nonresponsive for failing to provide all of the information required in section C.5 of the IFB, that portion of the protest is moot. The District initially determined that Micon's bid was not responsive to the IFB because the bid did not include any information in response to Section C.5 of the solicitation. (AR Ex. 3). Micon filed this protest on June 30, 2010. Subsequently, the CO reconsidered the determination of nonresponsiveness, and determined that Micon's bid did not provide the information regarding prior projects required in Section C.5 of the specifications, Special Standards of Responsibility. (AR Ex. 5). The District rejected the bid as nonresponsive. In the District's procurement regulations regarding responsibility, 27 DCMR §2200.5 states that "to be found responsible, a prospective contractor shall meet all of the following requirements:

- (a) Financial resources adequate to perform the contract, or the ability to obtain them;
- (b) Ability to comply with the required or proposed delivery or performance schedule, taking into consideration all existing commercial and governmental business commitments;
- (c) A satisfactory performance record;
- (d) A satisfactory record of integrity and business ethics;
- (e) The necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain them;
- (f) Compliance with the applicable District licensing and tax laws and regulations;

- (g) The necessary production, construction, and technical equipment and facilities or the ability to obtain them; and
- (h) Other qualifications and eligibility criteria necessary to receive the award under applicable laws and regulations.

The contractor has the burden of establishing its responsibility and “in the absence of information clearly indicating that a prospective contractor is responsible, the contracting officer shall make a determination of nonresponsibility.” 27 DCMR §2200.3; *Goel Services, Inc.*, CAB No. P-0804, Feb. 2, 2010. Here, the contracting officer determined that Micon did not provide evidence of experience required by the solicitation, and the contracting officer rejected the bid.

Additionally, the CO determined that Micon’s bid was not responsive because it did not contain requested information regarding Micon’s subcontracting plan. Micon did not respond to the District’s motion to dismiss the protest as moot, filed July 22, 2010. Micon also failed to rebut the CO’s determination of July 1, 2010, rescinding the original action, but finding Micon to be both nonresponsive and nonresponsible. Thus, we see no reason to overturn the contracting officer’s determination of nonresponsiveness and nonresponsibility.

### **CONCLUSION**

Micon has not rebutted the contracting officer’s reasons for determining Micon’s bid to be nonresponsive and nonresponsible. Accordingly, we deny the protest.

### **SO ORDERED.**

DATED: May 19, 2011

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

### **CONCURRING:**

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

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