

DISTRICT OF COLUMBIA CONTRACT APPEALS BOARD

PROTEST OF:

CHILDREN, CHILDREN, CHILDREN, INC.)
) CAB No. P-0858
Under IFB Solicitation CFSA -09-I-0004)

For the Protester: Henry Culbreath, Jr., President and CEO, Children, Children, Children, Inc. For the Government: Janice N. Skipper, Assistant Attorney General, D.C.

Opinion by Administrative Judge Warren J. Nash with Chief Administrative Judge Marc D. Loud, Sr., concurring.

OPINION

Filing ID 35251959

On July 2, 2010, Children, Children, Children, Inc. (“CCC”) protested the District’s Child and Family Services Agency’s (“CFSA”) determination that CCC was not a responsible bidder for the above solicitation. The protester alleged that it was responsible, and its price was lower than other prices bid by bidders who received contracts. The District responded in its Agency report that the District had properly determined that CCC was not a responsible bidder, and that the District had not acted in bad faith in finding CCC nonresponsible.

BACKGROUND

On December 9, 2009, CFSA issued IFB CFSA-09-I-0004 for an indefinite delivery indefinite quantity (“IDIQ”) contract to provide home based and community based supplemental educational services, tutoring, and remediation services in individual sessions or group settings to wards (students) of the District of Columbia between the ages of six (6) and twenty-one (21) who were enrolled in a general or special education program in an elementary or secondary school. Section B.2.1 of the IFB contemplated award of an IDIQ contract with fixed unit hourly prices. (AR Ex. 1). The IFB set forth service requirements in Section C.4 that required the contractor to provide a range of services to students who resided in the metropolitan area within a 75 mile radius of the Baltimore/Washington area. (AR Ex. 1). CFSA received 20 bids by December 29, 2009. (AR Ex. 1 and 3).

The District began its responsibility determinations for the first 10 apparent low bidders in March of 2010. CCC was included in the initial group of bidders that were given responsibility reviews. (AR Ex. 3). There was some initial confusion about the facility where the District would conduct the site visit. (AR Ex. 3). CFSA went to the initial address and discovered that the address was a private residence that apparently was not usable for extensive business activities. (AR Ex. 3). CFSA conducted further site visits at CCC's DC office at 1776 I Street, NW, an address which had been provided to CFSA after bid opening. At that address, CFSA evaluated the bidder's facilities and lack of instructional materials. CCC responded that all of the materials were housed at the D.C.

Superior Court, the site of another contract operation. (AR Ex. 3). CFSA submitted an evaluation of the inspection team which set forth the problems with CCC's bid. (AR Ex. 9). The inspection team headed by Dr. Benjamin Dukes did not recommend an award to CCC. (AR Ex. 9).

After further evaluation, CFSA determined that CCC was not a responsible bidder. (AR Ex. 3). CFSA also determined that four other bidders were not responsible. On June 14, 2010, CFSA notified CCC that CFSA would not award a contract to CCC. (AR Ex. 11). CCC filed this protest on July 2, 2010.

DISCUSSION

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

CCC asserts that the District improperly determined that the protester was not a responsible bidder and that the protester's price was lower than the prices of other bidders. The District responds that the District could not determine that CCC was responsible, and that without an affirmative determination of responsibility, the District could not award a contract to CCC.

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 in the record.

The CFSA had safety and security concerns for any clients which may have been assigned to CCC because CCC's office suite was an office space shared with other independent organizations. The single computer in the DC office located at 1776 I Street, NW, appeared to be the director's personal computer. At the time of the office visit, there was no CCC staff available. The proposed office space was a very small space and CCC intended to use shared space as an additional area, even though that shared space was also available to other agencies, companies and corporations not controlled by CCC. CCC's director did not have a key to the shared space.

CCC did not have instructional materials at the DC Office. The director indicated that all of his instructional materials were housed at the DC Superior Court, where CCC was performing under contract. CCC's director stated that the unseen staff at Superior Court would perform services at the 1776 I street location, but CFSA could not determine whether that staff met the requirements enumerated in section C.9 of the solicitation. CCC's director indicated that he would be able to procure more office space after contract award. CFSA also had concerns about the proper name of the offeror (whether the name was Children, Children, Children, Inc., or Culbreth & Culbreth Consulting, Inc.) and whether CCC may have been improperly using a home located in Lanham, MD, as a work performance site.

After reviewing the documentation presented by the protester and the District, this Board agrees with the contracting officer regarding CCC's responsibility, or lack thereof. We find that the contracting officer reasonably concluded that CCC had failed to present adequate information showing that CCC was a responsible contractor. The scope and nature of the contracting officer's task of gathering responsibility data is a matter committed to the contracting officer's discretion and business judgment. The contracting officer and the contracting and program staff reasonably provided CCC adequate opportunities 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 CCC's protest.

SO ORDERED.

DATED: January 7, 2011

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

CONCUR: /s/ Marc D. Loud, Sr.
MARC D. LOUD, SR.
Chief Administrative Judge

Electronic Service:

Henry Culbreath, President, CEO
Children, Children, Children, Inc.
1716 I Street, N.W., Suite 900
Washington, D.C. 20005

Janice M. Skipper, Esq.
Assistant Attorney General
441 4th Street, N.W., Suite 700
Washington, D.C. 20001