

GOVERNMENT OF THE DISTRICT OF COLUMBIA
CONTRACT APPEALS BOARD

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January 8, 2001

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SUBJECT: CAB No. P-624 (Protest Of: Trifax Corporation)

Attached is a copy of the Board's Opinion sustaining protest.

A handwritten signature in dark ink, appearing to read "Barbara Thompson", is written over a horizontal line. Below the line, the name "BARBARA THOMPSON" and the title "Staff Assistance" are printed. A large, loopy circular mark is drawn around the signature and the printed name.

BARBARA THOMPSON
Staff Assistance

GOVERNMENT OF THE DISTRICT OF COLUMBIA
CONTRACT APPEALS BOARD

PROTEST OF:

TRIFAX CORPORATION)	
)	CAB No. P-624
Under IFB No. HCOC 157329)	

For the Protester: Ralph O. Turner, President and CEO, *pro se*, and Mark D. Loud, Esq. For the Intervenor, IIU Consulting Institute, Inc., Frank Ukoh, President, *pro se*. For the Government: Howard Schwartz, Esq. and H. Chris Malone, Esq., Assistants Corporation Counsel.

Opinion by Administrative Judge Matthew S. Watson, with Administrative Judges Jonathan D. Zischkau and Phyllis Jackson, concurring.

OPINION

Trifax Corporation ("Protester" or "Trifax") protested against the award of a contract for the services of two Pediatric Registered Nurses to IIU Consulting Institute, Inc. ("IIU") pursuant to IFB No. HCOC157329, alleging that the District (1) failed to timely notify unsuccessful bidders, including protester, of the award to IIU; (2) improperly accepted a bid in an amount which failed to cover minimum compensation and benefit requirements; (3) failed to disclose the lowest cost only criteria for selecting the awardee; (4) failed to follow the stated cost analysis criteria; and (5) failed to publicly open the bids at the time, date, and place designated in the IFB. The District filed a Motion to Dismiss ("Motion") alleging that the protester lacked standing and that the protest was untimely, or, in the alternative an Agency Report ("AR"). The District now concedes that its argument for lack of standing is without foundation and that the protester has standing to bring this protest. We conclude that protest claims 1 and 5 are untimely, while claims 2, 3 and 4, are timely.

Upon consideration of the Agency Report, and further responsive pleadings, we find that the proper criteria for bid evaluation were stated and used. Thus, claims 3 and 4 of the protest are denied. As to Claim 2 concerning responsiveness, however, we find that the bid submitted by the IIU was not responsive and that award to IIU was therefore invalid. The protest is sustained and the District is directed to cancel the contract with IIU as void *ab initio*.

BACKGROUND

On April 4, 2000, the Contracting Officer, Office of Contracting and Procurement (OCP), for the Department of Health (DOH) issued IFB No. HCOC 157329 ("IFB") soliciting bids to provide "two professional Registered Nurses to conduct home visiting service to children ... enrolled in the Birth to Eight (0-8) Project." (AR, Ex. 1, § C.1). The contract is an indefinite delivery, indefinite quantity contract with payment based on a fixed unit price for each hour of service. (*Id.* §§ B & C.1).

On May 5, 2000, the Contracting Officer issued Amendments 1 and 2. Amendment 1 extended the bid closing date to May 12, 2000. (AR, Ex. 2). Amendment 2 responded to questions posed by prospective bidders. (AR, Ex. 3).

On May 12, 2000, the Contracting Officer received bids from, among others, Trifax, IIU, Motir Services, Inc. (Motir) and Horton & Barber (H & B). (AR, Ex. 4). The bids were opened publicly at the time, date and place designated in the IFB. (AR, Ex. 5).

H & B submitted the lowest bid. (AR, Ex. 6). On May 24, 2000, the Contracting Officer requested that H & B provide certain information to determine H & B's responsibility. (AR, Ex. 7). On May 25, 2000, H&B responded in part to the Contracting Officer's request, providing only a list of contracts previously held and did not respond to other items of the request. (AR, Ex. 8). The Contracting Officer rejected the bid of H & B stating that: (a) H & B failed to submit all of the information requested to determine responsibility, (b) H & B failed to submit the Tax Certification with its bid, and (c) H & B failed to acknowledge Amendment 1 which extended the date for submission of bids. (AR, Ex. 9).

IIU submitted the next low bid. (AR, Ex. 4). On May 31, 2000, the Contracting Officer requested that IIU provide certain information to determine its responsibility. (AR, Ex. 10). IIU provided the information on June 6, 2000. (AR, Ex. 11)

The Contracting Officer determined that: (a) the award of the contract to IIU for these services was in the best interest of the District, (b) the prices bid by IIU were fair and reasonable, (c) IIU is responsible, and (d) the failure by IIU to submit cost and pricing data was waived as a minor informality. (AR, Ex. 9). On June 29, 2000, the Contracting Officer awarded the contract to IIU. (AR, Ex. 12). At award, the Contracting Officer reduced the maximum number of hours for the base year in the IIU bid from 1386 hours to 1236 hours and the total base year price from \$74,566.80 to \$66,496.80. (AR, Ex. 12).

The Bid Tabulation prepared by the Contracting Officer showed Motir as the next apparent low bidder behind IIU. (AR, Ex. 6). Trifax was shown as the 4th low bidder. (*Id.*).

Due to administrative error, notice of award to IIU was not given to unsuccessful bidders immediately after award. (AR, Ex. 16). On July 26, 2000, Trifax notified the Contracting Officer

that it had learned that another bidder had been awarded the contract and requested a debriefing. (AR, Ex. 13). After receiving no response, on August 11, 2000, Trifax submitted a second request for debriefing. (AR, Ex. 14).

On August 11, 2000, the Contracting Officer notified Trifax and the other unsuccessful bidders of the award to IIU. (AR, Ex. 15). On August 17, 2000, the Contracting Officer notified Trifax that the debriefing it requested was scheduled for August 22, 2000. (AR, Ex. 17). The debriefing was held on August 22. On August 30, 2000, Trifax filed this protest with the Board.

DISCUSSION

Motion to Dismiss

On September 20, 2000, the District filed a Motion to Dismiss the protest on two bases. First, that Trifax lacks standing to protest because another bidder, Motir, had submitted a bid which, while higher than the successful bid, was lower than Trifax's bid, placing Motir, not Trifax, in line for award if the protest were successful. The Board has consistently held that an unsuccessful bidder not in line for award is not an aggrieved party and thus lacks standing to bring a protest. Secondly, the District contends that the protest was not timely. Protester submitted a Response to the District's Motion to Dismiss ("Response"). The District submitted a Reply to the Response ("District Reply"). IIU, as an Intervenor, submitted a pleading captioned "Motion to Dismiss" which was in the nature of a reply to the Response and has been considered as such by the Board.

Standing

Trifax did not protest against award to Motir. In general, the Board will find a lack of standing if the protester does not protest against the award to another bidder, whose bid, while higher than the successful bid, is lower than the protester's bid. *See Barcode Technologies, Inc.*, CAB No. P-524, Feb. 11, 1998, 45 D.C. Reg. 8723. However, as part of the Agency Report submitted together with its Motion to Dismiss, the District submitted the Bid Abstract Form prepared at the bid opening by Sonja White, Program Specialist, listing the contents of each bid. (AR, Ex. 4). The Bid Abstract states that Motir's bid, as submitted, did not contain "pricing for option year 3 or 4." Failure to submit a bid on each option makes the Motir bid nonresponsive on its face. (AR, Ex. 1 (Contract §M.2.3)) The bid abstract's note that pricing for option years 3 and 4 was not submitted by Motir is not consistent with the Bid Tabulation, (AR, Ex. 6), which showed prices allegedly bid by Motir for option years 3 and 4. Upon review of the procurement documentation, the Board requested an explanation of the clearly contradictory record. The District, upon investigation, stated that the bid prices shown in the Bid Tabulation are erroneous and were the result of a clerical error. The District admits that Motir's bid was not responsive and therefore not in line for award. (District Reply, at 15-16).

Notwithstanding that Trifax did not assert in its protest that the bid submitted by Motir was nonresponsive, the District is estopped from raising Motir's lower bid in opposition to Trifax's standing if evidence or knowledge in the District's possession unequivocally shows that Motir's bid was not responsive, and thus not properly in line for award. By submission of a pleading to the Board, a party certifies that, to the best of the party's knowledge, information and belief, formed after inquiry reasonable under the circumstances, the allegations have evidentiary support and that the defenses or other legal claims are warranted. *See* Sup. Ct. Rules of Civ. Proc. Rule 11(b). The Board does not believe that the allegation as to standing in the Motion to Dismiss was intentionally erroneous or otherwise wrongfully made, however, once it is known that the record unequivocally shows that District procurement personnel, namely the procurement specialist, had actual knowledge of facts contradicting the pleading, the pleading must be withdrawn regardless of whether it is challenged by the protester. It is incumbent on the Board, *sua sponte*, to raise an issue of law when unequivocal facts which would have precluded filing of the pleading became apparent. The Board has treated that part of the District's Motion to Dismiss raising the standing issue as withdrawn.

Timeliness

Claims 1 and 5

The Procurement Practices Act provides that protests, other than as to the terms of the solicitation, "shall be filed no later than ten (10) business days after the basis of protest is known or should have been known." D.C. Code §1-1189.8(b)(2). With regard to the first claim of the protest that the contracting officer failed to timely notify unsuccessful bidders, including protester Trifax, of the award to IIU, Trifax was aware of the delayed notification no later than August 15, 2000, when it received the written notice of award to IIU. (Protest at 1). With regard to the fifth claim of the protest, that the contracting officer failed to publicly open the bids at the time, date, and place designated in the IFB, Trifax should have been aware of any such issue on the date the bids were opened, May 12, 2000. (AR, Ex. 6).

The subject protest was filed with the Board on August 30, 2000, clearly several months after the bid opening, May 12, 2000, and 11 business days after August 15, 2000, when Trifax received formal notice of the contract award. Consequently these protest issues are untimely.

Claims 2, 3 and 4

With regard, however, to claims 2, 3 and 4 of the protest, that the Contracting Officer improperly accepted a bid in an amount which failed to cover minimum compensation and benefit requirements (claim 2), failed to disclose the lowest cost only criteria for selecting the awardee (claim 3) and failed to follow the stated cost analysis criteria (claim 4), there is no way that Protester could have known the bases for its protest until after the debriefing by the contracting officer which did not occur until August 22, 2000. (AR, Ex. 17).

Anyone hearing a reading of the bids at bid opening would have heard the IIU bid read at the prices and maximum hours originally submitted by IIU totaling \$375,619, including option periods. That bid price would not have indicated that the bid failed to cover minimum compensation. However, during the award process, the maximum number of hours was reduced for IIU, but not for any other bidder. It was not until the debriefing on August 22, 2000, that Trifax could have learned the actual contract award for a total price of \$367,549, including option periods, based on the reduced number of hours. The District, however, at that time failed to advise Trifax that the reduction in price resulted from a reduction in the maximum number of hours in the contract signed with IIU. Indeed, even in the Agency Report to the Board, the District failed to note the reduction in hours in comparing bids received. Both the Bid Tabulation (AR, Ex. 6), and the Motion at page 4 show the lower price for the IIU bid without any indication that the hours used to compute the IIU bid total were fewer than the hours used to compute the total price for comparison purposes of each of the other 7 bids. Notwithstanding the change in hours, the ranking of the bidders did not change, although the lower price in the contract awarded to IIU made it appear, if one was unaware of the reduced hours, that IIU had not committed itself to comply with the wages set in the wage determination and was thus nonresponsive. Trifax had no way of knowing, even when it submitted its protest, that the number of hours had been reduced causing it to believe that less than the minimum wage determination would be paid.¹

Similarly, Trifax could have had no way of knowing the basis of bid evaluation until the debriefing took place. Since the protest was filed 8 days after the debriefing, claims 3 and 4 are timely.

The Motion to Dismiss the protest as untimely is granted as to claims 1 and 5 and denied as to claims 2, 3 and 4.

Merits of Claims 2, 3 and 4

Claims 3 and 4

The protester alleges that the Contracting Officer failed to disclose the lowest cost only criteria for selecting the awardee, claim 3, and failed to follow the stated cost analysis criteria, claim 4. The instant solicitation was conducted by competitive sealed bidding through an Invitation for

¹ It does not appear from the record that even counsel for the District could have known of the reduction in hours in making the award to IIU. The Finding (AR, Ex. 9) prepared by the Contracting Officer two days before the District filed its Motion to Dismiss referred to the lower price computed on the basis of the reduced number of hours as "the lowest price submitted by a responsive and responsible bidder." In fact, that price was never submitted by IIU or any other bidder. A subsequent Finding by the Contracting Officer, (District Reply, Ex. 2), not signed until November 2, 2000, over a month after the protest was filed, finally acknowledged that the number of hours had been reduced on the day of award "because the Department of Health advised the Contracting Officer that there were insufficient funds, only \$66,520, available for the base year." (¶2 p. 6)

Bids. By definition, the only evaluation criteria for a responsive bid to an invitation for bids is price, either lowest line item price or lowest evaluated price. Section M.3 of the IFB (AR, Ex. 1) makes this clear providing, in part:

Evaluation for Award

The contract will be awarded to the lowest responsive responsible bidder by line item or in total whose bid is most advantageous to the District, based on the total price of for the Base Year and Option Years.

(See also §M.2.1)

The record indicates that, as to the evaluation of bids, the Contracting Office explicitly followed the evaluation prescribed in the solicitation. Claims 3 and 4 of the protest must therefore be denied.

Claim 2

The *pro se* protest questioned the determination by the Contracting Officer that IIU was responsible and that its bid was responsive, alleging that the award price indicated that the contractor was not intending to be bound by the minimum wage determination included as a requirement of the contract. (AR, Ex. 1 (Standard Contract Provisions §30(c)(1))). The protester's basis for its allegation was that, based on the maximum number of hours of service which could be called for by the District, IIU's total bid price did not indicate that IIU could cover the required minimum wage costs.

In response to Protester's allegation, the Agency Report showed that IIU was, in fact, committed to pay the required minimum wages and demonstrated that, as a result of the unannounced reduction in the maximum number of nursing hours to be procured, the award price was fully consistent with adherence to the wage determination.² The allegations of the protest were reasonably made because of the reduction in maximum number of hours was unknown to the Protester or any other bidder and not immediately apparent in the procurement record.

Protest claims must be read broadly, *See Mine Safety Appliances Company*, B-242379, Nov. 27, 1991, particularly when the procurement record has not clearly set forth the actions of the contracting officer. Maintenance of the integrity of the procurement system requires that, when any issue of responsibility or responsiveness have been raised in a protest, particularly in a protest filed *pro se*, the Board consider all issues relating to responsiveness which are *immediately apparent in*

² The Board has serious concerns as to the appearance of impropriety raised by amending the procurement terms for one bidder without offering the same amended terms to other bidders. However, because the ranking of bids was not changed by the amendment, the error, if any, was harmless.

the record, regardless of whether or not the protester has explicitly raised the specific aspect of responsiveness.

The solicitation provided, among other requirements:

SECTION J - LIST OF ATTACHMENTS

J.4 Tax Certification Affidavit

* * *

L.15 KEY PERSONNEL

L.15.1 The offeror shall set forth in its Bid on an attached sheet in Section III the names and reporting relationships of the key personnel whom the offeror will use to perform the work under the proposed contract. Their resumes shall be included in an attached folder and turned in with their Bid. Their resume will state the total number of hours each will devote to the contract.

L.15.2 The personnel specified in the contract are considered to be essential to the work being performed hereunder. Prior to diverting any of the specified key personnel for any reason, the Contractor shall notify the Contracting Officer at least thirty (30) calendar days in advance and shall submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on the contract. The offeror shall not reassign these key personnel or appoint replacements without written permission from the Contracting Officer.

The Agency Report plainly documented that IIU's bid, as received, did not meet either of these requirements. The bid abstract noted concerning IIU's bid that "no resumes [were] submitted." (AR, Ex. 6). Upon review of the original IIU bid attached as Exhibit 12 to the Agency Report, the Board observed, in addition, that, although IIU submitted two tax certifications, one dated May 12 and the other dated June 22, 2000, neither was fully completed.³ (AR, Ex. 12).

³ There is no indication as to why two differently dated certifications were included with the bid. Nevertheless, both forms left blank IIU's Unemployment Insurance Account Number and both forms failed to indicate whether Employer Withholding, Corporation Franchise, Personal Property or the Arena/Public Safety fees were either "Current" or "Not Current." On October 5, 2000, during the course this proceeding, IIU supplied its Unemployment Insurance Account Number and indicated that it was obligated to pay and was in fact current for each of the taxes. (IIU Letter dated October 5, 2000, attached as Attachment 3 to

The fact that the information was required by the IFB is not dispositive of the question of responsiveness. "[M]erely stating that a requirement is a responsive matter will not suffice to make it so. In all cases, the rationale underlying the responsiveness characterization must establish a "material" term to the invitation for bids." *Forrester Constructors, Inc.*, CAB 1987, 1 P.D. 74, 83 (note 6).

In order for the District to accept a bid, the bid must be responsive. It is a long established principle of formal advertising that the responsiveness of a bid is determined on the basis of that bid as submitted, and not on the basis of information provided after opening. *Id.* at 78-79. If the failure of IIU to submit the required information with its bid rendered the bid nonresponsive, the award to IIU was improper.

Tax Certification

While the District admits that the tax certifications submitted by IIU were incomplete, citing our holding in *J & R Roofing Co., Inc.*, the District correctly asserts that "submitting the tax certification affidavit is a matter of responsibility, not responsiveness." CAB No. P-548, March 22, 1999, 46 D.C. Reg. 3691, 3698. The position of the District ignores the second part of the holding that matters of responsibility may be resolved "up to the time of award." (*Id.* at 3698). The record shows that the tax certification was not completed by IIU *prior to award*.⁴ It was not until the issue was raised in this proceeding that IIU provided complete the tax compliance information. (Response, Ex. 3).

The contracting officer is charged with responsibility to possess or obtain information concerning responsibility that is current at the time the determination of responsibility is made. The procurement regulations provide:

Before making a determination of responsibility, the contracting officer shall possess or obtain information sufficient to satisfy the contracting officer that a prospective contractor currently meets the applicable standards and requirements for responsibility set forth in this chapter.

27 DCMR § 2204.1.

At the time the award was made the Contracting Officer had no basis to conclude that IIU was in compliance with its District tax obligations. The two tax certification documents in the

District letter of the same date).

⁴ The District also asserts that, in any event, "[a] tax certification affidavit is not required for a contract that is less than \$100,000," (Response 13), citing 27 DCMR 2204.6. Although the certification may not have been required, when a certification actually submitted casts doubt on compliance by the bidder, the contracting officer has an obligation to inquire further. (*See* 27 DCMR 2204.8).

possession of the Contracting Officer were plainly incomplete. The Board recognizes that the determination of a prospective contractor's responsibility is the duty of the contracting officer and that that official is vested with "wide latitude to exercise business judgment." *Kidd Int'l Home Care Services, Inc.*, CAB No. P-547, Sept. 15, 1998, 45 D.C. Reg. 8835, 8839. Therefore, in reviewing a determination concerning general standards of responsibility, we will not overturn a finding of responsibility or nonresponsibility unless the determination lacks any reasonable basis." *Ideal Elec. Supply Corp.*, CAB No. P-372, Aug. 13, 1993, 41 D.C. Reg. 3603. In this matter, the Contracting Officer had no basis when he made the award to determine whether the contractor was in compliance with District tax laws. In such a circumstance, the Board will review an unsupported determination of responsibility.

During the course of this proceeding, IIU presented evidence that it was actually in compliance with items it had left blank on the tax certificate. (Response, Ex. 3). We therefore conclude that, although unsupported in the contract record at the time of award, the determination of IIU's responsibility by the Contracting Officer was not incorrect.

Key Personnel

It is undisputed that IIU did not submit the resumes of key employees with its bid as required by the solicitation. The Bid Tabulation prepared at bid opening specifically noted "no resumes submitted." (AR, Ex 4). Although it was considered significant enough to note the absence of resumes at the time of bid opening in the Bid Abstract which normally identifies only questions of responsiveness, the District contends that "a resume is a matter of responsibility that may be submitted up to the time of award." (Response, 14).

This matter presents difficulties in interpretation because the District has included in a formally advertized solicitation (IFB) a provision dealing with key employees of a type normally included in a negotiated solicitation (RFP)⁵. (See e.g., "Key Personnel" clause to be inserted in "all solicitations and resultant cost-reimbursement contracts" contained in 48 CFR 352.270-5). The specific provision included in this solicitation not only requires the submission of resumes, but makes the named individuals a required term of the contract unless substitution is agreed to by the contracting officer. We believe that the solicitation, as written, makes the resumes a matter of responsiveness. Responsiveness concerns whether a bidder has unequivocally offered to provide supplies or services in conformity with the material terms and conditions of the solicitation; responsibility refers to the bidder's apparent ability and capacity to perform all of the contract requirements. See *Skyline Credit Corporation*, B-209193, March 15, 1983, 83-1 CPD 257.

⁵ Indeed, the clause uses the term "offeror" which normally refers to a respondent to a solicitation for a negotiated procurement, as opposed to the term "bidder" which normally refers to a respondent to a formally advertised solicitation.

The District cites two opinions of the Comptroller General, *Owl Resources Company*, B-210084, Apr. 29 1983, and *Science Applications, Inc.*, B-193479, Mar. 8, 1979, which hold that requirements to submit resumes are matters of responsibility and not responsiveness. These decisions are distinguishable from the instant case. In each of the cited cases, the solicitation merely required the submission of resumes, but did not contain any specific requirement that the named individuals be utilized in performance. The Comptroller General has expressed greater importance of submission of resumes when the named individuals will be mandated for performance.

Offeror "bait and switch" practices, whereby an offeror's proposal is favorably evaluated on the basis of personnel that it does not expect to use during contract performance, have an adverse effect on the integrity of the competitive procurement system and provide a basis for rejection of that offerors' proposal. . . . This does not mean that substitution of employees after award is prohibited; such substitution is unobjectionable where the offeror acted reasonably and in good faith. (Citations omitted).

Hornet Joint Venture, B-258430, Feb. 22, 1995.

Rather than merely showing the availability of qualified personnel, which would be an aspect of responsibility, the solicitation makes employment of the named individuals a material contract term. In addition, the solicitation emphasizes the importance the District attached to naming the key employees by requiring, not only that they be listed and their resumes supplied, but also that each "resume will state the total number of hours each will devote to the contract." Although in the context of negotiated procurements, the Controller General has clearly indicated that where employment of named individuals is required by the contract terms, failure to name those individuals and show that they are committed to employment before award renders a proposal nonresponsive and the proposer ineligible for award. *Essex Corporation*, B-246536, June 25, 1992, presented a situation similar to the instant matter. "[I]n its final revised proposal, [the awardee had] advised [the contracting agency] that it would wait until after its proposal had been evaluated, and after it had been awarded a contract, to advise the agency which key personnel it intended to use on the contract." The Comptroller General sustained a protest against the award stating:

[The awardee's] initial proposal failed to include letters of intent for all but two of the personnel it proposed to fill the key positions. Despite the agency's clear request during discussions that: "for any proposed personnel for which written assurances were not provided in your proposal, please provide letters of intent for such personnel," [The awardee] elected not to comply with this requirement. Accordingly, [the awardee's] final revised proposal should have been rejected for failing to comply with a material requirement of the solicitation.

In the instant matter IIU also refused to identify the specific nurses who would provide the services. The District concedes that IIU did not identify the specific nurses who would be employed under the contract, but rather that "IIU states that the seven registered nurses [it listed] were just some of its nurses." (Response, at 7). Notwithstanding the specific contract provision that the nurses should both be named and the time each would devote to the contract, in the Contracting Officer's revised Determination he determined, contrary to the contract terms that:

IIU had shown that it had the ability to provide licensed registered nurses. IIU had provided licensed nurses under three contracts in Maryland. IIU has more than seven licensed registered nurses available. The Contracting Officer concluded that if IIU could provide registered nurses in Maryland, IIU could provide registered nurses licensed in the District.

(Response, Ex. 2 at 4).

It is apparent that the procurement integrity issue raised by the Comptroller General in the *Hornet* case is relevant here. Although the Contracting Officer's Determination relies on the seven registered nurses listed by IIU prior to award, when IIU began performance none of the listed nurses was assigned to performance of the contract.⁶ No assertion has been made that IIU ever requested substitution, or that the Contracting Officer has ever even considered the substitutions.

The Board takes no position as to whether the key employee designation and requirement to name the nurses is a minimum need of the District. The Board must assume that by the specific insertion of the clause in the contract was a determination of the minimum need and cannot be ignored. The clause expressed a material term of the contract "considered to be essential to the work being performed." The initial bid submitted by IIU did not commit itself to this term and was therefore nonresponsive and ineligible for award.⁷

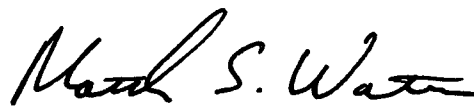
⁶ The seven nurses listed were Registered Nurses Cain, Ulu, Milbourne, Thomas, Joplin, White and Butler. (AR, Ex. 11). The nurses assigned to the contract were Registered Nurses Cobb, Steel and Sumpter. (Response, Ex. 2).

⁷ Even if the requirement were considered to be an issue of responsibility which could be fulfilled up to the time of award, IIU never made such a proffer prior to award.

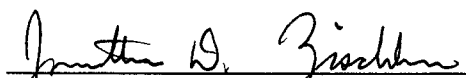
The protest is sustained. The District is directed to cancel the contract with IIU as void *ab initio*.

SO ORDERED

DATED: January 8, 2001



MATTHEW S. WATSON
Administrative Judge

CONCURRING:

JONATHAN D. ZISCHKAU
Administrative Judge



PHYLLIS JACKSON
Administrative Judge