

DISTRICT OF COLUMBIA CONTRACT APPEALS BOARD

PROTEST OF:

MID ATLANTIC TENNIS COURTS & SUPPLIES)	
)	CAB No. P-0849
Under Solicitation Nos. DCHA-2010-B-0105 and)	
DCHA-2010-B-0112)	

For the Protester, Mid Atlantic Tennis Courts & Supplies, Mr. Marc D. Farthing, *pro se*.
For the District of Columbia Government: Alton E. Woods, Esq., Assistant Attorney General,
Office of the Attorney General.

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

OPINION

Filing ID 32471737

Mid Atlantic Tennis Courts & Supplies has challenged two solicitations issued by the Department of Real Estate Services (“DRES”), Contracting and Procurement Division, on behalf of the Department of Parks and Recreation (“DPR”) for resurfacing of tennis and basketball courts. Mid Atlantic did not submit a bid. Each solicitation was for a “brand name or equal” resurfacing product to be used by the contractor. The solicitation identified a product called Premier Court as the “brand name” resurfacing product. Mid Atlantic is a resurfacing contractor and hoped to be a subcontractor for the contractor ultimately selected by the District. Mid Atlantic challenges the District’s decision to specify a “brand name or equal” resurfacing product in both IFBs, and to require that the product be installed only by a Premier Court authorized installer. Because Mid Atlantic is not an aggrieved party, it lacks standing to protest. Accordingly, we dismiss the protest.

BACKGROUND

On March 1, 2010, IFB No. DCHA-2010-B-0105 was issued for the resurfacing of tennis courts at the Fort Stevens Recreation Center, 1327 Van Buren St., N.W., with bid opening on March 22, 2010. (Corrected Agency Report “AR” Ex. 1). On March 22, IFB No. DCHA-2010-B-0112 was issued for the resurfacing of select basketball and tennis courts at DPR facilities throughout the District. (AR Ex. 4). Both solicitations specified the installation of the “Premier Court” resurfacing system manufactured by Premier Concepts, Inc., or an approved equal. (AR Ex. 1, at 5; AR Ex. 4, at 5). The specifications also provided that alternative products could be submitted to DPR for approval prior to submission of bids. (AR Ex. 4). No proposals for alternative products were timely submitted by any bidder in connection with the 0105 IFB. (AR at 4). It appears that one alternative product, called Xtreme Court, was approved by DPR for one tennis court under the 0112 IFB. (AR at 7). On March 22, 2010, eight bids were received in response to the 0105 IFB, with Mosaic Investment Group (“MIG”) as the apparent low bidder. Mid Atlantic did not submit a bid. (AR Ex. 22). The contract specialist requested that MIG

confirm that it would use the Premier Court product for the Fort Stevens courts. In a March 31, 2010 email, MIG confirmed its use of the Premier Court product and that installation would be done by American Tennis Courts, Inc. ("ATC"), one of three installers approved by Premier Concepts. (AR Ex. 9; AR at 4-5). Mid Atlantic is not an approved Premier Court installer. (AR Ex. 11). MIG asked the contracting agency if it could consider a quote from Mid Atlantic as one of the installers for the Premier Court product. On April 1, 2010, the contracting officer sent a letter to MIG rejecting its bid on the mistaken basis that MIG was not installing a Premier Court system and that Mid Atlantic, a proposed installer, was not on the list of authorized installers of the Premier Court system, and that failure to use an authorized installer would prevent the District from receiving the 25-year warranty from Premier Concepts for the re-surfacing. (AR Exs. 13, 16).

Thereafter, Mid Atlantic raised questions of possible "unfair practices" and requested a meeting with DRES representatives. (AR Ex. 17). Mid Atlantic alleged that MIG's decision to use ATC as its installer on the Fort Stevens project was prompted by the fact that ATC and Premier Concepts have common ownership. (AR Ex. 17). On April 7, 2010, after hearing the concerns of Mr. Farthing of Mid Atlantic, DRES's Deputy Director of the Contracting and Procurement Division requested that the 0105 and 0112 procurements be delayed until DRES completed an investigation. (AR Ex. 11). On April 8, 2010, Amendment 2 extended bid opening for the 0112 IFB to April 26, 2010. (AR Ex. 6). On April 9, 2010, as a result of a meeting with Mid Atlantic, the contracting officer sent a letter to Premier Concepts requesting information on the process used to authorize a company to install the Premier Court system. (AR Ex. 12). Premier Concepts responded that unless its product was installed by an authorized installer, it could not issue a 25-year warranty to the District. Premier Concepts discussed the training, experience, and oversight required by Premier Concepts before an installer can be considered "authorized" to install its products. (AR Ex. 13). Based on this information, the Deputy Director considered the investigation completed and directed the contracting officer to award the contract (to MIG) under the 0105 IFB, and proceed with the receipt of bids for the 0112 IFB. (AR Ex. 11).

On April 13, 2010, Mid Atlantic filed its protest. For the Fort Stevens project, Mid Atlantic challenges the contracting officer's decision not to allow installers who were not authorized Premier Court installers, and for the District-wide solicitation, the specifications should be modified to identify other re-surfacing products equivalent to Premier Courts.

DISCUSSION

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

The Procurement Practices Act ("PPA") requires that a protester be "any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of a contract." D.C. Code § 2-309.08(a).

With respect to both solicitations, Mid Atlantic is not an aggrieved party as it did not bid on either solicitation, and seeks only to be an installation subcontractor for a prime contractor under the solicitations. Although Mid Atlantic, as a potential subcontractor, has some economic

interest in offering services to a prime contract awardee, that interest is not the direct economic interest of an actual or prospective bidder as contemplated by the PPA. *Virginia E. Durbin*, CAB No. P-0591, Sept. 13, 1999, 46 D.C. Reg. 8693, 8694; *Control Technologies, Inc.*, B-251335, Jan. 5, 1993, 94-1 CPD ¶ 16. As Mid Atlantic is not an aggrieved party and lacks standing, its challenges cannot be adjudicated here.

CONCLUSION

For the reasons discussed above, we dismiss Mid Atlantic's protest because it is not an aggrieved party.

SO ORDERED.

DATED: August 3, 2010

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

CONCURRING:

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