

GOVERNMENT OF THE DISTRICT OF COLUMBIA
CONTRACT APPEALS BOARD

PROTEST OF:

CRAWFORD/EDGEWOOD MANAGERS, INC.)
) CAB No. P-424
Under Contract No. JA/95394)

For the Protestor: H.R. Crawford, President, *pro se*. For the Government: Howard Schwartz, Esquire and Edward Rich, Esquire, Assistants Corporation Counsel.

Opinion by Administrative Judge Cynthia G. Hawkins-León, with Administrative Judges Jonathan D. Zischkau and Lorilyn E. Simkins, concurring.

OPINION AND ORDER ON MOTION TO DISMISS

Procedural History

On November 29, 1994, Crawford/Edgewood Managers, Inc. ("Protestor" or "Crawford") filed a protest of the award of emergency contract number JA/95394 by the Department of Human Services ("DHS"), Commission on Social Services ("CSS"), Office of Emergency Shelter and Support Services ("OESSS") to REO Management ("REO" or "awardee").

As can be deduced from the November 29 filing, the Protestor's grounds for the protest are: (1) that a conflict of interest has been caused by REO's current status as a managing agent for property owners. As a managing agent, REO currently provides temporary, transitional housing for the District of Columbia. The Protestor contends that the contract requires the successful bidder to manage the same properties as currently managed by REO, thus allowing a doubled reimbursement for duties it is already performing; and (2) that REO lacks the capability and experience to perform the contract.

Pursuant to Board Rule 306.1, 36 D.C. Reg. 2713 (April 21, 1989), the District filed a Motion to Dismiss on December 27, 1994. The District moved the Board to dismiss the protest with prejudice on the grounds that: (1) the Protestor is not an aggrieved party because it would not be in line for award if the protest were successful; and (2) Protestor has failed to present a clear and concise statement of the legal and factual grounds of its protest.

Crawford did not respond to the Motion to Dismiss. Pursuant to Board Rule 307.4, 36 D.C. Reg. 2714 (1989), when a Protestor fails to file comments on an agency report or dispositive motion filed in lieu thereof, the factual allegations in the protest that are not admitted by the District, or otherwise corroborated on the record, may be disregarded. Alternatively, in accordance with Board Rule 110.5, 36 D.C. Reg. 2692 (1989), in light of Protestor's failure to file a timely opposition to the District's motion, the Board may, if it so chooses, treat the motion as conceded. *Heller Electric Co., Inc.*, CAB NO. P-244, December 23, 1991, 39 D.C. Reg. 4373; *Barcode Technologies, Inc.*, CAB No. P-298, January 16, 1992, 39 D.C. Reg. 4387. In this case, as will be discussed below, since the Board has determined that the Protestor is not an aggrieved party, it will not be necessary for the Board to determine whether it should disregard any or all of the factual allegations.

Facts

By emergency solicitation dated October 28, 1994, titled "Market Survey," DHS requested proposals for Emergency Contract No. JA/95394. This emergency contract was for the provision of temporary shelter, resident and facility management, security services and other related services for the transitional housing of 265 homeless families in apartment units currently leased by the District of Columbia. The emergency solicitation was for the award of three aggregate clusters of transitional housing. The offerors could submit offers on one or more of the clusters. The contractor was to begin services on or around November 4, 1994. The contract was self-described as a cost reimbursement contract with a fixed fee component. The Market Survey included a series of twelve questions to be answered that concerned the responsibility of the offerors. Offerors were given until noon on November 2, 1994 to submit their offers. Protest, Exhibit 1; Motion to Dismiss, Exhibit 1.

On October 31, 1994 and November 1, 1994, DHS transmitted via facsimile the above-described emergency solicitation to seven potential offerors. The seven potential offerors sent the solicitation were: (1) Anchor Development Corporation ("Anchor"); (2) 16-17 Street Associates ("16-17"); (3) Crawford/Edgewood Managers, Inc.; (4) North South Alternatives, Inc. ("North"); (5) National REO Management, Inc. ("REO"); Purpose, Inc. ("Purpose"); and Kingdom Property ("Kingdom"). Motion to Dismiss, Exhibit 2.

On November 2, 1994, the DHS contract specialist responsible for the solicitation wrote a memorandum to the DHS contracting officer providing a summary of the four proposals that had been received by the deadline. The summary indicated that the prices for the period from November 4 through November 30 were as follows:

1. REO	All Three Clusters: \$137,256.00
	Cluster #1: \$ 49,532.00
	Cluster #2: \$ 50,432.00
	Cluster #3: \$ 45,974.00

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2. Crawford All Three Clusters: \$290,460.00
 Cluster #1: \$ 96,070.00
 Cluster #2: \$ 98,430.00
 Cluster #3: \$ 95,960.00

3. Anchor All Three Clusters: \$179,635.00
 Cluster #1: \$ 66,895.00
 Cluster #2: \$ 66,895.00
 Cluster #3: \$ 45,845.00

4. Corporation for Community Development¹

 All Three Clusters: \$124,020.00*
 Cluster #1: \$ 42,120.00
 Cluster #2: \$ 43,524.00
 Cluster #3: \$ 38,376.00

*This offeror has a one-time take-over cost of \$52,903.00 for all three clusters -
- for a total cost of \$176,923.

Motion to Dismiss, Exhibit 3.

On November 23, 1994, the President of REO informed DHS' contracting officer by letter that it was "willing to accept a 21 day contract for Emergency Solicitation #JA95394 at a per diem rate of \$4,575 or \$96,079 for a 21 day term ... available and ready to take over th[e] contract on November 28, 1994." Motion to Dismiss, Exhibit 5, page 1.

An undated memorandum from the DHS contract specialist to the DHS contracting officer recommended that the contract be awarded to REO based upon an evaluation of the cost/price bid by the four offerors. It was recommended that the contract be awarded in the amount of \$96,079.20 for the period November 28, 1994 through December 18, 1994. The contracting officer approved this recommendation on November 23, 1994. Motion to Dismiss, Exhibit 5, page 2.

By letter dated November 23, 1994, the contracting officer notified the three unsuccessful offerors that they had not been selected for award. The letter informed them that "your offer has been determined, from a price standpoint, to be no longer competitive and, therefore, cannot be considered for an award under the above referenced solicitation...." Motion to Dismiss, Exhibit 5, page 3.

¹A handwritten notation on Exhibit 3 to the Motion to Dismiss indicates that this offeror is a consolidation of 16-17 and North.

On November 23, 1994, the District executed Emergency Contract No. JA/95394 with REO for a contract period of November 28, 1994 through December 18, 1994 in the amount of \$96,079.20.

On November 29, 1994, Crawford filed the instant protest with the Board.

On December 16, 1994, a bilateral modification to the emergency contract was executed which extended the contract period for an additional thirteen days (until December 31, 1994) for an additional amount of \$57,967.35. Motion to Dismiss, Exhibit 6.

Decision

A. Clear and Concise Statement

One of the two grounds for dismissal cited by the District is the protest's lack of a clear and concise statement of protest grounds as required by the Board's Rules.

As is stated in the Board's Rules, the Protestor, not the Board, has the responsibility of providing a clear and concise statement of the protest. Board Rule 302.1(c), 36 D.C. Reg. 2711 (April 21, 1989). *See also U.S. Sprint Communications Company*, 1 P.D. 33 (D.C. CAB 1987); and *Metropolitan Pest Control, Inc.*, 2 P.D. 126 (D.C. CAB 1989). Specifically, Board Rule 302.1(c) requires the Protestor to file a protest which includes

[a] clear and concise statement of the legal and factual grounds of the protest, including copies of relevant documents, and citations to statutes, regulations or contract provisions claimed to be violated.

To this end, the Board has previously held that

... neither the P[rocedure] P[ractices] A[ction] nor the Board's rules of practice and procedure imposes upon the Board the responsibility to untangle the grounds of a protest and the evidence to support such grounds.

Track-Tech International, CAB No. P-231, October 12, 1990, 38 D.C. Reg. 3137, 3139. *See also NAPA Development Corp., Inc.*, CAB No. P-324, November 16, 1992, 40 D.C. Reg. 4702, citing *Prisma Construction & Management Corp.*, CAB No. P-342, October 21, 1992, 40 D.C. Reg. 4638, 4639.

In the instant case, the Board finds that the Protestor's protest filed on November 29, 1994 was sufficient to meet the standard established by Board Rule 302.1(c). Therefore, this ground of the District's Motion to Dismiss is **DENIED**.

B. Aggrieved Party

Section 903 of the Procurement Practices Act of 1985 ("PPA") establishes the Board's jurisdiction. D.C. Code §11189.3. Specifically, section 903 states that

[t]he Board shall be the exclusive hearing tribunal for, and shall have jurisdiction to review and determine de novo:

(1) Any protest of a solicitation or award of a contract addressed to the Board by any actual or prospective bidder or offeror, or a contractor who is aggrieved in connection with the solicitation or award of a contract


Id.

As the facts demonstrate, Crawford was fourth in line for the contract award and in its protest it has not challenged the second and third ranked offerors. Consequently, Crawford is not in line for the award of the contract should its protest be sustained and, therefore, is not an interested or aggrieved party for purposes of the Board's jurisdiction. In sum, the Protestor lacks standing to bring this protest. *Scientific Games, Inc.*, CAB No. P-294, September 24, 1993, 41 D.C. Reg. 3666; *Unfoldment, Inc.*, CAB No. P-358, September 17, 1993, 41 D.C. Reg. 3656; *O'Donnell Construction Company*, CAB No. P-340, April 2, 1993, 40 D.C. Reg. 5063.

As the Board has held previously, this determination is in keeping with a number of Federal procurement decisions on point. Specifically, the Comptroller General has held that a Protestor will not be deemed "interested," pursuant to the Competition in Contracting Act of 1984, 31 U.S.C. § 3551(2), if the Protestor would not be in line for award should its protest be upheld. The GSBCA has made a similar holding. *See generally MTI-RECYC, A Joint Venture*, CAB No. P-287, October 1, 1992, 40 D.C. Reg. 4554.

ACCORDINGLY, based upon the facts, legal precedent and reasoning set forth above, the protest is hereby **DISMISSED**, with prejudice.

DATE: March 22, 1995


CYNTHIA G. HAWKINS-LEÓN
Administrative Judge