

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
CONTRACT APPEALS BOARD

PROTESTS OF:

|   |   |                        |
|---|---|------------------------|
| URBAN SERVICE SYSTEMS CORPORATION       | ) |                        |
|   | ) | CAB No. P-0735, P-0739 |
| Under Solicitation No. DCAM-2005-B-0027 | ) |                        |

For the Protester: Shelley D. Hayes, Esq. For the Intervenor, TAC Transport LLC: Kristen E. Ittig, Esq., Holland & Knight LLP. For the District of Columbia Government: Howard Schwartz, Esq., Talia S. Cohen, Esq., Assistant Attorneys General.

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

**OPINION ON MOTIONS FOR RECONSIDERATION  
AND CORRECTION OF THE RECORD**

*LexisNexis Filing ID 13266966*

The District has filed a motion to correct the opinion of the Board in CAB Nos. P-0735 and P-0739, issued on October 16, 2006, on the basis that the Board failed to state in its findings that the Small and Local Business Opportunity Commission ("SLBOC") had re-certified TAC Transport, LLC, as a local, disadvantaged, and development zone enterprise on February 16, 2006. Urban Service Systems Corporation has responded to the District's motion and additionally moves for reconsideration of the Board's decision on the related bases that the Board (1) failed to deem admitted certain facts raised by Urban in its motion for partial summary judgment dealing with TAC's eligibility for certification, and (2) failed to find exceptional circumstances warranting Board review of the provisional certification made by the Department of Small and Local Business Development ("DSLBD").

We deny Urban's motion for reconsideration because the Board concluded in its decision that it would not review the actions of the SLBOC and DSLBD because the facts did not show the exceptional circumstances warranting our review of certifications that are statutorily committed to the SLBOC and DSLBD. The facts raised by Urban in its motion for summary judgment are not relevant to our determination of exceptional circumstances because those facts go to the correctness of the DSLBD's provisional certification but do not imply a finding that either the DSLBD or the SLBOC abdicated their certification obligations. At most, Urban is complaining only about the *merits* of the provisional certification but we held in our decision, and reaffirm here, that we do not review the merits of a determination made by the SLBOC and DSLBD. Here, the DSLBD made a provisional certification. Unlike in the case of *C&D Tree Service, Inc.*, CAB No. P-0440, Mar. 11, 1996, 44 D.C. Reg. 6426, there is no basis for us to find that the SLBOC or DSLBD abdicated their responsibilities requiring us to protect the integrity of the procurement system. Because Urban simply disagrees with the certification determination of the DSLBD, its recourse was to seek judicial review of that administrative determination as provided by law.

We dispose of the District's motion for correction of our merits opinion by clarifying that although the SLBOC re-certified TAC on February 16, 2006, that re-certification was irrelevant to the

award decision based on bids opened on August 30, 2005, was not relied upon by the contracting officer, and thus has no effect on our substantive findings or conclusions.

The record is muddled concerning the SLBOC's re-certification of TAC on February 16, 2006. In Exhibit A to Intervenor's [TAC's] Discovery Opposition, filed on July 5, 2006, TAC attached a DSLBD website page indicating that as of February 19, 2006, TAC was entitled to 9 preference points (4 for LBE, 3 for DBE, and 2 for DZE). But in Urban's second protest (CAB No. P-0739) filed on July 10, 2006, Urban attached a DSLBD website page indicating that as of March 15, 2006, TAC was entitled to 6 preference points (2 for LBE, 2 for DBE, and 2 for DZE). (P-0739 Protest, Ex. L). The record does not contain the actual February 16, 2006 re-certification letter of TAC, however, it appears that the DSLBD corrected its website to reflect that the preferences to which TAC is entitled total 6 points, not 9 points. The website currently displays TAC's certification as 6 points. Unlike TAC's provisional certification of August 30, 2005, the re-certification of February 16, 2006 does not provide 3 preference points for small business enterprise certification. The contracting officer never mentions, let alone relies upon, the February 16, 2006 re-certification of TAC in her Business Clearance Memorandum dated May 5, 2006. (P-0735 AR Ex. 8). In addition, the contracting officer's chronology of events prepared on June 21, 2006, also omits reference to the February 16, 2006 re-certification. (P-0735 AR Ex. 5). Nor does the District mention or rely upon the February 16, 2006 re-certification in its Agency Reports in the protests.

The February 16, 2006 certification does not alter the Board's findings and conclusions because the provisional certification expired by operation of law no later than December 2005, and, according to the terms of the provisional certification letter, it expired when the SLBOC denied TAC's application for re-certification on November 8, 2005. Thus, the contracting officer could not rely on the February 16, 2006 re-certification for the award to TAC because bids were opened on August 30, 2005, and as we noted in our merits decision, the contracting officer never amended the solicitation to obtain bids at any later time. Also, because TAC's re-certification only provided for 6 preference points, it is clear from the record that Urban would have had the lower evaluated price for Award Group 1 if the contracting officer had solicited new bids after February 16, 2006. Thus, the District is wrong in implying in its motion for correction of the record that the February 16, 2006 re-certification of TAC somehow supports the contracting officer's award decision.

## **CONCLUSION**

We have considered all of the contentions raised by Urban in its motion to reconsider our opinion, but we conclude that Urban fails to set forth any valid grounds requiring reconsideration. For the reasons discussed above, we see no reason to correct the opinion as requested by the District.

## **SO ORDERED.**

DATED: December 22, 2006

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

CONCURRING:

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