

On January 22, 2007, the Office of Contracting and Procurement (“OCP”) issued in the open market IFB No. DCHA-2007-B-0002, on behalf of the Department of Parks and Recreation (“DPR”), for a contractor to provide comprehensive landscape maintenance and management services for approximately 450 acres of land at 72 recreational centers and facilities in Wards 1 through 8. (Agency Report (“AR”) Ex. 3). Bidders were to bid fixed-unit prices that would result in a requirements contract with total amounts based on estimated quantities of work. (AR Ex. 3). The bid opening date was February 5, 2007. Six bidders responded with bids and OCP performed an initial bid tabulation based on an evaluation of bid prices that was later determined to be erroneous. The initial bid tabulation showed the following order of evaluated prices from lowest to highest: Horton & Barber, IIU Consulting, Community Bridge, Inc., RBK Landscaping, KC Home Improvement, and Turf Center Lawns. (AR at 3-4; AR Ex. 6). The OCP contract specialist and the contracting officer’s technical representative made site visits to the bidders’ facilities, including RBK’s facility. (AR at 4; AR Ex. 13).

On February 9, 2007, OCP sent all bidders a letter requesting responsibility data. (AR Exs. 13, 14). RBK responded to the request by furnishing a package consisting of approximately 23 pages. (AR Ex. 15). The RBK submission has no index and only partial indications of which documents were meant to respond to the various categories of responsibility data requested by the contracting officer. The RBK documentation is comprised of the following: insurance information, a 1-page "Analysis of Operating Procedures" composed by its president, a 1-page balance sheet as of October 31, 2006, a 2-page profit and loss statement for the period January through October 2006, an inventory of equipment and vehicles, a list of current and past contract work with the District Government, and a Dun & Bradstreet report.

On February 21, 2007, the contracting officer determined Horton & Barber and IIU nonresponsible. (AR at 4). On the same date, the contracting officer determined Community Bridge a responsible bidder. (AR at 4; AR Ex. 10). On March 5, 2007, Horton & Barber protested the District's determination of its nonresponsibility. We denied that protest on May 25, 2007. On March 19, 2007, the District awarded the landscape and maintenance contract, Contract No. DCHA-2007-C-0002, to Community Bridge.

On March 26, 2007, RBK filed the instant protest. On or about March 30, 2007, OCP discovered that section B, CLIN 3, of the solicitation contained an incomplete format for calculating the total estimated amount of the bid extensions. When OCP revised the bid tabulation based on properly extending the bid prices, the order of the lowest to the highest bidders changed, with RBK becoming the third lowest bidder, followed by Turf Center and Community Bridge (AR at 5-6), with the corrected evaluated prices and order as follows:

Bidder	Bid Price for Base Year and Four Option Years (Estimated Amounts)	Evaluated Bid Price
1. Horton & Barber	\$7,794,019.50	\$6,858,737.16
2. IIU Consulting	\$10,217,403.85	\$9,359,141.93
3. RBK Landscaping Construction	\$11,771,969.58	\$10,359,333.23
4. Turf Center Lawns	\$12,200,900.00	\$12,200,900.00
5. Community Bridge	\$13,385,668.60	\$12,342,925.02
6. KC Home Improvement	\$15,119,490.00	\$14,907,817.14

(AR at 6). Because the contracting officer had previously determined Horton & Barber and IIU nonresponsible, RBK became the low bidder if it was found responsible. On May 9, 2007, however, the contracting officer determined RBK nonresponsible. (AR at 6; AR Ex. 9). Turf Center withdrew its bid, leaving Community Bridge, the awardee, as the lowest responsible

bidder. (AR at 6; District's May 21, 2007 Supplement to the Agency Report). The May 9 nonresponsibility determination provides in relevant part:

1. Lack of Financial Capability - The requested information was analyzed by the OCP Cost Price Analyst. Based on the Financial Statement Analyses dated 04/10/2007, attached to this D&F, the Contracting Officer determined that RBK does not have the financial capability for a project of this magnitude. Critical findings in this report include:

- The financial statements provided were for the ten months ended 10/31/06 and un-audited or reviewed. As such, they did not provide a full year's financial activity and are not current.
- According to RBK's balance sheet, at 10/31/2006 they had only \$40,605 in cash. There was no additional information provided by them regarding lines of credit or access to additional sources of capital.
- The COTR for DPR has estimated that they will need a minimum of 60 days funds, approximately \$300,000 in cash based on their bid price for CLIN003 alone, and assuming an operating profit margin of 20%. Based on this, the bidder does not appear to have adequate financing to absorb a contract of this size.

2. Comply with Required Performance Schedule - The bidder's response to the Contracting Officer's request for information reflected notable discrepancies: According to RBK's employment data (Schedule D), RBK currently has 28 employees, while his listing of [current] employees attached to his First Source Employment Agreement shows 6 current employees. . . .

. . . .

4. Compliance with DC licensing and tax laws - As of 02/2/07, RBK was "not in compliance with the tax filing and payment requirements of the District of Columbia Unemployment Tax Laws."

5. Production Equipment, Supplies, and Facilities - The Contracting Officer and the Contract Specialist conducted a site visit of RBK on 02/10/07. RBK requested that the group travel to the site of one [of] its (non-LSDBE) subcontractors, Chapel Valley Landscaping in Woodbine, Maryland. At the site, RBK explained that the majority of the equipment belonged to the subcontractor, although he pointed out certain items that belonged to them. The Contracting Officer and Contract Specialist, using an equipment checklist provided by the COTR, did not see any vehicles, trucks or trailers on the premises. They cannot perform the contract without vehicles and trailers to transport equipment from Woodbine, Maryland to the District of Columbia. . . .

6. Evidence of Obtaining a Performance Bond - The bidder provided no evidence that they were being given "favorable consideration for a surety bond", as requested in the Contracting Officer's letter dated 02/10/07.

(AR Ex. 9). Attached to the D&F is a February 28, 2007 tax verification response from the Department of Employment Services indicating that RBK is not in compliance with the tax filing or payment requirements of the District's unemployment tax laws.

DISCUSSION

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

RBK argues that it has the financial capability to perform the contract, noting that it performed the "same contract in 2006 without financial complications by employing a \$350,000 working capital line of credit as needed to underwrite the District's payment timing, which at times was very delayed." (Comments on Agency Report, at 1). Regarding staffing, RBK urges that the reference to the reduced staffing in the First Source Agreement reflected its employment "in the off season" and should not have been considered as a negative factor. Regarding equipment and vehicles, RBK states that it offered the same items that it used in successfully performing the 2006 contract. RBK states that it has timely paid its unemployment taxes and timely filed its returns but has introduced no evidence that it was in tax compliance as of the date of the determination of nonresponsibility. RBK points out that it had its bonding agent send a bonding letter directly to OCP but there is no evidence in the record of that letter. Finally, RBK argues that the contracting officer's D&F of nonresponsibility is invalid because in the final line of the document, the name "Unicorn Landscaping Services" is mentioned rather than RBK.

We sustain the contracting officer's determination that RBK did not demonstrate adequate financial capacity to perform the contract. The financial statements were not current and complete, rendering it impossible for the contracting officer to have a reasonable understanding of the company's financial position. For a contract of the size at issue here, the contracting officer reasonably doubted the company's ability to finance the significant work required by the solicitation. On staffing and equipment, we see no legal error in the contracting officer's determination based on the meager record presented by RBK. The only evidence submitted by RBK was that found in the package submitted to the contracting officer in response to the responsibility data request. For the same reason, RBK has failed to rebut the findings and determination by the contracting officer regarding the lack of a bonding letter. Argument by the protester's representative in RBK's comments on the Agency Report does not constitute evidence. Finally, the contracting officer's reference to "Unicorn Landscaping Services" in the final sentence of the D&F is simply a typographical error. The repeated references to RBK throughout the D&F convincingly show that the nonresponsibility determination was directed to RBK, not "Unicorn Landscaping Services."

RBK argues that Community Bridge, the awardee, should have been found nonresponsible. The determination and findings of contractor responsibility, dated February 21, 2007, adequately support the contracting officer's determination. Unsupported allegations by the protester's representative of poor past performance on the part of Community Bridge are insufficient to rebut the determination.

CONCLUSION

RBK has not shown that the contracting officer's determination of RBK's nonresponsibility violated law or the terms of the solicitation. We find that the record adequately supports the findings of the contracting officer regarding RBK's nonresponsibility and Community Bridge's responsibility. Accordingly, for the reasons discussed above, we deny RBK's protest.

SO ORDERED.

DATED: June 20, 2007

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

CONCURRING:

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