

The District requires this contract in order to support the ability of customers to mail payments for photo enforcement, parking and moving [violation] tickets issued within the District, and to support the ability of customers to pay tickets pursuant to secondary collection activity. The mail payments lockbox function includes the receipt, processing and deposit of payments, and transmission of payment data to the ticket system. The secondary ticket collection function includes the design and pursuit of a collection strategy for tickets that have been assigned for secondary collections, customer service pursuant to incoming correspondence and phone calls, and transmission of payment data to the ticket system. A ticket system and ancillary support services including primary noticing, mailing and back-office processing, is being separately solicited.

With regard to pricing, section C.2.6 of the RFP provides:

Contract pricing shall consist of a fixed price per payment processed and updated by the lockbox, and a contingency fee based as a percentage of the amount collected for secondary collections, with certain fee eligibility exclusions.

Between July 28, 2006, and October 6, 2006, OCP issued six amendments. (AR Ex. 2, Ex 8, § 4.2). Section M of the RFP identifies four general evaluation criteria and maximum points for each: Technical Approach (40 points) consisting of a work plan (10 points), management plan (10 points), quality assurance plan (10 points), and responsiveness to the stated requirements (10 points); Experience and Past Performance (15 points), consisting of past experience in providing lockbox and collection services (10 points) and quality of references (5 points); Quality and Retention of Personnel (15 points), consisting of experience managing high volume, production oriented lockbox and collection services at the scale described in the RFP (5 points), ability to retain employees (5 points), and project management experience of key personnel (5 points); and Price (30 points).

The RFP closed on October 13, 2006, with four offerors responding: Industrial Bank, Kidd International, and two other contractors who were later determined not to be within the competitive range. A technical evaluation panel (“TEP”) was assigned to review, evaluate, and score the technical proposals. On November 14, 2006, the TEP submitted to the contracting officer a report of its technical evaluation of the initial proposals, containing scoring of proposals pursuant to the RFP evaluation criteria and detailed comments of the relative strengths and weaknesses of the proposals. (AR Ex. 5, Ex. 8, § 5.2). The TEP’s consensus technical score for Kidd International was 36 points while Industrial Bank’s was 32 points. The four point difference resulted from Kidd receiving 20 points for technical approach while Industrial Bank received 16 points. The total scores for experience and past performance and quality and retention of personnel were the same for the two proposals. (AR Ex. 8, § 5.3). The contracting officer’s initial evaluation of the proposals resulted in scoring of 40 points for Kidd and 36 points for Industrial Bank, reflecting a similar 4 point differential based on technical approach favoring Kidd. (AR Ex. 8).

The contracting agency prepared a detailed list of questions for Kidd and a separate list of questions for Industrial Bank on January 10, 2007, in preparation for discussions held by the contracting officer with the offerors on January 12, 2007. (AR Ex. 4; Ex. 8, § 13.2). As a result of the discussions, the contracting officer requested best and final offers (“BAFOs”) including responses to the written questions with submissions due on January 22, 2007. (AR Ex. 8, § 13.4). Both offerors responded with BAFOs and they were evaluated by the TEP which issued an evaluation report dated January 30, 2007. (AR Ex. 5, Ex. 8, § 13.6). The TEP advised the contracting officer that because of a substantial strengthening in Industrial Bank’s work plan, management plan, and quality assurance plan, as well as an overall strengthening of its responsiveness to the RFP requirements, the TEP increased its score of Industrial Bank to 41 points, an increase of 9 points. On the other hand, the TEP evaluation of Kidd International resulted in its score rising by only one point to a new consensus score of 37 points, reflecting a one point increase under the project management experience of key personnel subfactor. (AR Ex. 5).

The contracting officer had price analysts evaluate the cost and pricing of each of the

proposals. The first price analysis report, dated December 1, 2006, indicates a number of cost and pricing issues in both proposals. The contracting agency sought clarification from the offerors in the written questions and oral discussions. (AR Ex. 3). Following the BAFOs which incorporated the written responses, another price analysis was conducted resulting in a price analysis report dated January 30, 2007, analyzing the cost and pricing data of Kidd International and Industrial Bank. (AR Ex. 6.). In this second price analysis report, the analyst indicates that Kidd International had an unexplained “gap” of \$1,627,119 (Kidd’s costs did not support its BAFO price of \$18,727,509), and that Kidd had an excessive profit of 27 percent. (AR Ex. 6, at 8, 12).

As a result of the price analysis report, the contracting officer requested a second round of BAFOs to address price issues, with responses due on February 9, 2007. In the second round of BAFOs, Kidd’s revised offer was \$16,717,244, while Industrial Bank (which did not submit a revised offer) held its price to \$15,647,607. The contracting officer’s independent assessment of the (1) technical proposals, (2) BAFOs, (3) TEP evaluations, and (4) prices resulted in the following total technical and price scores: Kidd received 77 points, and Industrial Bank received 80 points. (AR Ex. 8, §13.7). In the Business Clearance Memorandum (AR Ex. 8, §13.8.1), the contracting officer states:

In spite of the offerors’ similarities in capabilities, Industrial Bank provided a proposal that met the requirements of the RFP with a price of approximately 5% lower than the next lowest offeror. The merits of each are summarized below:

A. Industrial Bank, NA processes approximately two (2) million checks per year is about twice the volume required under this contract and two (2) million now managed through lockbox services. Industrial offers the ability for customers to pay tickets at any Industrial Bank site, a value added feature. Also, the bank transition to the Check-21 environment four (4) years prior to the Check-21 legislative mandate, minimizing potential check imaging issues.

B. Kidd International Home Care, Inc. ranked second, brings the experience of ACS State and Local Solutions as a subcontractor. ACS is the current prime contractor providing lockbox and collection services of which Kidd International is a subcontractor.

By Determination and Finding for Price Reasonableness dated March 16, 2007, the contracting officer determined Industrial Bank’s prices to be reasonable. (AR Ex. 9). By Determination and Finding for Contractor Responsibility dated March 15, 2007, the contracting officer determined Industrial Bank to be a responsible contractor. Accordingly, after Council approval, on June 13, 2007, the contracting officer awarded Industrial Bank contract number DCKV-2007-C-0001. (AR Ex. 10). On June 28, 2007, OCP held a procurement debriefing for Kidd. On July 13, 2007, Kidd filed its protest.

## **DISCUSSION**

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

Kidd International first argues that it was “unreasonably misled” by OCP during its contract discussions “to believe that certain changes should be made in its personnel proposal to increase its chances of receiving the contract award although the agency had no real intent to do anything but downgrade Kidd’s personnel proposal regardless of any changes which it later made in its BAFO responses.” (Protest, at 6). First, the record simply does not support the allegation that “the agency had no real intent to do anything but downgrade Kidd’s personnel proposal . . . .” On the contrary, the contracting agency had identified as a weakness in Kidd’s proposal that the proposed manager for collection strategy would commit 50 percent of her time to the contract but this same person was identified in another District contract as devoting 100 percent of her time to the other contract. In its BAFO, Kidd replaced this proposed manager with another who would be dedicated full time to the contract. The TEP did not downgrade Kidd for this change but rather increased its score from 2 points to 3 points. We find no merit in this protest ground.

Next, Kidd alleges that the contracting officer failed to properly evaluate the reasonableness of Industrial Bank’s proposed costs, did not perform a price realism analysis, and improperly downgraded Kidd’s proposal based upon a \$1 million price decrease from its first to its second BAFO. Kidd cites 27 DCMR §§ 1614.2 and 1618.2, the latter of which provides that the contracting officer “shall evaluate the cost estimate or price, not only to determine whether it is reasonable, but also to determine the offeror’s understanding of the work and ability to perform the contract.” More particularly, Kidd states that it “strains credulity” to believe that Industrial Bank could perform the contract at a lower price than Kidd when Kidd had substantial experience working on the existing contract with the incumbent contractor.

We have carefully reviewed the three cost and price analyses prepared by the contracting agency and the determination and findings for contractor responsibility and conclude that the record does not support finding that the contracting officer violated District procurement law or regulation. The contracting officer had detailed cost and pricing analyses prepared and this data was considered in the evaluation of the proposals and in the selection decision. The determination for price reasonableness indicates that Industrial Bank’s \$0.69 unit price for lockbox services is lower than Kidd’s \$0.85 price but nearly matches the \$0.68 unit price in the incumbent contract. Meanwhile, the percentage of collection price of Industrial Bank (19.9 percent) is nearly identical to that of Kidd International (19.8 percent). Although Kidd claims that the contracting officer unreasonably downgraded its second BAFO due to a price reduction, there is no support in the record for that assertion. The contracting officer agreed with the TEP that Kidd’s technical score increased by one point from its initial proposal to its BAFOs. There was no downgrade in its technical evaluation from its first to second BAFO. In sum, we discern no basis for sustaining the protest on the reasonableness of Industrial Bank’s pricing or responsibility.

For its third ground of protest, Kidd alleges that the contracting officer unequally evaluated the technical proposals in that Industrial Bank’s outgoing call plan for collecting debts was more

favorable than Kidd's plan. Industrial Bank proposed making the outgoing telephone calls for secondary debt collections at an earlier point in the collections cycle than proposed by Kidd. Kidd argues that because any plan for telephone calls made to collect District debts must first be approved by the Mayor, "it would have been speculative for OCP to presume that either outgoing call approach . . . was better than the other because only the Mayor can ultimately make that determination." (Protest, at 13). The District responds that it is aware of no legal authority for Kidd's contention that the Mayor must approve the outgoing call plans. Even if there were a required Mayoral approval, we see no basis for concluding that differences between the call plans could not be considered in evaluating the strengths and weaknesses of the proposals under the RFP's evaluation criteria. The TEP found that Kidd's proposal provided incomplete information regarding the commitment of resources and phone collection strategy. While Kidd provided some additional information in its BAFO, the overall evaluation did not change. In contrast, the evaluators found that Industrial Bank had proposed a "robust" telephone collections strategy with supporting statistics from other contracts. We find no basis for sustaining the third protest ground.

In its fourth basis for protest, Kidd contends that OCP gave no meaningful consideration to its "extensive experience under the incumbent contract." (Protest, at 14). Kidd states that its experience was "arbitrarily ignored by the agency by effectively opting to award the contract to Industrial Bank having no comparable levels of experience . . . ." (*Id.*).

In her Business Clearance Memorandum, the contracting officer clearly indicates that Kidd's experience was considered a strength. Indeed, of the 6 strengths listed, 5 directly relate to Kidd's experience under the incumbent contract. For example, the first two strengths are as follows: "[Kidd] is teaming with entities that are experienced in ticket processing and collections. Kidd, DCI and ACS are already performing on the District's ticket processing and collections contract. . . . A relatively painless transition would be likely. Lockbox, call center and collection noticing procedures are already established and fully tested." (AR Ex. 8, BCM at 11). Further, in her source selection determination, quoted *infra*, the contracting officer noted that Kidd would bring the experience of performing on the incumbent contract. (AR Ex. 8, § 13.8.1). We conclude from the record that the contracting officer and the TEP were well aware of and did consider Kidd's experience on the incumbent contract. The record also indicates that Industrial Bank had considerable relevant experience. We are unable to conclude that the contracting officer's evaluation and scoring were unreasonable or arbitrary. In sum, we discern no violation of the law or the terms of the RFP in the evaluation and scoring of the experience and past performance criterion. In its comments on the Agency Report, Kidd raises additional grounds for protest in its discussion of the past performance issues (*see* Comments on Agency Report, at 6-7), but we find no merit in these additional allegations.

## CONCLUSION

Based on the protest record, we conclude that the contracting officer violated neither the law nor the terms of the RFP in her evaluation of proposals and in the selection of Industrial Bank for award. Accordingly, we deny Kidd International's protest.

**SO ORDERED.**

DATED: October 5, 2007

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

CONCURRING:

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