

PROTEST OF:

MADVAC INTERNATIONAL, INC.)
) CAB No. P-595
Under Purchase Order No. KAOP9001552)

For the Protester: Peter C. Federico, *pro se*. For the District of Columbia Government: Howard S. Schwartz, Esq., and Warren J. Nash, Esq., Assistants Corporation Counsel.

Opinion by Administrative Judge Jonathan D. Zischkau, with Chief Administrative Judge Lorilyn E. Simkins and Administrative Judge Matthew S. Watson, concurring.

OPINION

MADVAC International, Inc., filed a protest challenging the decision of the Department of Public Works (“DPW”) to award a purchase order for alley sweepers and litter vacs. The District argues that the Board lacks jurisdiction over the matter because DPW ordered the equipment from a vendor based on the GSA Federal Supply Schedule. Alternatively, the District argues that MADVAC lacks standing since it was an equipment manufacturer, but not one of the vendors who submitted a quotation in response to DPW’s solicitation. Contrary to the District’s first argument, DPW’s purchase order based on an the GSA Federal Supply Schedule does not negate the fact that DPW conducted a District procurement and entered into a contract covered by the Procurement Practices Act. The District correctly argues, however, that MADVAC lacks standing to protest because it was not a bidder. Accordingly, we dismiss the protest.

BACKGROUND

In June 1999, the Department of Public Works solicited price quotations from three vendors listed on the Federal Supply Schedule Authorized Price Lists (Group 3825) for litter vacs and alley sweepers. (Protest, at 5-7; District's Motion to Dismiss, at 2, Ex. 1). The vendors were Maryland Industrial Trucks, Inc. ("MIT"), Tennant, and Windsor Industries. (District's Motion, at 2). MIT and Tennant responded with price quotations and equipment configurations. (*Id.*). By facsimile transmittal dated June 23, 1999, DPW requested that MIT identify whether its proposed equipment complied with requirements set forth in a two-page specification. (Protest, at 5-7). On June 24, 1999, MIT responded with a bid which listed the equipment specifications and bid price for the equipment. MIT proposed litter vac equipment manufactured by MADVAC. MIT quoted a total price of \$659,621 and Tennant quoted a total price of \$669,457. On June 25, 1999, DPW evaluated the equipment proposed by MIT and Tennant, determining that the Tennant equipment had larger litter capacity and superior vacuum wand mechanics, and that Tennant's equipment would be more cost effective than the MIT equipment. DPW prepared Purchase Notification No. KAOP9001552 to acquire five Litter Vacs/Sidewalk Sweepers and seven Alley Sweepers from Tennant, in the amount of \$669,457.96. (*See* District Ex. 3, at 2). DPW submitted the purchase notification to the

District's Chief Procurement Officer for pre-execution approval. On June 30, 1999, the CPO approved the purchase notification. (*Id.* at 1). On July 15, 1999, DPW's contracting officer executed Purchase Notification No. KAOP9001552. (*Id.* at 2). On August 19, 1999, DPW's contracting officer executed Modification No. C0018696, increasing the contract price in Purchase Notification No. KAOP9001552 from \$669,457.96 to \$836,925.40, for the purchase of three additional Litter Vacs and one additional Alley Sweeper. (*Id.* at 3).

On August 12, 1999, MADVAC filed a protest challenging DPW's award to Tennant rather than MIT. MIT acts as a distributor of equipment manufactured by MADVAC. MADVAC states that its equipment fully complies with the District's specifications and that MIT's price quote was less than Tennant's. MADVAC requests that we direct award to MIT. The record indicates that MADVAC and MIT are separate legal entities.

On September 1, 1999, the District moved to dismiss the protest. In a September 17, 1999 filing, MADVAC opposed the motion to dismiss.

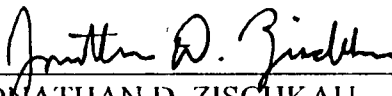
DISCUSSION

The District first contends that we lack jurisdiction to consider a protest of a District award under a Federal Supply Schedule. In support of this unusual argument, the District asserts that "DPW did not solicit the contract for litter vac equipment, GSA did." The District errs both factually and legally. The solicitation was issued by the District for equipment needed by the District and the contract was to be awarded by the District. GSA had no involvement in the solicitation or the award. That the District was using a GSA pricing schedule simply does not convert a District procurement into a federal procurement. Accordingly, the Procurement Practices Act applies to the solicitation and award.

The District next argues that MADVAC lacks standing to challenge the award to Tennant because MADVAC was not an actual bidder but merely a supplier of MIT, one of the bidders. MADVAC responds that MIT is the exclusive authorized distributor of MADVAC products in the District and was acting as an agent for MADVAC. The problem with MADVAC's position is that MIT was the legal entity submitting the bid and binding itself to perform the work. Because MADVAC was not a bidder, merely a supplier of one of the bidders, it does not have standing to challenge the award. *See Remco Business Systems, Inc.*, CAB No. P-131, Dec. 30, 1988, 36 D.C. Reg. 4016, 4017.

We dismiss the protest because MADVAC lacks standing.

DATED: November 18, 1999



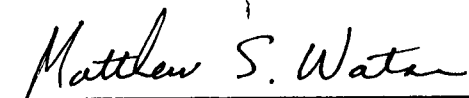
JONATHAN D. ZISCHKAU
Administrative Judge

CONCURRING:



LORILYN E. SIMKINS

Chief Administrative Judge



MATTHEW S. WATSON

Administrative Judge