

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
CONTRACT APPEALS BOARD

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**EXHIBIT 3**

to  
District of Columbia  
Motion to Dismiss

Opinion of D.C. Contract Appeals Board,  
Goel Services, Inc., CAB No. P-0804,  
February 2, 2010

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Protest  
of  
Urban Service Systems Corp.  
CAB No. P-0845

# DISTRICT OF COLUMBIA CONTRACT APPEALS BOARD

PROTEST OF:

GOEL SERVICES, INC.

Under IFB No. DCKT-2008-B-0160

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CAB No. P-0804

For the Protester: Paul V. Waters, Esq., Erin A. Behbehani, Esq. For the District of Columbia Government: Alton Woods, Esq., Janice N. Skipper, Esq., Assistant Attorneys General.

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

## OPINION

*Filing ID 29359455*

Goel Services, Inc. (“Goel”) protests a nonresponsibility determination made by the contracting officer regarding the award of a contract to provide hauling and disposal of combustible and non-combustible municipal solid waste. Goel alleges that it is responsible and that the District did not comply with the provisions of the District’s procurement regulations in making its responsibility determination. Goel requests that the Board overturn the contracting officer’s determination of nonresponsibility and direct the District to award the contract to Goel, the bidder with the lowest evaluated price. The District asserts that the contracting officer properly determined Goel nonresponsible because Goel failed to identify sufficient equipment (tractors and trailers) to perform the contract; failed to submit verifiable and reliable references of current and past performance; and failed to develop a realistic work plan for transporting trash to the landfill. After carefully considering the documentary record and the testimony of the witnesses, we conclude that the contracting officer did not violate law, regulation, or the terms of the solicitation in determining Goel to be nonresponsible. Accordingly, we deny the protest.

## BACKGROUND

On December 2, 2008, the Office of Contracting and Procurement (“OCP”), on behalf of the Department of Public Works (“DPW”), issued IFB DCKT-2008-B-0160, in the open market, for a contractor to haul and dispose of combustible and non-combustible municipal solid waste including tires and white goods. (Agency Report (“AR”) at 3; AR Ex. 1; District’s Findings of Fact and Conclusions of Law (“District Brief”) at 2). The IFB required the contractor to (1) transfer the solid waste from the Fort Totten and Benning Road solid waste transfer stations and dispose of it at a licensed solid waste disposal facility, (2) enter into disposal agreements with a solid waste disposal facility and a metal recycling facility, and (3) transport leaves to a composting facility each year from November through January. OCP anticipates awarding a multiyear contract for a period of 5 years. The District estimated its waste tonnage to be 1,021,000 tons per year and its leaf tonnage to be 8,000 tons per year. (AR at 3; AR Ex. 1).

Section L.15 of the IFB sets forth the following standards of responsibility:

L.15 Standards of Responsibility

The prospective contractor must demonstrate to the satisfaction of the District the capability in all respects to perform fully the contract requirements, therefore, the prospective contractor must submit the documentation listed below, within five (5) days of the request by the District.

- L.15.1 Evidence of adequate financial resources, credit or the ability to obtain such resources as required during the performance of the contract.
- L.15.2 Evidence of the ability to comply with the required or proposed delivery or performance schedule, taking into consideration all existing commercial and governmental business commitments.
- L.15.3 Evidence of the necessary organization, experience, accounting and operational control, technical skills or the ability to obtain them.
- L.15.4 Evidence of compliance with the applicable District licensing and tax laws and regulations.
- L.15.5 Evidence of a satisfactory performance record, record of integrity and business ethics.
- L.15.6 Furnish evidence of the necessary production, construction and technical equipment and facilities or the ability to obtain them.
- L.15.7 Evidence of other qualifications and eligibility criteria necessary to receive an award under applicable laws and regulations.
- L.15.8 If the prospective contractor fails to supply the information requested, the Contracting Officer shall make the determination of responsibility or nonresponsibility based upon available information. If the available information is insufficient to make a determination of responsibility, the Contracting Officer shall determine the prospective contractor to be nonresponsible.

(AR Ex. 1; *see* 27 DCMR § 2200.4).

OCP issued Amendment No. 3 to the IFB on January 16, 2009, which provided in relevant part:

- 1) Add the following paragraph to Section C.1, Scope: The use of sub-contracted vehicles and labor shall not exceed 20% of the total equipment and labor used to haul the solid waste from the District's transfer stations to the final disposal sites. The District may choose to direct the contractor to haul to: (a) Fairfax County (b) the Contractor's licensed disposal facility or (c) a combination of both. . . .

(AR Ex. 2). In section L.1.2 of the IFB, the District set forth its intention to award a single contract to the responsive, responsible bidder with the lowest price. (AR Ex. 1).

On January 23, 2009, OCP opened thirteen bids. The three lowest bidders were Goel, Covitta, and Urban Services. The bids are set forth below in order from lowest to highest bid price and evaluated price after application of local and small business preference points, if any:

	<u>Actual Bid Price</u> <u>5 year Multiyear</u>	<u>Evaluated</u> <u>Price</u>
Goel	47,576,600	41,867,408
Covitta	43,070,000	43,070,000
Urban Services	49,755,000	43,784,400
Waste Recycling Services	49,952,459	43,958,156
TAC Transport	51,083,600	48,018,584
AF Developmental/F&L	56,528,175	49,744,794
Nets, Inc.	55,117,500	55,117,500
Drew Transport Services	55,253,750	55,253,750
Consolidated Waste	55,782,500	55,782,500
Specialty Transportation	56,901,250	56,901,250
Ibex, LLC	57,720,000	57,720,000
BM Trucking, LLC	61,300,000	61,300,000
Walson Partners	82,297,000	82,297,000

(AR Ex. 3). Goel received 12 preference points under the Small, Local, and Disadvantaged Business Enterprise Development and Assistance Act of 2005, D.C. Code § 2-218.01. Goel was the bidder with the lowest evaluated price after application of preference points.

Piyush J. (“PJ”) Goel is the president, CEO, and sole owner of Goel Services, Inc. (Tr. 114, 193; Goel Ex. E, Part 1). Prabodh K. (“PK”) Goel is PJ Goel’s brother and although he states that he is not an owner of Goel Services (Tr. 5), he was Goel Services’ Project Manager. (AR Ex. 22). He states that he was tasked to help prepare the bid, prepared all of the responsibility data, and was involved with the bid from the beginning. (Tr. 5; AR Exs. 15, 16, 20, 21). PK Goel stated that he is also employed by Delaware Cornerstone Builders (“DCB”). (Tr. 5). PJ Goel testified that PK Goel spent about 75 percent of his time with Goel Services and 25 percent of his time with the “other company” (Tr. 187) which we find more likely than not refers to DCB. Regarding that other company, PJ Goel testified that PK Goel was the sole owner and CEO. (Tr. 187-188). Kailash (“KC”) Goel, the father of PJ and PK Goel, is listed as the Project Manager (Alternative) for Goel Services. (Tr. 197-198; AR Ex. 22).

OCP sent the three lowest bidders its standard Request for Responsibility Determination Data (“RDD”) form on January 27, 2009. The form requested that Goel provide a “Listing of current contracts relative to the commodity or services to be provided within the last three (3) years” and a “Listing of expired or terminated contracts, within the last two years relative to the commodity or services to be provided.” (AR Ex. 5). Although the District originally requested the three lowest

bidders to return the completed form by February 3, 2009, Goel requested a one day extension which was granted by OCP. After reviewing the Goel data submission, OCP requested additional data on March 9, 2009. (AR Ex. 6). Goel submitted additional clarification on March 16, 2009. (Protest Ex. G, Part 1).

Because OCP could not establish who owned the equipment Goel proposed to use for the contract, OCP requested that Goel provide additional clarification. On March 26, 2009, the contracting officer sent Goel an email requesting ownership information for the trailers Goel intended to use during contract performance. (AR Ex. 7). In reply, Goel stated that the trailers were owned by Covitta, another bidder, but that Goel was leasing the equipment from EnviroSolutions. On April 9, 2009, OCP's Mr. Chandy requested that Goel provide "a copy of the lease agreement executed between EnviroSolutions and the owners of the equipment." (AR Ex. 15). In response, Goel on April 17, 2009, provided a letter apparently signed by John Delgadillo on behalf of Delgattu, Inc., Covitta, Inc., and John Delgadillo providing "confirmation that the [69] trailers listed on the following table are under lease to EnviroSolutions from June 1, 2009 to July 31, 2014. Please note the terms of this lease agreement are considered to be confidential." (AR Ex. 10). A copy of the lease was never provided to OCP. OCP, DPW and Solid Waste Management Administration representatives conducted a site visit on April 20, 2009, at Goel's ETW site in Upper Marlboro and found:

An estimated total between 28-30 trailers were on site for review;

Positive -

- 7 walking floor trailers were available for review
- 21 tipper trailers were available for review
- Site good for staging or parking trailers

Negative -

- Tags for all 30 trailers not registered in DC (no tax).
- 6 walking floor trailers were damaged.
- Tipper trailers could not be properly tested to determine effective usage.
- Tractors used at site did not belong to Goel.
- Company Goel plan to get tractors from will not have 30 tractors available immediately.
- Company Goel plan to get tractors from DPW do not know if all tractors will be compatible to all trailers reviewed.
- Drivers present were independents and did not drive for Goel.
- Because of rain weather many trailers were available to review, would the same had occurred if the weather had been clear.

(AR Ex. 11). Goel provided a letter from two truck dealers offering to sell tractors to Goel. (AR Ex. 19; Protest Ex. G, Part 1).

In response to the RDD request for references, Goel provided to OCP a list of five current contracts: Solid Waste Transfer & Recycling; Transfer Station & Processing Facility; Metro DC Facility & Disposal; Contract # 009759, and; Transportation & Disposal Services, and; five prior contracts: Andrews AFB; National Naval Medical Center; Department of the Interior; Mary Switzer

Building; and Yorktown Naval Station. (District Brief Ex. 29).

Starting on April 2, 2009, Yorjai Chandy, the purchasing agent/contract specialist, conducted a reference check on the five current and five past contract references provided by Goel in its initial RDD responsibility submission. (Tr. 261-265; AR Ex. 4 at 3-4; AR Ex. 13 at 2-5). Mr. Chandy searched websites in an effort to confirm the information provided to the District by Goel. (Tr. 265). The sources Mr. Chandy used for researching the references that Goel listed in its RDD response are noted in the Contract Specialist Notes, Memorandum to the File, and the contracting officer's letter to the DSLBD. (AR Ex. 4 at 3-4; AR Ex. 17, at 5-8; AR Ex. 13, at 2-5). Mr. Chandy's reference check reflected that Marc Shaener (reference entitled "Contract #009759"), Bob Gretz ("Transfer Station & Processing Facility" – revealed at the hearing to refer to Curtis Creek Recovery, LLC), and Ernie DeCasper ("Solid Waste Transfer & Recycling"), listed as current contract references for Goel, are employees of EnviroSolutions. (AR Ex. 4 at 3; AR Ex. 17, at 5-6; District Ex. 24). During the hearing, Shaener testified that all three references were to companies which were subsidiaries of EnviroSolutions. Goel did not reveal in the one-page RDD reference submission to the District the fact that the references were affiliated with EnviroSolutions. That is an important omission because EnviroSolutions by virtue of the intended lease arrangement with Goel had a significant financial interest in the success of Goel in obtaining the contract award. The two other current contract references, Kevin Dockett ("Metro DC Hauling & Disposal") and Bernie Dutz ("Transportation & Disposal Services"), were subcontractors for Goel, not owners/firms that had contracted Goel to perform services. (Tr. 123-124; AR Ex. 17, at 5-6; AR Ex. 4 at 3). Again, there was no indication in the RDD reference submission to this fact. Goel listed Susan Kingsbury as the person to contact for two references identified as "National Naval Medical Center" and the "Mary Switzer Building." (District Brief Ex. 29; AR Ex. 4 at 3; AR Ex. 17 at 7-8; Tr. 266-268). Mr. Chandy testified respecting his efforts to contact Ms. Kingsbury for a reference:

A: I was having a problem contacting Susan Kingsbury at the number listed. I called National Naval Medical Center. I was unable to find a person by that name. I contacted Mr. Goel. And it was actually – he clarified it was a wrong number listed. So, when I finally got the right number for Susan Kingsbury actually, she – I was not at my desk. She called my voice mail, left a message. And her voice mail mentioned that she was Susan Kingsman. So I called her back... And I asked her what company she worked for. She said KCG. I asked her what that meant... She said she didn't know. And I also asked her to verify her name... She said "I'm Susan Kingsbury." So, I was a little struck by the inconsistency in her name....

I contacted [name given for] the Mary Switzer Building. Again, Susan Kingsbury. Now, for this one, I didn't contact Susan Kingsbury again because I assumed it would be pointless... I wasn't too happy that she was unable to give me her correct name.

(Tr. 266-268). Although the record is not clear on what entity "KCG" stands for (perhaps nothing more than the initials of KC Goel), PJ Goel testified that Kingsbury is an employee of DCB. PK Goel is the sole owner of DCB and it was PK Goel who prepared the RDD reference submission. Yet there is no indication on the reference form that Kingsbury is employed by the referenced firm (DCB) owned by PK Goel who is also Goel Services Project Manager. Mr. Chandy testified concerning David Henriquez, a listed contact for the

“Department of Interior” reference provided by Goel:

I contacted the Dept. of the Interior, David Henriquez... And Mr. Henriquez said he worked for Delaware Cornerstone Builders or DCB. So in the process of doing this, I was having problems with some of the phone numbers. I was getting wrong numbers. I was getting similar numbers. So, when I did my research on Mr. Henriquez, I realized DCB was listed as a company with KC Goel as the director. And I just put that in my notes.

(Tr. 267). Goel has not provided any rebuttal evidence disputing that KC Goel is a director of DCB. Mr. Chandy contacted Marcia Laraque, the contact for the reference labeled “Andrews AFB”, at the same telephone number that was given for Mr. Henriques (Department of the Interior). (AR Exs. 4, 13, 29). Mr. Chandy wrote in his notes during his research of references that the telephone number at which he called Ms. Laraque and Mr. Henriques is not only the number for DCB, but also for G&B Environmental Inc., a company for which PJ Goel is listed as the contact person. (Tr. 265-266; AR Exs. 4, 13). Mr. Chandy communicated his concern respecting the references to the contracting officer:

Q: The next one, Yorktown Naval Station was work performed by DCB ?

A: I did not contact Nick Skamagos [the reference] who is listed there.

Q: Why not?

A: I was actually getting conflicting information. ...[A]t that point, I presented whatever I had...with the Yorktown Naval Station. I presented this to the contracting officer saying that --initially, I was very happy.. I was getting good --very good reviews....But, I was having several problems. So I went up to Mr. James Roberts and I gave him the information that I had.

Q: What was his reaction?

A: He was not too happy because – I wanted to know what to do when I had either erroneous information or clearly wrong information. And he did ask me to note down the sites. I went back and noted the sites. And he said, “Just keep that in the case file.”

(Tr. 268-269). Chandy noted later in his report of the references that he found that DCB had performed work for Yorktown Naval Station. Thus, all of the five past contract references submitted by Goel to the District listed contacts who were employed by DCB of which PK Goel was the sole owner. Goel never revealed the relationship between DCB and Goel Services. Goel offered no rebuttal regarding all of the references. The contracting officer testified that:

There was concern with the references. I mean, normally, if you ask for references, you are provided references and the person can tell you what their name is where they work at. And some of these references, there ...[were] issues with them. So integrity comes into question.

(Tr. 250-251). In the Contract Specialist notes, Mr. Chandy states that:

As a follow up to the telephonic conversations, during which the stated

inconsistencies were noted, OCP on April 9, 2009, asked the references to send a copy of their contracts with Goel. The copies of the contracts would give the Contracting Officer (CO) evidence of the services provided by Goel.

(AR Exs. 4, 13). On April 9, 2009, when Goel learned that OCP had requested copies of contracts from Goel's references, Goel called Chandy to object and directed Chandy to "cease contacting my clients." Goel followed up with the following email to Chandy:

[W]e consider your request (made directly to our clients) for copies of executed agreements to be beyond the parameters of the transfer station solicitation. Please note, our contracts with current and former clients, are considered confidential. The terms and pricing structure of these agreements are also considered confidential.

We take exception to providing confidential executed contractual agreements. And, we ask that you cease contact with our clients unless approved by us in writing.

(AR Ex. 8; Tr. 173, 269-270). On April 10, 2009, OCP responded with an email to Goel stating:

In accordance with the requirements under Section L.15 of the solicitation, the contracting officer must affirm that a potential contractor is in compliance and/or capable of meeting the stated requirements to be deemed responsible. Therefore, the references provided by your company were contacted to obtain information deemed essential to enable the CO to ascertain (1) that there was in fact a contractual relationship and (2) that performance under said agreement was satisfactory.

Therefore, it is requested that you provide the page/s showing an agreement between the referenced persons/entities and Goel Services, Inc., which would be sufficient evidence of contracts performed, and is necessary for the Contracting Officer to determine responsibility. It would not be necessary for the terms and pricing structure to be revealed.

(AR Ex. 9). On April 28, 2009, Goel's attorney sent to OCP copies of three (3) redacted contracts for Solid Waste Transfer & Recycling, Inc. ("SWTR"), and two new companies, Curtis Creek Recovery, LLC ("Curtis") and ETW LLC ("ETW"). (AR Ex. 14; Tr. 271). Section 3 of each of the three redacted contracts with SWTR, Curtis, and ETW state the following:

The Transporter's [Goel's] agreement to provide services for the Supplier pursuant to this contract is voluntary. Nothing herein shall be construed as imposing an obligation on the Transporter to provide services for the Supplier. However, once the Transporter agrees to provide such services, it shall use its best efforts to do so.

(AR Ex. 14). The contracting officer testified during the hearing regarding the three redacted contracts as follows:

Q. Now, when you received these agreements, Mr. Roberts, did this satisfy your request for information on references from Mr. Goel?



A. Not at all .... These were voluntary agreements, not contractual documents.

(Tr. 218-219). The signatories on the agreements with SWTR, Curtis, and ETW were illegible, and the District was unable to determine the parties to these non-binding agreements. (Tr. 245, 248-249). During the hearing, Marc Shaener, an employee of EnviroSolutions, testified that he signed all three of the agreements with SWTR, Curtis, and ETW and confirmed that Goel was not obligated to provide services under the three agreements. (Tr. 72-73).

After reviewing the responsibility data, the contracting officer determined that Goel was not responsible. On April 22, 2009, the contracting officer sent a memorandum to the Director of the Department of Small and Local Business Development (“DSLBD”), regarding the pending determination of non-responsibility, in accordance with 27 DCMR § 2202.6. (AR Ex. 13). In the memorandum, the contracting officer requested that the DSLBD send to OCP any evidence that it deemed relevant to the nonresponsibility determination of Goel. OCP requested that DSLBD submit its response within 10 working days. OCP did not receive a response from the DSLBD. (AR at 12). The contracting officer’s May 19, 2009, Determination and Finding of Non-Responsibility found Goel to be nonresponsible based upon findings that:

In accordance with 27 DCMR 200.4 and section L.15, Standards of Responsibility in the solicitation, the Contracting Officer and Technical Evaluation Panel reviewed the responsibility determination data submitted by the proposed contractor to determine the contractor’s responsibility prior to award. The information provided was insufficient to determine that the company has the necessary technical equipment, had the necessary experience, had a satisfactory performance record, or had the ability to comply with the required performance schedule.

The vendor was unable to demonstrate that it owned or could easily obtain the required equipment to perform the required service through a leasing agreement. The information provided indicated that the equipment to be used was either owned or leased by another company.

A check of the company’s references yielded no information to validate that the company had the experience or performance record in providing the required service. The company asked the District to cease contacting its references. Although copies of contracts were eventually provided by the company’s attorney, the District was unable to determine the vendor’s performance history.

The proposed operation schedule was considered to be unrealistic by the technical panel given the company’s use of the Shoosmith facility. The schedule would require more trucks.

(AR Ex. 18). Goel filed this protest on May 18, 2009. Goel requested an evidentiary hearing regarding its responsibility to perform the contract. The Board held an evidentiary hearing on September 9, 2009. The District has not yet awarded a contract under the solicitation. The parties presented post hearing briefs to the Board on October 30, 2009.

## DISCUSSION

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

The District argues that it properly determined that Goel was nonresponsible for the following reasons: (1) Goel failed to identify sufficient equipment (tractors and trailers) to perform the contract; (2) Goel failed to provide documentation that it owned sufficient equipment so as not to exceed the 20 percent limitation on subcontracting equipment; (3) Goel failed to submit verifiable and reliable references and copies of current and prior contracts that would allow the District to conclude that Goel had the requisite experience to perform the contract; (4) Goel failed to demonstrate to the District during the site visit that Goel had sufficient tractors for the District to test and inspect, and; (5) Goel failed to develop a realistic work plan for transporting trash to the landfill.

Goel contends that the nonresponsibility determination lacks any reasonable basis because: (1) the contracting officer improperly refused to conduct discussions with Goel during the responsibility process; (2) Goel was not given the opportunity to address any questions regarding its ability to perform the contract; (3) the contracting specialist improperly misled Goel regarding the purpose of the site visit; (4) the District improperly imposed special standards of responsibility on Goel during the responsibility process which are not included in the solicitation; and (5) Goel had appropriate equipment, labor, and performance plan to perform the contract work.

Bidder responsibility is a prerequisite to contract award. D.C. Code § 2-303.03(e). The contracting officer must make a written determination of whether the prospective contractor is responsible, and in the absence of information clearly indicating that the contractor is responsible, the contracting officer shall determine the contractor to be nonresponsible. 27 DCMR §§ 2200.1 - 2200.3. The general standards of responsibility are set forth in 27 DCMR § 2200.4 and in section L.15 of the solicitation. Before making a determination of responsibility, the contracting officer shall possess or obtain information sufficient to satisfy the contracting officer that a prospective contractor currently meets the applicable standards and requirements for responsibility. 27 DCMR § 2204.1. Section L.15 requires the prospective contractor to submit the required documentation within 5 days of a request from the contracting agency. Besides obtaining information from the prospective contractor, the contracting officer should also obtain information on responsibility from other sources as appropriate under the circumstances, including, preaward survey reports and information from “publications, suppliers, subcontractors, and customers of the prospective contractor, financial institutions, government agencies, and business and trade associations.” 27 DCMR § 2204.5(e). Section L.15.8 of the IFB mirrors 27 DCMR § 2204.4, which provides:

If the prospective contractor fails to supply the information requested under §2204.3 [responsibility information requested by the contracting officer], the contracting officer shall make the determination of responsibility or nonresponsibility based upon available information. If the available information is insufficient to make a determination of responsibility, the contracting officer shall determine the prospective contractor to be nonresponsible.

In making the determination of responsibility, the contracting officer is vested with wide discretion and business judgment. Therefore, in reviewing a determination concerning general standards of

responsibility, we will not overturn a finding of responsibility or nonresponsibility unless the protestor shows bad faith on the part of the contracting agency or that the contracting officer's determination lacks any reasonable basis. *Anchor Construction Corp.*, CAB No. P-0737, Jan. 9, 2007, 54 D.C. Reg. 2066, 2068; *Ideal Electrical Supply Corp.*, CAB No. P-0372, Aug. 13, 1993, 41 D.C. Reg. 3603, 3606.

As discussed below, we conclude that the contracting officer's nonresponsibility determination is supported by the documentation and testimony in the record.

#### Sufficient Equipment to Perform the Contract Work

The contract work requires the prospective contractor to have tractors, trailers, and the labor to operate the equipment in order to perform the hauling services. The record shows that Goel intended to sublease 69 trailers from EnviroSolutions who in turn had some type of lease arrangement for the trailers with three other entities who owned the 69 trailers. The District requested clarification of the initial February 4, 2009 Goel responsibility data submission regarding the numbers, ownership, and leasing arrangements (between Goel and EnviroSolutions and between EnviroSolutions and the owners) for the trailers by communications dated March 9, March 16, March 26, and April 9, 2009. Although Goel provided the District a copy of its lease agreement with EnviroSolutions, the District also asked for redacted copies of the lease agreements between EnviroSolutions and the owners of the trailers. Goel did not provide those leases because the lease terms were considered to be "confidential", but rather provided a statement from the owners (signed by a single person on behalf of the owners) that the trailers were under lease to EnviroSolutions through July 2014. Goel also provided to the District an additional lease agreement by which it could obtain another 30 trailers if needed for performing the contract work. At the April 20, 2009 site inspection, 28 trailers were available for inspection but 6 trailers were damaged and 21 others could not be properly tested to determine effective usage. The contractor would also need a tractor to pull a trailer. The tractors inspected at the site visit were not owned by Goel. Goel states that it would purchase new tractors from either of two dealers. Goel said it could purchase a tractor for \$250,000. The District learned from Goel that the dealers did not have 30 tractors available immediately and that Goel did not have any written commitment for specifically identified tractors although Goel stated that it would purchase 30 or 35 tractors once Goel received contract award. Goel had an average cash balance available of \$3.2 million and a \$2 million credit line.

The contracting officer found that the responsibility information as supplemented by Goel was insufficient to assure that Goel owned the necessary tractors and trailers or had the ability to easily obtain the required equipment to perform the contract. Goel complains that the lease arrangement with EnviroSolutions was not a "subcontract." A contract to provide equipment certainly may constitute a subcontract. The paragraph added to Section C.1 of the IFB by Amendment No. 3 refers to the use of "sub-contracted vehicles and labor." There is nothing in this language that excludes equipment from being subcontracted equipment, but rather confirms that equipment may be subcontracted. Although the record does not clearly indicate the relative values for the tractors, trailers, and the labor to assess compliance with the 20 percent subcontracting limitation, the subcontracting limitation provision shows that the District wanted a contractor with ready access to its own equipment and labor such that the critical and large daily hauling requirements of the District would not be jeopardized by a contractor who did not itself have control

over a significant portion of the equipment and labor needed to perform the work. We find from a review of the documentation and testimony that the contracting officer reasonably could determine that Goel did not demonstrate through its responsibility submissions that it had adequate equipment reliably available to perform the work.

Goel argues that the contracting officer failed to meet with Goel representatives or otherwise arrange a meeting to discuss his responsibility concerns. We conclude that the contracting officer and the other contracting agency personnel involved in the responsibility process communicated adequately with Goel over the course of almost three months to obtain the documentation and other information it needed regarding Goel's equipment. Goel was at times reluctant or refused to provide information or directed the contracting agency not to communicate with its subcontractors and vendors. The contracting officer is not required to pry responsibility information from the prospective contractor. *Heller Electric*, CAB No. P-0444, Jan. 22, 1997, 44 D.C. Reg. 6784 (Heller failed to properly respond to the District's repeated requests for adequate and current qualification data; Heller, not the District, was responsible for coming forward with performance information to show that it was experienced and qualified to perform the contract work).

#### Current and Past Performance

Goel argues that the evidence does not support the contracting officer's conclusion that Goel failed to provide adequate evidence of current and past performance of similar services. We find the contracting officer's conclusion amply supported by the record. Section L.I5.5 required the prospective contractor to submit in connection with the District's responsibility determination adequate evidence of a satisfactory performance record, and record of integrity and business ethics. The initial responsibility request form requested Goel to provide a "Listing of current contracts relative to the commodity or services to be provided within the last three (3) years" and a "Listing of expired or terminated contracts, within the last two years relative to the commodity or services to be provided." (AR Ex. 5). Goel was to provide the name of the contracting company, the name of a contact at the company who could verify the performance reference, a phone number for the contact, a description of the contract work, and the contract amount. (AR Ex. 5). These requests were clearly proper requests in order for the contracting officer to fulfill his duties under the District's procurement regulations for determining contractor responsibility.

In its February 4, 2009 response, as detailed in the findings above, Goel provided a listing of 5 current contracts and 5 expired or terminated contracts, and identifying contacts with phone numbers who could be contacted to verify these performance references. During the verification process conducted by OCP's purchasing agent, Yorjai Chandy, and the contracting officer, the contracting officer questioned the reliability of the references.

Goel did not reveal in the one-page RDD reference submission to the District the fact that three of five current references were affiliated with EnviroSolutions. That is an important omission because EnviroSolutions by virtue of the intended lease arrangement with Goel had a significant financial interest in the success of Goel in obtaining the contract award. After Goel refused to provide a copy of the contract relating to these references, counsel for Goel provided a copy of three "Service Agreements" between Goel and the three subsidiaries of EnviroSolutions. The agreements

do not bind Goel to provide hauling services but rather is a voluntary arrangement by which Goel would use “best efforts” to perform the hauling services. The contracting officer reasonably could find such an arrangement between Goel and EnviroSolutions not similar to the contracted services required under the District’s solicitation. More importantly, the contracting officer had a reasonable basis for not finding these “references” to demonstrate a satisfactory performance record. For the third and fifth references, the District learned that the references were subcontractors of Goel, not the owners/entities contracting Goel to provide hauling services. The contracting officer could justifiably question the reliability of all of these references and the accuracy of the descriptions provided by Goel.

Viewing the documentation and testimony, the Board agrees with the contracting officer that the five prior contract references are also unreliable for showing Goel’s performance record. All five references listed contacts who were employees of DCB, an entity of which PK Goel was the sole owner and KC Goel was a director. The contracting officer, when presented with the irregularities discovered by Chandy, sought copies of the contracts that the referenced firms had with Goel. When Goel (improperly) objected to the contracting officer’s request, the contracting officer requested that Goel provide a copy of the contract between each referenced person/entity and Goel. Of the ten references, Goel’s attorney produced only the three “Service Agreements” discussed above.

Based on the documentation and testimony, we find the contracting officer reasonably concluded that Goel had failed to submit verifiable and reliable references of current and prior contracts for work similar to that required under the IFB, such that there was an insufficient record of satisfactory performance. Although the contracting officer did not identify that Goel failed to show a satisfactory record of integrity and business ethics in his determination and finding of nonresponsibility, the results of the investigations into Goel’s references in the responsibility submissions might have merited a more thorough analysis of this prospective contractor’s disclosures on the subject. Goel’s argument that the contracting officer imposed special standards of responsibility on Goel is without merit. The requests for current and past performance information were reasonably directed to assisting the contracting officer in fulfilling his duty to make a proper responsibility determination regarding whether the prospective contractor has a satisfactory performance record under 27 DCMR § 2200.4(c).

#### Other Protest Grounds

Goel argues that the contracting officer had no reasonable basis for concluding that Goel’s proposed operation schedule was unrealistic. Goel planned to have each truck make two roundtrips per day to the Shoosmith landfill facility to haul District waste. Goel’s project manager testified that he conducted a time trial for two roundtrips from the Benning Road Transfer Station to the Shoosmith landfill in Chester, Virginia (a 260-mile roundtrip), using a tractor trailer with about 40 tons of solid waste. The project manager testified that the first roundtrip took a total of five hours driving time, and the second roundtrip took a total of about five and half hours driving time because the truck was leaving at 4:45 p.m. and there was heavy traffic during the second trip on the drive from the District to Shoosmith. The District’s chief of the DPW Solid Waste Administration testified that Goel’s plan for two roundtrips to Shoosmith per truck per day was unrealistic given the roundtrip distance to be traveled, the operations of the trash transfer facility, and the 5 p.m. closing

time for the transfer stations. The District's witness testified that the trip to Shoosmith averages 3 hours each way not counting loading and unloading time. The owner of Shoosmith testified that the one-way drive could take 2 ½ to 3 ½ hours depending upon traffic conditions. Even if Goel could expedite the unloading at Shoosmith, Goel does not have control over the loading time at the transfer stations. We cannot conclude that the contracting officer's determination lacks a reasonable basis in the record. More importantly, it was not unreasonable for the contracting officer to consider Goel's plan as an additional factor in the contracting officer's determination that Goel did not demonstrate reliable access to substantial tractor and trailer equipment to perform the critical daily trash hauling requirements.

Goel argues that the District did not refer its determination of Goel's nonresponsibility to the Department of Small and Local Business Development ("DSLBD") as required by 27 DCMR § 2202.6. The evidence clearly shows otherwise. The DSLBD did not respond to the contracting officer's request for information. (AR at 12).

Goel also argues that the contracting agency representatives misled Goel about the purpose and scope of the site visit. Goel contends that the site visit was advertised as only an inspection of a sample of Goel's equipment. PJ Goel's correspondence asking for the District's list of attendees implied that he himself was attending the site visit on behalf of Goel. We see nothing in the record that demonstrates that District representatives misled Goel as to the nature of the site visit. The site visit was an opportunity for Goel to further augment its responsibility information and discuss concerns and impressions that the program and site team had regarding the responsibility submissions between February 4 and the April 20 site visit date, particularly in light of the attendance at the site visit of the agency's purchasing agent and the principal program representative who was the contracting officer's technical representative. Goel did not take advantage of that opportunity, and instead faults the contracting officer for failing to engage in discussions and meetings with Goel. Goel is correct that the contracting officer may discuss responsibility matters and concerns with the prospective contractor but the scope and nature of the contracting officer's task of gathering responsibility information is also a matter committed to the contracting officer's discretion and business judgment. In the present matter, the contracting officer and the contracting and program staff that assisted him in this effort, reasonably provided Goel adequate opportunities over a nearly three month period to submit accurate and comprehensive information showing the contractor's responsibility.

## CONCLUSION

For the reasons discussed above, we sustain the nonresponsibility determination and accordingly deny Goel's protest.

**SO ORDERED.**

DATED: February 2, 2010

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

CONCURRING:

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