

DISTRICT OF COLUMBIA CONTRACT APPEALS BOARD

PROTEST OF:

HOOD'S INSTITUTIONAL FOODS, INC.)
) CAB No. P-0750
Under Solicitation No. RFQ 308282)

For the Protester, Mr. Lenward C. Hood, *pro se*. For the District of Columbia Government: Howard Schwartz, Esq., and Talia S. Cohen, Esq., Assistant Attorneys General.

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

OPINION DENYING PROTEST

Filing ID 14576967

Hood's Institutional Foods, Inc. ("Hood"), the protester, has challenged a purchase order awarded to J&K Distributors, Inc. ("J&K") for the warehousing and delivery of various foods, on the grounds that J&K's certification as a small business enterprise ("SBE") is improper, and that the contracting officer erred in identifying the lowest price quotation without considering various other economic factors. The District has filed an Agency Report, arguing that there are no exceptional circumstances to justify Board review of the SBE certification, and that the contracting officer's price determination was proper and consistent with the request for quotations ("RFQ"). On the un rebutted record presented by the District, we find a reasonable basis for the award of the purchase order to J&K. Accordingly, we deny the protest.

BACKGROUND

On November 17, 2006, the District issued RFQ No. 308282 on behalf of the District of Columbia State Education Office for a contractor to provide dry, cooler, and freezer storage (warehousing) and distribution of indefinite quantities of dry products, including approximately 36,000 pounds of chicken products and other commodities requiring freezing or refrigeration. (Agency Report ("AR") at 3; AR Ex. 1). Pursuant to D.C. Code § 2-218.44 (Supp. 2006), this RFQ was issued only to companies certified by the Small and Local Business Opportunity Commission ("SLBOC") (or its predecessor, the Local Business Opportunity Commission) as small business enterprises ("SBEs") since section 2-218.44 requires that purchases of less than \$100,000 must be set aside for SBEs, absent certain exceptions not relevant here.

Pursuant to the RFQ, the reply date for submission of quotes was November 22, 2006, and Hood and J&K timely submitted quotes. (AR Exs. 1, 2). Based on the quotes submitted by Hood and J&K, the District determined that J&K's price was the lowest price. (AR Ex. 7). In a price analysis memorandum dated December 4, 2006, the contract specialist determined that by comparing minimum quantities, Hood's quote was 63 percent more than J&K's quote for food pickup services and 34 percent more than J&K's for delivery services. (AR Ex. 7). On December 5, 2006, the District issued Purchase Order No. PO207851 to J&K. (AR Ex. 9).

On December 21, 2006, Hood misfiled a protest with the District's Chief Procurement Officer ("CPO") of the award to J&K, arguing that J&K should not have been found to comply with the local, small, and disadvantaged business enterprise certification requirements because J&K's warehousing operations allegedly are carried out predominantly in Maryland, not the District. On December 29, 2006, Hood filed a supplemental protest with the CPO, alleging that the District failed to "factor in the economic differences between a warehouse storage facility located in the District of Columbia and a storage facility located in another jurisdiction." Rather than immediately forwarding the misfiled protests to the Board, the contracting officer responded to the December 21 protest by letter of January 8, 2007, stating that the District properly awarded the contract to J&K, that J&K's SBE certification was verified as current, and that if Hood wished to challenge the certification, it should contact the SLBOC's enforcement division. On January 15, 2007, Hood sent a letter to the CPO, claiming that the contracting officer's response did not address Hood's challenge to J&K's responsibility and responsiveness, the storage location issue, and the failure to evaluate the economic factors. By letter of January 18, 2007, the contracting officer transmitted the protest correspondence to the Board, which the Board received on January 31, 2007. The Board docketed the filing as CAB No. P-0750.

On February 28, 2007, the District filed an Agency Report, arguing that Hood had not alleged any exceptional circumstances justifying the Board's review of an SLBOC certification determination. Also, the District responds that the contracting officer properly considered only the bidders' prices and not other "economic factors" such as warehouse location and District tax revenue. Hood has not responded to the Agency Report.

DISCUSSION

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

We conclude that there is no basis in the law or the facts here to justify our reviewing the SLBOC/LBOC certification of J&K as an SBE. Only in exceptional circumstances will we consider such a review, such as where the certifying agency has abdicated its function and we are left with no choice but to review the certification so as to protect the integrity of the procurement process and fulfill our statutory obligation under D.C. Code § 2-309.08(d) of deciding whether an award complies with applicable law, regulations, and terms and conditions of the solicitation. *Capitol Paving of D.C., Inc.*, CAB No. P-0736, Oct. 12, 2006, 54 D.C. Reg. 2036, 2040-41; *Urban Service Systems Corp.*, CAB No. P-0714, Nov. 15, 2005, 54 D.C. Reg. 1973, 1978; *C&D Tree Service, Inc.*, CAB No. P-0440, Mar. 11, 1996, 44 D.C. Reg. 6426, 6433-39. Those exceptional circumstances are not present here. Such challenges to a certification are properly addressed to the SLBOC through the statutory mechanism provided in D.C. Code § 2-218.63. We find no error by the contracting officer in relying on the certification made by the SLBOC in this case.

Hood's argument, that the contracting officer failed to consider other "economic factors" in the price evaluation, is not well taken. Warehouse location and presumed tax revenue to be earned by the District are not price evaluation factors under the RFQ. Hood has not demonstrated that the contracting officer's price evaluation was flawed in any respect. To the extent that Hood's other allegations can be considered challenges to J&K's responsibility or responsiveness, we conclude there was no error by the contracting officer in determining J&K's quote to be responsive and J&K to be a responsible bidder.

Accordingly, we deny the protest.

SO ORDERED.

DATED: April 23, 2007

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

CONCURRING:

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