

DISTRICT OF COLUMBIA CONTRACT APPEALS BOARD

PROTEST OF:

ACE COMMUNICATIONS)	
)	CAB No. P-0772
Under Contract No. DCTO-2008-C-0064)	

For the Protester, Ace Communications: Mr. Frank Clancy, Jr., pro se. For the District of Columbia Government: Howard Schwartz, Esq., Senior Assistant Attorney General, and Mark Hansen, Esq., Assistant Attorney General.

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

OPINION

Filing ID 20555807

Ace Communications protests the District's award of a contract to Audio Visual Innovations ("AVI") to install a new audio/visual system in the Metropolitan Police Department ("MPD") Synchronized Operations Command Center ("SOCC") complex. Ace Communications contends that it should have received the award because it was an "equally qualified firm" and proposed a lower price than the awardee. The record shows no error on the part of the contracting officer in determining that AVI's offer was more advantageous than Ace's offer, considering technical and price factors. AVI's technical proposal was rated significantly higher than Ace's proposal such that the relatively smaller pricing advantage for Ace did not change the ultimate ranking of offerors with AVI ranked highest. We conclude that the contracting officer's evaluation and selection did not violate the terms of the solicitation or District law. Accordingly, we deny the protest.

BACKGROUND

On December 13, 2007, the District of Columbia Office of Contracting and Procurement ("OCP"), on behalf of the MPD, issued Request for Proposals ("RFP") No. DCTO-2008-R-0025 for the provision and installation of a new audio/visual retrofit in various locations at the MPD SOCC complex. (AR Ex. 1, Sec. B.1). The scope of work required the upgrade/replacement of the audio/visual system in the (1) SOCC Command Information Center; (2) SOCC Intelligence Operations Center; (3) SOCC Secure Compartmented Information Facility; (4) SOCC Conference Room; (5) Chief's Conference Room; and (6) MPD HQ Conference Room. The contractor was required to replace/upgrade the AMX control system and assure connectivity with various other systems. OCP intended to award a fixed-price contract to the offeror with a proposal most advantageous to the District. (AR Ex. 2, Sec. L). The District did not amend the RFP, and received four proposals prior to the January 5, 2008 closing date. (AR Ex.2, at 3).

Section B.3.1 of the RFP required fixed-unit prices. The RFP contemplated eight CLINs for the base period, which were to be added by the offerors to propose a total price for the base period. Additionally, the RFP contemplated four fixed-price one year option periods to provide maintenance

and warranty of the audio/visual retrofit. (AR Ex. 1, Sec. B). The District intended to award the contract to the offeror whose proposal provided the best value to the District. (AR Ex. 1, Sec. M).

The contracting officer convened a source selection panel on January 17, 2008, and provided instructions on how to properly evaluate the technical proposals consistent with the rating scale contained in the RFP, including instruction that each score had to be substantiated by recording the strengths and weaknesses. The solicitation provided a maximum of 70 points for the technical evaluation criteria, divided into four categories:

Understanding of the requirement:	20 points
Management of operations and resumes:	20 points
Quality control:	20 points
Past performance:	10 points

The source selection panel evaluated the four technical proposals and forwarded the following consensus scores to the contracting officer:

	Factor 1	Factor 2	Factor 3	Factor 4	Total Score
OFFEROR	Understanding Requirement 20 Points	Management of Operations 20 Points	Quality Control 20 Points	Past Performance 10 Points	
AVI	20 Points Consensus Rating 5	20 Points Consensus Rating 5	20 Points Consensus Rating 5	10 Points Consensus Rating 5	70
Activu	17.5 Points Consensus Rating 3.75	17.5 Points Consensus Rating 3.75	20 Points Consensus Rating 5	10 Points Consensus Rating 5	65
Ace/Tri Tech	5 Points Consensus Rating 1.25	7 Points Consensus Rating 3	12 Points Consensus Rating 1.75	10 Points Consensus Rating 5	34
Vantix	5 Points Consensus Rating 1.25	5 Points Consensus Rating 1.25	10 Points Consensus Rating 2.5	10 Points Consensus Rating 5	30

(AR Ex. 2, at 8). The evaluators determined that only AVI provided a true turnkey solution and provided timelines for the work that met the requirements of the solicitation. Other comments included that AVI fully understood the requirements, had a clear and concise proposal, and more than 30 years experience. (AR Ex. 4). The contracting officer, contracting specialist, and cost/price analyst evaluated each offeror's price proposal. (AR Ex. 2, at 8). The RFP stated that the best value proposal would receive the maximum 30 points score for the price factor, with other proposals receiving proportionally lower scores. (AR Ex. 1, Sec. M.3.2). The contract specialist initially awarded AVI 30 points for its price evaluation as providing the best value to the District. The contracting officer corrected the contract specialist's initial impression on price evaluation, determining that the maximum 30 points should be awarded to the offeror with the lowest price and proportionally lower scores to other offerors, consistent with the District's intent for the pricing factor:

<u>Offeror</u>	<u>Score</u>	<u>Price</u>
AVI (awardee)	23	\$1,107,966.71
Activu	16	\$1,548,847.85
Ace (protester)	30	\$868,059.27
Vantix	0	\$375,000.00

(AR Ex. 2, at 11). Vantix received a 0 score for price as they did not provide option year prices and thus its proposal was unacceptable. The contracting officer therefore determined Ace’s price to be the lowest. Adding the revised price evaluation scores to the technical evaluation scores yielded the following point totals:

<u>Offeror</u>	<u>Technical</u>	<u>Price</u>	<u>Total</u>
AVI (awardee)	70	23	93
Activu	65	16	81
Ace (protester)	34	30	64
Vantix	30	0	30

On February 27, 2008, the District awarded the contract to AVI in accordance with RFP Section L.1.2 which states that the District may award contracts on the basis of initial offers received, without discussion. The contracting officer determined that the difference in technical scores between AVI and the protester “virtually eliminated Ace/Tri Tech from consideration for award.” (AR Ex. 2, at 11).

On March 4, 2008, Ace filed the instant protest with the Board, contending that “this award was made to an equally qualified firm whose bid price was significantly higher than the bid price which we had submitted.” (Protest). By letter dated March 18, 2008, the District notified AVI to cease performance due to the filing of the protest. On March 21, 2008, the District filed a Determination and Finding to proceed with the Protest while a Protest is pending (“D&F”), and Ace Communications opposed the District’s D&F. In an order of March 28, 2008, the Board sustained the CPO’s determination to proceed.

Ace filed a motion for summary judgment on March 24, 2008, alleging that the District had failed to timely file its Agency Report, and thus that the protest allegations should be taken as unrebutted. The District, however, timely filed its Agency Report later the same day. On March 26, 2008, Ace filed a second motion for summary judgment, contending that the Agency Report was deficient and incomplete for failing to include its proposal and the proposal of AVI. In the motion, Ace further contends that the District’s Agency Report was not timely filed because it was not electronically filed until 5:16 p.m., that is, past the 5 p.m. standard closing time for the Board. On March 27, the District supplemented the Agency Report by submitting the proposals of Ace and AVI. The District also argues that the Agency Report was timely filed because the Board’s rule for electronic filing, Rule 403.1, states that “any document filed with the Board before midnight local time at the Board’s offices is filed with the Board on that date.”

DISCUSSION

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

Our standard of review for proposal evaluations and the selection decision is whether they were reasonable and in accord with the evaluation and selection criteria listed in the solicitation and whether there were material violations of procurement laws or regulations. *Trifax Corp.*, CAB No. P-0539, Sept. 25, 1998, 45 D.C. Reg. 8842, 8847. Ace has neither argued nor shown that any aspect of the evaluation of proposals or selection decision was flawed or unsupported by the record. The awardee, AVI, received a perfect technical score of 70 points and was the only offeror to provide a true turnkey solution requested by the solicitation. Ace was a distant third with a technical score of 34 points. Even with its 7 point advantage in pricing, Ace's total score of 64 points is well below AVI's total score of 93. Having reviewed the contracting officer's selection memorandum, and the underlying consensus evaluation reports of the evaluation panel, we conclude that the technical evaluations and selection decision were adequately documented and rationally supported. Regarding Ace's allegation that the District's Agency Report was untimely filed, we agree with the District that its filing met the Board's deadline for electronic filing.

Because Ace has not demonstrated that the evaluations and selection decision violated the law or the terms of the solicitation, we deny the protest.

SO ORDERED.

DATED: July 8, 2008

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

CONCURRING:

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