

GOVERNMENT OF THE DISTRICT OF COLUMBIA
CONTRACT APPEALS BOARD

PROTEST OF:

ROBERSON INTERNATIONAL)
) CAB No. P-0734
Under IFB No. DCAM-2006-B-0033)

For the Protester: Mr. Steven Roberson, *pro se*. For the District of Columbia Government: Howard Schwartz, Esq., Senior Assistant Attorney General, and Talia S. Cohen, Esq., Assistant Attorney General.

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

OPINION DENYING PROTEST

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Roberson International has protested its failure to receive an award to provide janitorial and related supplemental services at various District facilities. The contracting officer determined Roberson to be nonresponsible due to insufficient evidence of its financial condition and its ability to perform the requested services. Roberson has not responded to the District's Agency Report. Therefore, we conclude that Roberson concedes the facts presented by the District. Because Roberson has not rebutted the evidence presented by the District supporting the nonresponsibility determination, we deny the protest.

BACKGROUND

On November 23, 2005, the District issued Invitation for Bids ("IFB") No. DCAM-2006-B-0033 for janitorial and related supplemental services at various District facilities in support of the Office of Property Management, the Department of Human Services, the Metropolitan Police Department, the Department of Public Works, the Department of Motor Vehicles, and the University of the District of Columbia. (Agency Report ("AR") Ex. 1, at 2-20; Declaration of Hans Paeffgen, Contracting Officer, AR Ex. 7 (¶ 3)).

The IFB was set aside for certified Small Business Enterprise ("SBE") bidders under the provisions of the Small, Local, and Disadvantaged Business Enterprise Development and Assistance Act of 2005, Title II, Subtitle N, of the Fiscal Year 2006 Budget Support Act of 2005, D.C. Law 16-33, effective October 20, 2005. SBEs eligible to bid were to be certified as small in the procurement category of General Services—Building Maintenance/Janitorial Services. (AR Ex. 1, §§ B-3; AR Ex. 7 (¶ 4)). The IFB provided for the award, under each of aggregate award groups 1-5, of up to five requirements contracts with payment based on fixed unit prices. Each contract would have a one-year base term and up to four one-year option periods. (AR Ex. 1, §§ B-2 and F.2-F.3; AR Ex. 7 (¶ 4)).

On December 19, 2005, the Office of Contracting and Procurement ("OCP") issued Amendment No. 1, which extended the bid opening date until January 10, 2006. By Amendment No. 2, issued on

December 21, 2005, OCP established a date for a pre-bid conference, which was held on December 30, 2005. In addition, OCP scheduled a site visit for prospective contractors to view core buildings and facilities and conducted the site visit on January 5, 2006. By Amendment No. 3, issued on January 5, 2006, OCP extended the bid opening date and answered written questions submitted by prospective bidders. On January 10, 2006, by IFB Amendment No. 4, OCP made a final extension of the bid opening date to January 20, 2006. (AR Exs. 7 (¶ 5) and 2).

The IFB provided for award to the responsible bidder who submitted a responsive bid with the lowest evaluated price for the combined base year and four options years. (AR Exs. 7 (¶ 6) and 1, IFB §§ B, L.1, L.13, L.14 and L.16). The evaluated price, in each award group would be the bidder's actual bid price reduced by the LSDBE preferences provided in IFB § M.2, namely a percentage reduction of the offered price based upon the LSDBE points for the LSDBE categories in which each bidder was certified by the District's Department of Small and Local Business Development. For evaluation purposes, a maximum twelve percent reduction in each actual bid price was possible. (AR Exs. 7 (¶ 6) and 1).

On or before January 10, 2006, eighteen prospective contractors, including Roberson, submitted bids for each of the five aggregate award groups. OCP analysts prepared independent bid tabulations for the base and option years for each of the five aggregate award groups. The Janitorial Bid Summary, Exhibit 3 to the District's Agency Report, summarizes the prices offered by each of the bidders for the base and option years, the total prices offered by each of the bidders for all five years, and the evaluated prices offered by each of the bidders for all years. (AR Exs. 7 (¶ 7) and 3).

By letter dated February 28, 2006, the contracting officer informed Roberson that it was the apparent low bidder for award group 4 and requested that Roberson provide the District with certain financial information for the District to make its responsibility determination. (AR Ex. 5). In response to the District's letter, Roberson submitted the following documents: financial information for 2003 and 2004, key personnel information, and a commercial lease agreement. (AR Ex. 5). By a determination and findings dated March 31, 2006, the contracting officer determined Roberson nonresponsible. In support of the determination, the contracting officer found that: (1) Roberson failed to provide the District with 2005 financials thus preventing the contracting officer from determining whether Roberson currently had the financial resources adequate to perform the contract; (2) Roberson did not demonstrate that it had past experience in the requisite size or scope to perform the requirements of the contract; and (3) Roberson did not perform any janitorial service contracts in 2004 since Roberson's income for 2004 was derived entirely from hauling and storage rather than from janitorial services.

By a determination and findings dated March 29, 2006, the contracting officer determined that Motir Services Inc. ("Motir") was the lowest evaluated responsive and responsible bidder for aggregate award groups 1, 2 and 3 and that R&R Janitorial, Painting, and Building Services, Inc. ("R&R Janitorial") was the lowest evaluated responsive and responsible bidder for aggregate award groups 4 and 5. (AR Exs. 7 and 8). The contracting officer thereafter made awards to Motir and R&R Janitorial.

On May 30, 2006, Roberson filed the instant protest challenging the District's awards, arguing that it was the lowest bidder for award group 4 and thus should have received award. Roberson concluded that the contracting officer must have improperly evaluated the bids based on criteria not

disclosed in the solicitation. The District filed its Agency Report on June 20, 2006. Despite requests from the Board, Roberson has never responded to the Agency Report.

DISCUSSION

We exercise jurisdiction over this protest pursuant to D.C. Code § 2-309.03(a)(1). Our Board rules provide in pertinent part:

307.3 Failure of the protester to file comments, or to file a statement requesting that the case be decided on the existing record, or to request an extension of time for filing, shall result in closing the record of the case and may result in dismissal of the protest.

307.4 When a protester fails to file comments on an Agency Report, factual allegations in the Agency Report's statement of facts not otherwise contradicted by the protest, or the documents in the record, may be treated by the Board as conceded.

We treat as conceded the District's statement of facts in its Agency Report regarding the bases for the nonresponsibility determination and conclude that Roberson has not demonstrated that the contracting officer violated law or the terms of the solicitation in determining Roberson nonresponsible. Roberson has provided no evidence to rebut the agency's record of the nonresponsibility determination.

CONCLUSION

We conclude that the record adequately supports the determination and findings of the contracting officer. Accordingly, for the reasons discussed above, we deny Roberson's protest.

SO ORDERED.

DATED: August 23, 2006

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

CONCURRING:

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