

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
CONTRACT APPEALS BOARD

PROTESTS OF:

COMMANDO K-9 DETECTIVES, INC., and	)	
EXECUTIVE SECURITY & ENGINEERING	)	
TECHNOLOGIES, INC.	)	CAB Nos. P-405, P-406
	)	
Under Contract Nos. 3185-AA-03-8-DW,	)	
3185-AB-03-8-DW	)	

For Protester, Commando K-9 Detectives, Inc.: Mr. Douglas E. Wych, pro se. For Protester, Executive Security & Engineering Technologies, Inc.: Mr. James Hunt, pro se. For the Government: Anne Cauman and Nancy Hapeman, Assistants Corporation Counsel.

Opinion by Administrative Judge Jonathan D. Zischkau, with Administrative Judges Zoe Bush and Terry Hart Lee, concurring.

**OPINION AND ORDER ON MOTION TO DISMISS**

These consolidated protests of Commando K-9 Detectives, Inc. ("Commando"), and Executive Security & Engineering Technologies, Inc. ("Executive"), challenge the awards made to Eastern Shield Security Systems Inc. ("Eastern") and Dow Associates, Inc. ("Dow") in Contract Nos. 3185-AA-03-8-DW and 3185-AB-03-8-DW by the District of Columbia's Department of Administrative Services ("DAS"). The protesters principally argue that Eastern and Dow should not have received award because they did not obtain the required licenses and permits until after bid opening or contract award. The District has moved to dismiss on the ground that Commando and Executive lack standing to protest the awards because neither protester would be next in line for award even if the protests were sustained. We grant the District's motion and dismiss the protests.

**BACKGROUND**

On October 15, 1993, DAS issued Invitation for Bids ("IFB") No. 3185-AA-03-8-DW in the small business set-aside market for security guard services. (Agency Report ("AR") Ex. 1). Bids were opened on November 15, 1993. There were nine bidders: Commando, Eastern, Executive, Dow, B&B Security Consultants, Inc. ("B&B"), Atlas International Security, Inc. ("Atlas"), Aimats Corporation, Smith Security, and Combat Security Force, Inc. ("Combat"). (AR Ex. 2).

The IFB contained four aggregate award groups for the provision of security guard services. Special Condition 11 of the IFB specifies that awards were to be made so that generally no more than two aggregate award groups were awarded to any one bidder. Special

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Condition 11 also provides that aggregate groups will be awarded based on the evaluated bid price for each aggregate group. (AR Ex. 1, at 37-38).

Dow was the low bidder for each of the four aggregate award groups. Eastern was the second low bidder for each of the four aggregate award groups. On March 7, 1994, DAS awarded Contract No. 3185-AB-03-8-DW to Eastern for aggregate award groups 2 and 4. (AR Ex. 3). On March 18, 1994, DAS awarded Contract No. 3185-AA-03-8-DW to Dow for aggregate award groups 1 and 3. (AR Ex. 4).

On March 17, 1994, Commando filed its protest (CAB No. P-405) with the Board challenging the award to Eastern on the basis that Eastern allegedly did not have, at the time of bid opening, proper state licenses required by the IFB.<sup>1/</sup> Commando was the eighth low bidder on aggregate award group 2 and seventh low bidder on aggregate award group 4. (AR Ex. 2).

On March 29, 1994, Executive filed its protest (CAB No. P-406) with the Board challenging the award to Dow on the basis that Dow was not properly licensed and that Dow should not have received an enterprise zone evaluation preference because it allegedly is not located in an enterprise zone. Executive was the seventh low bidder on aggregate award groups 1 and 3. (AR Ex. 2).

By order dated April 4, 1994, the Board consolidated the two protests for purposes of further proceedings. The District timely filed a motion to dismiss the protests on April 18, 1994. Neither Commando nor Executive has responded to the District's motion.

### DISCUSSION

Only aggrieved persons have standing to protest agency award decisions. In order to have standing, an actual or prospective bidder or offeror must show that it has suffered, or will suffer, a direct economic injury as a result of the alleged adverse agency action. *District of Columbia v. Group Insurance Administration*, 633 A.2d 2, 18-19 (D.C. 1993). A protestor lacks standing where it would not be in line for award, even if its protest were upheld. *Unfoldment, Inc.*, CAB No. P-358, Sept. 17, 1993, 6 P.D. 5399, 5401-02. The record demonstrates that neither Commando nor Executive would be in line for award even if their

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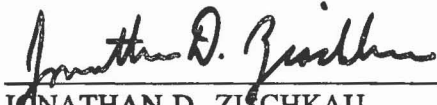
<sup>1/</sup> Section VII of the IFB's specifications, entitled "Licenses Permits and Regulations", provides:

The contractor(s) shall possess all licenses and permits necessary for the performance of this contract, in accordance with all pertinent laws and regulations of the District of Columbia, of the United States and the State of Maryland, if applicable.


protests were sustained. Accordingly, the protests are dismissed.<sup>2/</sup>

So ORDERED.

DATE: May 6, 1994

  
JONATHAN D. ZISCHKAU  
Administrative Judge

CONCURRING:

  
ZOE BUSH  
Chief Administrative Judge

  
TERRY HART LEE  
Administrative Judge

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<sup>2/</sup> Although we do not reach the protesters' arguments on the merits, we note that a provision like Section VII of this IFB's specifications, requiring a prospective contractor to obtain a specific license or permit, generally involves the issue of a bidder's responsibility rather than the responsiveness of a bid because it relates to the ability of the successful bidder to perform. See *United International Investigative Services*, B-243720, May 6, 1991, 91-1 CPD ¶ 443; *Allied Sanitation, Inc.*, B-225988, Jan. 30, 1987, 87-1 CPD ¶ 104; *Carolina Waste Systems, Inc.*, B-215689, Jan. 7, 1985, 85-1 CPD ¶ 22; *Day Detectives, Inc.*, B-208312.2, Oct. 28, 1982, 82-2 CPD ¶ 379.