

DISTRICT OF COLUMBIA CONTRACT APPEALS BOARD

PROTEST OF:

SECURUS TECHNOLOGIES)	
)	CAB No. P-0784
Under Solicitation No. DCTO-2008-B-0217)	

For the Protester, SECURUS Technologies: Mr. John Viola, *pro se*. For the District of Columbia Government: Howard Schwartz, Esq., Senior Assistant Attorney General, and Robert Schildkraut, Esq., Assistant Attorney General.

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

OPINION

Filing ID 23001117

SECURUS Technologies has protested the District's solicitation for a contractor to provide inmate telephone services at the District of Columbia Department of Corrections. SECURUS argues that the inclusion of video-visitation systems with the inmate telephone services required by the solicitation will add unnecessary costs to each offeror's proposal, causing the offerors to inflate the rates that parties pay for calls. Further, SECURUS argues that the RFP is potentially in conflict with D.C. Law 13-280 which prohibits the imposition of commissions or surcharges on inmate telephone service rates. Finally, SECURUS contends that the weight the District assigned to the price factor in its evaluation criteria is inconsistent with D.C. Law 13-280. Because we conclude that the District's decision to include video-visitation systems is neither unreasonable, irrational, nor contrary to D.C. Law 13-280, and that the solicitation evaluation weightings also do not violate D.C. Law 13-280, we deny the protest.

BACKGROUND

On June 25, 2008, the District's Office of Contracting and Procurement ("OCP") issued RFP No. DCTO-2008-R-0217 on behalf of the Department of Corrections ("DOC") for a contractor to provide inmate telephone services at the District of Columbia Department of Corrections Detention Facility ("CDF"). (Agency Report ("AR") Ex. 1). The contractor would be responsible for providing labor, materials, and equipment necessary to furnish, install, and maintain a coinless, collect call, commissary account debit-type telephone system appropriate for inmate use. (AR Ex. 1, RFP § 3.C). The RFP stated that all proposals had to be submitted by July 24, 2008.

OCP issued Amendment 1 to the RFP on July 21, 2008. (AR Ex. 1). This amendment provided answers to various questions submitted by prospective offerors and extended the closing date of the RFP until August 14, 2008. OCP issued Amendment 2 to the RFP on July 29, 2008. (AR Ex. 1). Amendment 2 changed section C.3.12 of the RFP to require that 3 telephones on each housing unit have video capability to offer inmates video conferencing/video-visitation access, and that the contractor provide 54 video-visitation terminals at the CDF visitor center for video

conferencing/video-visitation use. (AR Ex. 1). Amendment 3 to the RFP was also issued on August 20, 2008. Amendment 3 answered a question regarding whether the telephones in each unit would also be able to function as video visitation phones. Amendment 4 to the RFP was issued on September 9, 2008. This amendment addressed additional questions from prospective offerors, and extended the closing date of the RFP until September 26, 2008. (AR Ex. 1).

On September 9, 2008, SECURUS filed a protest with the Board. The basis of the protest is that: (1) the inclusion of video-visitation phones in the RFP was improper and in conflict with D.C. Law 13-280, and (2) the evaluation criteria for price established too low a weight (20 points out of 112) relative to the weight for the technical criteria, contrary to D.C. Law 13-280.

SECURUS requests that the RFP be modified to eliminate the video-visitation component, and that the RFP be amended so that the price factor accounts for at least 50 percent of the final scoring in each offeror's proposal in order to provide a scoring mechanism that will assure an award that complies with DC Law 13-280. On September 23, 2008 OCP issued Amendment 5 to the RFP extending the closing date of the RFP until October 10, 2008. (AR Ex. 1). On September 29, 2008, the District filed its agency report. Exhibit 2 of the District's agency report, a September 25, 2008, declaration of Thomas Hoey, Director of the Office of Management Information and Technology Services for the DOC, responds to the protest grounds as follows:

6. The use of video visitation phones is considered best practice in the correctional field today. With video visitation phones inmates can do visits right from the housing unit; there is no need for escorts and the security strength on the housing unit can be maintained rather than compromised.

7. In addition, corrections agencies are setting up visitation centers outside the facility, so visitors don't have to pass through the walls to talk to the inmate. This saves staff, and most importantly, eliminates contraband from the facility. So, there is an overriding public safety imperative to use video visitation phones.

8. Video visitation will greatly expand opportunities for inmates to visit with friends and family, with access potentially available during all out of cell time seven days per week. Research has shown that frequent social contacts can lower stress and tension levels within the inmate population. This in turn contributes to greater safety and security for inmates and staff alike.

9. The District is not charging a surcharge, commission, or other financial imposition that is in addition to legally established rates for local or long-distance telephone service.

10. The DOC is seeking to obtain quality service for the least cost to the individual party paying for the telephone call by an inmate. In order to balance the need for quality service and low price the District made a determination that (20) twenty points out of a maximum total of one hundred twelve (112) points used in evaluating each proposal be based upon the offeror's total price for the base and option years.

11. Access to phones and video visitation capability under DOC's latest initiative is very important to the inmate population. DOC seeks to avoid frequent and/or prolonged delays in access caused by inferior quality equipment or poor service responsiveness. The audio and visual quality of the connection is important as well.

Problems in these areas can lead to higher tension levels, verbal conflicts, assaults and even multi inmate disturbances. Enormous security risks are at stake in the jail's maximum security environment.

In a September 30, 2008 declaration (Exhibit 1 of the District's response to SECURUS' comments on the agency report), Mr. Hoey expands upon his earlier declaration and responds to the allegation that the video-visitation system should have been separately procured by DOC:

It would not be realistic, nor in the District's best interests, both technically and economically, to conduct two separate procurements. The integrated video-visitation/telephone system originally specified is preferred and is dependent upon the technology from the inmate telephone service to function. The video-visitation system is not a stand alone product that will work independently of the inmate telephone system. The system that is being procured is in fact one piece of equipment. Further, it is important that the video-visitation/inmate telephone system be awarded to the same vendor in order to increase operational effectiveness. Since the systems are so intertwined, it is essential that implementation and administration of the systems be handled by one party because of economies that can be achieved and the government's desire to avoid needless disruption of inmate housing units. Multiple contractors working in each of the housing units would place a greater strain on security personnel which could create an unsafe environment for inmates and personnel. Moreover, inmates, their families, and taxpayers are spared the total overhead cost associated with separate procurements, which is considerable. The additional cost for two procurements could easily exceed \$100,000.

(District's October 31 Response, Ex. 1 ¶ 6.).

DISCUSSION

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

SECURUS argues that the inclusion of video-visitation phones in the inmate telephone services RFP will add unnecessary costs to each offeror's proposal, causing the offerors to inflate the rates that inmates and called parties pay for collect and debit calls. Further, SECURUS argues that the RFP is potentially in conflict with D.C. Law 13-280 which prohibits the imposition of commissions or surcharges on inmate telephone service rates.

SECURUS' argument that the video-visitation phones are unnecessary to achieve the District's desired goals raises the question of the District's determination of its minimum needs for this procurement. SECURUS faces a difficult burden. The District has the primary responsibility for determining its minimum needs and the method of accommodating them. *See In re Prison Health Services, Inc.*, CAB No. P-0610 (reconsideration), June 22, 2000, 48 D.C. Reg. 1556, 1557. We have recognized that government procurement officials, since they are the ones most familiar with the conditions under which supplies, equipment, or services have been used in the past and how they are to be used in the future, are generally in the best position to know the government's actual needs. Consequently, we will not question an agency's determination of its actual minimum needs

unless there is a clear showing that the determination has no reasonable basis. *See Mell, Brownell & Baker*, CAB No. P-0615, Jan. 18, 2001, 49 D.C. Reg. 3321, 3324-25; *Beretta U.S.A. Corp.*, CAB Nos. P-0144, P-0177, Aug. 23, 1990, 38 D.C. Reg. 3098, 3120-3121; *G. Koprowski*, B-400215, Aug. 12, 2008, 2008 U.S. Comp. Gen. LEXIS 150; *Ray Service Company*, B-217218, May 22, 1985, 85-1 CPD ¶ 582.

We conclude that the factual record reasonably supports the contracting agency's need to include video-visitation phones in the solicitation. DOC's Director of Management Information and Technology Services explains in his declaration that video-visitation phones provide important security, safety, and cost benefits for the inmate phone service: (1) the video-visitation phones are considered best practice in the correctional field today, (2) with video-visitation phones, inmates can conduct visits right from the housing unit, and there is no need for escorts and the security strength of the housing unit can be maintained rather than compromised, (3) by setting up a visitation center outside the facility, visitors will not have to enter the secure prison facility to talk to inmates, thus saving staff and eliminating the potential transfer of contraband, and (4) video visitation will greatly expand opportunities for inmates to visit with family and friends, with access potentially available during all out-of-cell time, seven days per week and research has shown that frequent social contacts can lower stress and tension levels within the inmate population. (AR Ex. 2). SECURUS has made no effective showing to the contrary.

We see no basis for SECURUS' other argument that including the video-visitation system would result in a 60 percent commission on calling rates, in conflict with D.C. Law 13-280, which regulates telephone charges in correctional institutions. D.C. Law 13-280 was codified as D.C. Code § 24-263.01 (Telephone charges in penal or correctional institutions), § 24-263.02 (Prohibited charges in government contracts), and § 24-263.04 (Operator-assisted calls). The relevant language regarding this issue can be found in D.C. Code §§ 24-263.01 and 24-263.02:

§ 24-263.01. Telephone charges in penal or correctional institutions,

(a) Notwithstanding any other District of Columbia law, no telephone service provider shall charge a customer a rate for operator-assisted calls made from a penal or correctional institution in the District of Columbia in excess of the maximum rate determined by the Public Service Commission of the District of Columbia.

(b) No penal or correctional institution in the District of Columbia shall charge a surcharge, commission, or other financial imposition that is in addition to legally established rates for local or long-distance telephone service.

§ 24-263.02. Prohibited charges in government contracts.

In any contract to which the District of Columbia is a party that is for the holding or incarceration of persons charged or convicted in the Superior Court of the District of Columbia, such contract shall prohibit surcharges, commissions, or other financial impositions that are in addition to the legally established rates for calls made by any inmate subject to the contract. The District of Columbia government shall seek to obtain quality service for the least cost to the individual party paying for the

telephone call by an inmate subject to the contract.

There is no evidence that the solicitation requires charging “a customer a rate for operator-assisted calls made from a penal or correctional institution in the District in excess of the maximum rate determined by the Public Service Commission of the District.” In addition, there is no evidence that the solicitation at issue here will cause the District to charge a “surcharge, commission, or other financial imposition that is in addition to legally established rates for local or long-distance telephone service.” Under section 24-263.02, as we read it, the contract must affirmatively prohibit the charging of surcharges and commissions beyond the legally established rates. SECURUS has not persuaded us that the District’s requirement for the video-visitation system violates the prohibition on assessing improper surcharges or commissions.

SECURUS further argues that the weight the District assigned to the price factor in its evaluation criteria is inconsistent with D.C. Law 13-280. The RFP’s price criterion provides that each offeror’s proposal would be scored and ranked based upon a maximum 12 points. (AR Ex. 1). An offeror can receive a maximum of 80 points for its technical proposal, a maximum of 20 points for its price proposal, and a maximum of 12 preference points. (AR Ex. 1). The relevant language in § 24-263.02 states: “The District of Columbia government shall seek to obtain quality service for the least cost to the individual party paying for the telephone call by an inmate subject to the contract.” SECURUS contends that the RFP should have established a minimum of 50 percent of the offeror’s overall evaluation score for the price criterion. Clearly, the statute does not require any specific percentages for price or technical evaluation criteria in a District solicitation. We conclude that the stated evaluation criteria do not violate D.C. Law 13-280. SECURUS has not shown that the agency’s allocation of technical and price evaluation points violates any other District laws. The DOC Director of Office of Management Information and Technology Services explains in his declaration that: “DOC seeks to avoid frequent and/or prolonged delays in access caused by inferior quality equipment or poor service responsiveness. The audio and visual quality of the connection is important as well. Problems in these areas can lead to higher tension levels, verbal conflicts, assaults and even multi inmate disturbances. Enormous liability risks are at stake in the jail’s maximum security environment.” (AR Ex. 2). Under our deferential standard of review of the business judgments of agency officials regarding the establishment of evaluation criteria and the allocation of points among those criteria, we find that the criteria are neither unreasonable nor irrational.

In its comments on the District’s agency report, SECURUS argues that the District should not bundle two distinct systems, *i.e.*, the inmate telephone system and the video-visitation system, in the same procurement. We agree with the District that this argument is not supported by the facts. According to the DOC, the system being procured is really one integrated system, not two separate systems and it would not be in the best interest of the District, both technically and economically, to conduct two separate procurements. The DOC states that the video-visitation system is dependent upon the technology from the inmate telephone service to function, the video-visitation system is not a stand alone product that will work independently of the inmate telephone system, the system that is being procured is in fact one piece of equipment, and it is important that the video-visitation system and inmate telephone system be awarded to the same vendor in order that administration of the systems be handled by one vendor because of economies that can be achieved and the District’s desire to avoid needless disruption to inmate housing units. (Response, Ex. 1). We find that the

District has justified its procuring the video-visitation system and inmate telephone service together since the District has shown that the systems are dependent on each other, and technical and financial economies will be achieved by not separately procuring the systems. *See Nautical Engineering, Inc.*, B- 309955, Nov. 7, 2007, 2007 CPD ¶ 204; *Boehringer Ingelheim Pharm., Inc.*, B-294944.3, B-295430, Feb. 2, 2005, 2005 CPD ¶ 32.

We have considered each of the grounds raised by SECURUS but find that the solicitation violates no District law. Accordingly, we deny the protest.

SO ORDERED.

DATED: December 19, 2008

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

CONCURRING:

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