

GOVERNMENT OF THE DISTRICT OF COLUMBIA
CONTRACT APPEALS BOARD

PROTEST OF:)
)
Koba Institute, Inc.) CAB No. P-0657
)
Under RFQ PN # 223575, and)
RFQ PN# 217087, 88, 89, 90)

For the Protester, Ian M. Paregol, Esq. For the Government, Howard Schwartz,
Esq., Assistant Corporation Counsel.

Opinion by Administrative Judge Matthew S. Watson, with Administrative Judge
Jonathan D. Zischkau, concurring.

OPINION

(Courtlink Filing ID 803171)

Koba Institute, Inc (“Koba”) protests the cancellation of a request for quotations using small purchase procedures to enter into a single Blanket Purchase Agreement (“BPA”) for investigative services and the subsequent solicitation of the same services by awarding BPAs with 4 separate firms. Koba asserts that both solicitations were improper uses of BPAs, that the first solicitation exceeded the dollar limitation for use of small purchase procedures and that the second solicitation improperly “parceled, split, [and] divided” the solicitation in order not to exceed the dollar limitation for use of the small purchase procedures. The District moved to dismiss the protest on the grounds that, by its allegations, Koba concedes that the first solicitation was properly cancelled, that Koba lacks standing to protest the second solicitation, and further, that the protest of the second solicitation has been rendered moot by issuance of an RFP covering the same services. We conclude that the protest as to the first RFQ is moot, that Koba has standing to protest the second RFQ, however, that the protest of the second RFQ is also moot *provided that a contract pursuant to the RFP is awarded no later than August 31, 2002*. Accordingly, we dismiss the protest subject to the above proviso.

BACKGROUND

On May 3, 2002, the Office of Contracts and Procurement (“OCP”), issued a request for quotations (“RFQ 1”) to establish a BPA for a single firm to investigate the background and circumstances surrounding the deaths of wards of the Department of Human Services for a period ending September 30, 2002. (Agency Report (“AR”), Ex 1). The request for quotations was sent to 4 potential offerors: Koba, The Columbus

Organization ("Columbus"), Public Interest Investigations, Inc. ("PII") and DAH Private Investigators ("DAH"). (*Id.*).

On May 7, 2002, OCP received quotes from Koba, Columbus, PII and DAH. (*Id.*). On May 24, 2002, OCP extended the submission date for submission of quotations and issued Addendum 1, which defined "interview" and requested additional pricing. (*Id.*). By fax transmission dated May 30, 2002, OCP cancelled RFQ 1 (AR, Ex. 2).

On May 31, 2002, OCP issued a request for quotations ("RFQ 2") pursuant to small purchase procedures for the identical services and term as RFQ 1 to Koba, Columbus, PII and DAH, as well as two private investigators. (AR, Ex. 3). As opposed to the contemplated single award pursuant to RFQ 1, the request stated that RFQ 2 "is to establish multiple Blanket Purchase Agreements with contractors for investigative services not to exceed \$25,000.00 . . . Awards will be made to the four (4) lowest bidders." (*Id.*). On June 4, 2002, Koba, Columbus and PII responded to RFQ 2.

On June 7, 2002, the CPO signed a D&F to Proceed with Contract Award while a Protest is Pending ("D&F"). On June 11, 2002, OCP awarded BPAs not to exceed \$25,000 to Koba and Columbus. On June 14, 2002, OCP awarded a similar BPA to PII. (AR, Exhibit 4). On June 17, 2002, Koba filed a supplement to its protest. In the supplement, Koba opposed the D&F lifting the stay and additionally argued that OCP did not provide adequate time for response to RFQ 2.

On July 1, 2002, OCP issued RFP No. POJA-2002-R-0164 for Investigative Services ("RFP") soliciting proposals for a contract to be awarded to a single firm for substantially the same services as contemplated in the multiple BPAs for a term of one year commencing upon award. (Supplement to Motion to Dismiss, Ex. S-2). The RFP has a closing date for proposals of July 31, 2002. (*Id.*)

DISCUSSION

RFQ 1

"In general a case becomes moot when the issues presented are no longer alive or the parties lack a legally cognizable interest in the outcome." *See Murphy v. Hunt*, 455 U.S. 478, 481, 102 S.Ct. 1181, 1183, 71 L.Ed.2d 353 (1982). Koba alleges that RFQ 1 was too large to be issued using small purchase procedures. The remedy for such violation, if the protest were sustained, would be cancellation of the solicitation. Since RFQ 1 was cancelled by the District, apparently because OCP agreed that it was an improper use of small purchase procedures, there is no further remedy which the Board could order if it sustained Koba's protest and the protest as to RFQ 1 is therefore dismissed as moot.

RFQ 2

To have standing to protest, a party must be aggrieved. (D.C. Code §2-309.08 (2001 ed.); Board Rule 100.2(a)). Simply stated, the protester must have a direct economic interest in the outcome of the protest. *Barcode Technologies, Inc*, CAB No. P-524, Feb. 11, 1998, 45 D.C. Reg. 8723. The District asserts that since Koba has already received the maximum BPA under the solicitation, Koba has no further economic in the outcome of the protest. The fact that Koba received the maximum award *under the terms of the* RFQ does not deprive Koba of standing to question the propriety of multiple awards, each for less than the total requirement, since, if the Board sustains the protest and requires a single award, as in fact the District has provided in the RFP, Koba could possibly be awarded a contract larger than its limited BPA. Thus Koba clearly has an economic interest in the outcome of the protest and standing before the Board.

Even though Koba has standing to protest RFQ 2, the Board must dismiss a protest if the grounds of the protest have become moot. The District argues that the issuance of the RFP for the same services to replace the BPAs meets the demands of the protest for a sealed competitive procurement from a single offeror and thus renders the protest moot. It is well settled that “termination of an awarded contract for reasons that relate to the solicitation process may render a pending protest moot.” *Anacostia Medical Center*, CAB No. P-115, October 27, 1988, 3 P.D. 435. In the instant matter, the solicitation protested, and awards made are for Blanket Purchase Agreements. Since the District is not required to make any purchases under a BPA, the District may accomplish the same result as terminating the BPA by merely ceasing to place purchase orders. The Board believes that the award of a contract requiring purchases of the same requirements as the described in the BPAs is the equivalent of termination, since no further orders would be placed on the BPA. The RFP issued by the District describes the same services as are described in the BPA. The issue as to whether the protested BPA has been terminated is whether the term of any contract issued pursuant to the RFP will overlap the term of the BPA and thus supplant it. It is not clear from the face of the RFP that award pursuant to it will result in a contract which begins before the end of the term of the BPA. The term of the contract to be awarded is one year *from date of award*. (Supplement to Motion to Dismiss, Ex 2, §F.1). The RFP provides for a proposal acceptance period of 120 days, (*Id.* §L.14), from the proposal submission date of July 31, 2002. Thus, while the contract could be awarded prior to the completion of the term of the BPAs and supplant the BPAs, it could also be awarded as late as November 28, 2002. To render this protest moot, the Board believes that the contract must be awarded so that there is a significant effective termination of the BPAs protested. The Board believes that, in the instant matter, this period must be no less than one month.

CONCLUSION

The Board dismisses the protest concerning RFQ 2 as moot *provided that a contract pursuant to the RFP is awarded no later than August 31, 2002*. If the contract is not awarded by that date, the Board will, upon notice from the Protester, vacate this order and consider the protest concerning RFQ 2 on the merits. Although that consideration may not permit any action affecting the BPA, if the protest is sustained the protester may be entitled to bid preparation, and or protest costs.

Dated: July 16, 2002

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

CONCURRING:

/s /Jonathan D. Zisschkau
JONATHAN D. ZISCHKAU
Administrative Judge