

GREGORY L.A. THOMAS, ESQ. )  
 ) CAB No. P-579  
Under Solicitation No. WAS-9009-AA-KG )

Opinion by Administrative Judge Jonathan D. Zischkau, with Chief Administrative Judge Lorilyn E. Simkins and Administrative Judge Phyllis W. Jackson, concurring.

The District of Columbia Water and Sewer Authority (“WASA”) awarded a contract for labor relations and employment law services to Venable, Baetjer, Howard and Civiletti, LLP (“Venable”) after receiving and evaluating offers from eight prospective contractors. Gregory L.A. Thomas, Esq., protested the award on the basis that the evaluation and selection was flawed. WASA has moved to dismiss the protest on the ground that as the seventh ranked offeror, Thomas lacks standing because he is not in line for award even if his protest were sustained. We agree with WASA that Thomas has not demonstrated that he would be in line for award even if his protest were sustained. Accordingly, we dismiss his protest for lack of standing.

On November 9, 1998, WASA issued Solicitation No. WAS-9009-AA-KG for labor relations and employment law services. (WASA's Motion to Dismiss, Ex. 1). The RFP required offerors to submit proposals by December 9, 1998. Eight prospective contractors timely submitted proposals. A technical evaluation panel ("TEP") evaluated and scored the proposals in December 1998 and ranked the eight offerors according to their overall scores which included technical and price criteria as follows:

Venable, Baetjer, Howard & Civiletti, LLP (“Venable”)	84.14
Proskauer Rose LLP (“Proskauer”)	76.31
Morgan, Lewis & Bockius, LLP (“Morgan”)	73.91
Hunton & Williams (“Hunton”)	69.70

Lindner & Marsack, S.C. ("Lindner")	64.00
D.C. Office of Labor Relations	50.22
Gregory L.A. Thomas, Esq.	47.07
Herbert L. Jackson, Esq. ("Jackson")	25.80

(*Id.*, Exs. 2, 4, and 5).

On January 19, 1999, the TEP recommended that the contracting officer select Venable as the awardee. The TEP also recommended that the contracting officer award Proskauer a contract limited to issues pertaining to the reorganization of WASA's Office of the Chief Financial Officer.

The contracting officer awarded a contract to Venable on February 25, 1998. (*Id.*, Ex. 6). WASA has not yet awarded a contract to Proskauer.

On March 17, 1999, Thomas filed his protest alleging that the award to Venable was improper because: (1) WASA awarded to Venable without conducting discussions; (2) Venable's skills and qualifications were not sufficiently better than Thomas' to justify a 53 percent price differential; (3) WASA's selection of Venable placed undue emphasis on reputation rather than on the solicitation's evaluation criteria; (4) WASA improperly made an award only to Venable when the solicitation contemplated multiple awards. On April 6, 1999, WASA moved to dismiss the protest on the ground that Thomas, ranked seventh of eight offerors, lacks standing. In his opposition to the motion, Thomas argues that WASA improperly conducted discussions with the three top-ranked firms, Venable, Morgan, and Proskauer. Thomas also complains that the fifth ranked firm, Lindner, received a disproportionately higher score for technical qualifications than did Thomas and Jackson. Thomas also objects to the high scores that Proskauer and Hunton received for the approach and methodology criteria while Thomas and Jackson received much lower scores for the same criteria. Finally, Thomas questions why Morgan received a significantly higher score than Thomas for the criterion relating to key personnel.

## DISCUSSION

We exercise protest jurisdiction pursuant to D.C. Code § 1-1189.3(a) (Supp. 1998).

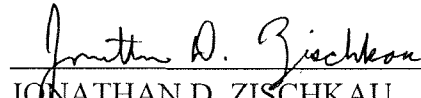
Thomas' broad claim that WASA failed to consider the technical and price criteria in its evaluation and selection is without merit. The record demonstrates that WASA properly evaluated the proposals based on the criteria set forth in the solicitation and selected the highest ranked offeror, considering all technical and price criteria.

The many other allegations in Thomas' protest and opposition merit no additional discussion because we agree with WASA that Thomas is not in line for award even if Thomas' other challenges could

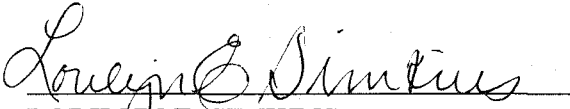
be sustained. To avoid the obvious standing problem, Thomas suggests that he has standing because he is challenging "the integrity of the manner in which the agency officials scored all the offerors." This general argument cannot substitute for showing how the six higher-ranked offerors were improperly evaluated such that Thomas would be in line for award if his protest grounds were sustained. Having carefully reviewed the evaluation and selection record and the arguments raised by Thomas, we conclude that Thomas has not shown any reasonable possibility of being in line for award even if his evaluation challenges were sustained. Even accepting Thomas' conclusory allegations on improper evaluation and scoring of the five highest-ranked offerors, Thomas fails to demonstrate how he could surpass any of the six higher-ranked offerors.


Accordingly, we dismiss Thomas' protest for lack of standing.

DATED: May 11, 1999

  
JONATHAN D. ZISCHKAU  
Administrative Judge

CONCURRING:

  
LORILYN E. SIMKINS  
Chief Administrative Judge

  
PHYLLIS W. JACKSON  
Administrative Judge