GOVERNMENT OF THE DISTRICT OF COLUMBIA
CONTRACT APPEALS BOARD

PROTEST OF:

DENTAL BENEFIT PROVIDERS, INC.	)	
	)	CAB No. P-623
Under Solicitation No. 9022-AA-NS-1-JX	)	

For Dental Benefit Providers, Inc.: Leslie H. Lepow, Esq., Kevin M. Kordziel, Esq., Jenner & Block. For Greater Washington Dental Service, Inc.: Christopher R. Yukins, Esq., David S. Black, Esq., Holland & Knight. For the Government: Howard Schwartz, Esq., Warren J. Nash, Esq., Assistants Corporation Counsel.

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

OPINION

Dental Benefit Providers, Inc. ("DBP") protests the award of a contract to Greater Washington Dental Services, Inc. ("GWDS") for a prepaid dental benefits program. DBP alleges that the District improperly awarded preference points to GWDS, that GWDS is incapable of meeting minimum performance requirements, that the District's technical evaluation of the proposals was flawed, that the District improperly determined GWDS to be a responsible offeror, and that the District failed to perform a cost analysis of GWDS's proposal. We conclude that the District did not violate law, regulation, or the terms of the solicitation in its evaluation of proposals, and in its selection and award decision. Accordingly, we deny the protest.

BACKGROUND

On May 4, 1999, the Office of Contracting and Procurement ("OCP") issued Solicitation No. 9022-AA-NS-1-JX, requesting proposals for award of a firm-fixed price contract to provide a prepaid dental services benefit program for union and non-union District government employees. (Agency Report ("AR") Ex. 1). The contract term was for a base year and four one-year options. Section C.3.1 of the solicitation provides:

> The purpose of this procurement is to implement a dental services benefits program that will result in the provision of high quality, accessible dental services at cost competitive rates, initially to approximately 10,000 union employees of the District government. Services may be expanded in the future to include prepaid benefits to additional union and non-union employees, provided the contractor demonstrates satisfactory service delivery to the initial group of plan participants.

Section C.3.2 further provides:

> The contractor shall develop or provide evidence of an existing network of dental service providers with the capacity to deliver services to 10,000 District of Columbia employees and their eligible dependents. As the District may open enrollment in the plan to an estimated 26,000 additional union and non-union employees and their eligible dependents, contractors are expected to demonstrate the capacity to handle an increased patient load and to offer more cost-effective premium rates based on the expansion of services to a larger group.

Section B required offerors to propose prices based on biweekly premiums for estimated enrollments in the following categories: Biweekly Self Only Premium for Dental Benefits; Biweekly Family I Premium for Dental Benefits; and Biweekly Family II Premium for Dental Benefits. Prices were required for the base year and the four option years based on the enrollment estimates in Section B. The estimated enrollment for each of the five years was divided into three groups: Compensation Units I and II Employees; All Other Union Employees; and Non-Union Employees.

Section C.5, entitled "Performance Requirements", provides in relevant part:

> **The following section summarizes the minimum performance requirements of this statement of work and sets forth the standards by which the quality of the contractor's performance will be assessed.**
>
> C.5.1 The contractor shall inform all eligible employees of the availability of the dental plan, including but not limited to addresses, telephone numbers of its network locations and registration procedures.
>
> C.5.2 The contractor shall provide prepaid dental services to all eligible employees to meet the American Dental Association standards for dental care.
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> C.5.3 The contractor shall issue identification (ID) cards and plan directories to all eligible employees within 10 working days of enrollment.
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> C.5.4 The contractor shall maintain geographically diverse provider facilities adequate to serve the approximate distribution of covered employees as follows: The District of Columbia (45%); Prince George's and Montgomery Counties in Maryland (46%); Northern Virginia (including Lorton) (9%).
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> C.5.5 The [c]ontractor shall ensure that 85% of the plan provider facilities are located within one (1) mile of public transportation.
>
> C.5.6 The [c]ontractor shall schedule dental service appointments for all participants within 48 hours of requests for appointments and maintain a log of all requests and appointments, which shall be made available to the District upon request.
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> C.5.7 The [c]ontractor shall provide dental services to all participants within two (2)

> weeks after an appointment is scheduled and must keep a log of all schedules and time of service, which shall be made available to the District upon request.
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> C.5.8 The [c]ontractor shall provide emergency dental services to plan participants within 8 hours of participant's request for emergency care and shall maintain a log of all emergency care provided, which shall be made [available] to the District upon request.
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> C.5.9 The [c]ontractor shall provide dental services to all participants within an average of 15 minutes of scheduled appointments.
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> C.5.10 The [c]ontractor shall cooperate with the District in its conduct of Customer Satisfaction Surveys.

Section C.5 also contains a "Performance Requirements Matrix" showing the performance requirements and associated performance standards for measuring acceptable quality levels.

The contract is a fixed unit price requirements type contract in the estimated amount of $4,086,546.10 for the base year period. (AR at 6). Under the terms of the contract, the contractor is responsible for providing prepaid dental services and related plan administration and management services. The price is based on biweekly premiums proposed in the GWDS's second best and final offer (BAFO).

The offerors, who are dental benefits program providers, do not typically employ the dentists who are part of their networks. Rather, each program provider enters into provider agreements with dentists whereby the dentists provide the dental services for the program provider and the provider pays the dentist for the services. Thus, the District government does not make direct payments to the provider's dentists and has no contractual arrangement with the provider's dentists.

DBP raises the issue in its protest whether the dentists in GWDS's network are subcontractors of GWDS. GWDS received a 5 point preference for evaluation purposes because it was certified as a local business enterprise ("LBE") under the law providing for preferences. DBP points out that the law requires a certified prime contractor to perform at least 50 percent of the contract effort, or if 50 percent or more is subcontracted, the subcontractors must be certified as LBEs, disadvantaged business enterprises ("DBEs"), or small business enterprises ("SBEs"). Because the majority of work under this solicitation consists of the actual dental services provided by dentists, DBP argues that GWDS will not perform at least 50 percent of the contract work, and that GWDS cannot meet the 50 percent requirement of dentist subcontractors who are certified as LBEs, DBEs, or SBEs. The District and GWDS concede that performance by GWDS's 8 employees is limited to management and administration of the dental benefits programs and constitutes appreciably less than 50 percent of the contract work. The District and GWDS assert that GWDS's dentists should not be counted as GWDS subcontractors under the solicitation. DBP says that Amendment No. 2 of the solicitation makes clear that the dentists are subcontractors.

Amendment No. 2 (the cover sheet of which states that it is an amendment of Solicitation No. 9022-AA-NS-1-JX), dated June 7, 1999, provides *inter alia*:

> *Solicitation number 9022-AA-NS-1-JX, as amended, is further hereby amended to clarify the District's requirements relating to Prepaid Dental Care Benefits for Union and Non-Union Employees, as follows*:
>
> 1. Pursuant to Section L.4, the District's responses to questions raised by prospective offerors are furnished as Attachment J.10. . . .

Attachment J.10 contains responses from the District to various questions from offerors, including Question 19 concerning the question of subcontractors:

> 19. QUESTION Section I.14.1 discusses Subcontractors. It is common practice in the industry to enter into independent contracts with providers for the delivery of services and materials. For purposes of this RFP and performance under an agreement, are these providers considered Subcontractors? If so, what information must be provided to the District? Would providing a sample of the standard Provider Agreement suffice?
>
> ANSWER Independent Contractors with whom the Contractor enters into agreements to provide services or materials under this contract would be considered Subcontractors and subject to the provisions of Section I.14.1. Each Subcontractor must be identified and a copy of the standard Provider agreement provided.

In an affidavit attached to the District's response to DBP's comments on the Agency Report, the current contracting officer for the dental benefits procurement states:

> 3. In April 1996, I was appointed as an Administrative Contracting Officer by the Director of Federal Employees Health Benefits Program. In that capacity, I was familiar with contracts and contracting regulations related to the federal health benefits program. The federal definition of subcontractor, set forth at 48 CFR 1602.170.14 in the Federal Acquisition Regulations System that applies to federal health benefit contracts, specifically excludes from the definition providers of direct medical services or supplies. That regulation provides as follows:
>
> > Subcontractor means any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime contractor or another subcontractor, except for providers of direct medical services or supplies pursuant to the Carrier's health benefits plan.
>
> 4. When I was assigned as the Contracting Officer for Solicitation No. 9022-AA-NS-1-JX in December 1999, I reviewed the solicitation, the amendments, and the history of the procurement. I became familiar with all of the documents. After I completed my review, I determined that the answer to Question No. 19 in amendment number 2 refers to Section I.14.1 in RFP 9045-AA-NS-1-RO, the Optical benefits solicitation. There is no section I.14.1 in RFP 9022-AA-NS-1-JX Dental Benefits. While it is true that Section I.13.1 of the dental benefits solicitation contains a

> Subcontracts clause that is similar to the clause in section I.14.1 of the optical benefits solicitation, I believe that the Contracting Officer at the time did not intend the answer to Question 19 to apply to the dental benefits solicitation. In any event, even if the previous Contracting Officer had intended the answer to Question 19 in amendment number 2 to apply to the contract for dental benefits, the answer is incorrect. Providers of dental services are a separate category of independent contractors and should not be considered subcontractors under this procurement because the dental service providers do not provide services that assist the prime contractor in administering the dental benefits program. Therefore, for purposes of considering whether the prime contractor performs more than 50% of the work, the work of direct providers of Dental Services and supplies should be excluded from the equation.
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> 5. I am familiar with the treatment of subcontractors under federal health benefits plans, and I consider the federal regulation to be a statement of the industry standard definition of subcontractors in the health care industry. In addition, I know that the District government looks to the federal government for guidance in procurement matters, and under federal health benefits contracts, providers of direct medical services and supplies are not considered to be subcontractors.
>
> 6. I intend to modify the contract with GWDS to make clear that the providers of dental services are not subcontractors to GWDS, within the meaning of contract clause I.13 or D.C. Code § 1-1153.3(c).

Based on our review of the record, we find that the answer to Question 19 in Amendment No. 2 was applicable to both the dental and optical procurements and the fact that the similar clause in the one solicitation was numbered I.13.1 and the other was numbered I.14.1 is of no consequence. We further find, that notwithstanding the federal definition of subcontractors with regard to medical services found in the FAR, and the contracting officer's belief concerning industry standard, the dental solicitation unequivocally defines the dental service providers as subcontractors for purposes of the solicitation and performance.

> Section M of the solicitation, concerning evaluation for award, provides in M.1.1:
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> The contract will be awarded to the responsible offeror whose offer is most advantageous to the District, based upon the evaluation criteria specified below. Thus, while the points in the evaluation criteria indicate their relative importance, the total scores will not necessarily be determinative of award. Rather, the total scores will guide the District in making an intelligent award decision based upon the evaluation criteria. The District reserves the right to reject any or all proposals determined to be inadequate or unacceptable. The District may award a contract on the basis of initial offers received, without discussions. Therefore, each initial offer should contain the offeror's best terms from a firm-fixed price basis and technical standpoint.

The evaluation criteria from Section M.3 are summarized below along with their maximum possible scores:

M.3.1	Quality of Dental Care Services	20 points

M.3.2	Accessibility of Network Facilities/Provider Locations	20 points
M.3.3	Dental Management and Plan Design	20 points
M.3.4	Past Performance	10 points
M.3.5	Financial Practices, Guarantees and Cost Sharing	10 points
M.3.6	Cost/Price Criteria Points	20 points

Section M.4.1 provides up to 12 preference points for certified LBEs (5 points), DBEs (5 points), and businesses located in enterprise zones (2 points).

Six offerors submitted proposals by the closing date of June 16, 1999: DBP, GWDS, Avesis of Washington, D.C., Inc., The Dental Network, Quality Plan Administrators, Inc., and Spectera Dental Services. (AR at 4). A technical evaluation panel was used to evaluate the proposals. The panel completed its initial technical evaluation in July 1999, with evaluators completing Selection/Evaluation forms for each offeror and including narrative comments explaining the point scores assigned. (AR, Ex. 4 (Consensus Report)). A gross score was computed for each offeror by adding the technical point scores assigned by the six evaluators. The gross scores were converted to a "technical score" based on a formula set forth in Section M.3.6.2 of the solicitation. The top three technical scores were 80.00 for GWDS, 79.08 for The Dental Network, and 78.57 for DBP. After evaluation of the initial proposals, the contracting officer determined that all offerors had a reasonable chance of being selected for award. OCP held discussions with the six offerors during the period August 14-17, 1999. On September 10, 1999, OCP received BAFOs from the offerors. The panel evaluated the BAFOs and rescored each offeror's proposal. On December 1, 1999, the panel met to discuss the proposals and reach a final consensus on the technical scores. (AR, Ex. 4 (Consensus Report, at 2)). The final consensus report of the panel was approved on December 14, 1999, and showed The Dental Network receiving a total technical score of 80 points, followed by DBP at 78.53, followed by GWDS at 75.86.

The panel recommended further evaluation of the panel's findings by an independent employee benefits consulting firm, particularly with respect to certain "high" concerns expressed by the panel in a risk assessment section of the report. Three such concerns related to GWDS, namely, its financial soundness, the fact that several dental offices are owned by GWDS officers, and a condition in its proposal that it "reserves the right to submit a new pricing proposal for any additional covered populations." (AR, Ex. 4 (Consensus Report, at 3)). OCP prepared a price analysis of the offerors. The contracting officer reviewed the consensus report, the cost/price analysis, and obtained an independent evaluation of the report by an employee benefits consultant. (AR, Ex. 5). The consultant prepared a report assessing DBP and The Dental Network, concluding that DBP had the superior plan. (AR, Ex. 5). On April 17, 2000, the District approved a Price Negotiation Memorandum that recommended award to DBP, to include approximately 9,700 union employees and 8,700 non-union employees. (AR, Ex. 5). The Price Negotiation Memorandum designated GWDS's price proposal as "disqualified" and was omitted from the price analysis of the other offerors. By this time, the contracting officer had decided to reject GWDS's offer because of an unacceptable condition in its BAFO. In May 2000, the employee benefits consultant analyzed the proposals of the other three

offerors and concluded that DBP offered the best value. The contracting officer reviewed the reports of the employee benefits consultant along with the remainder of the evaluation record and determined to award the contract to DBP. (AR, Ex. 6). GWDS filed a protest with us on June 19, 2000 (CAB No. P-618), and Avesis file a protest on June 28, 2000 (CAB No. P-619). GWDS alleged that the contracting officer improperly rejected its offer, because despite the discussions conducted in August 1999, no mention was ever made that its offer contained an unacceptable condition. During the pendency of the protest, on June 30, 2000, the contracting officer decided to reopen discussions and request a second round of BAFOS due July 6, 2000. On June 30, the contracting officer also issued a stop-work order to DBP. (AR, Ex. 6). In its second BAFO, GWDS revised its offer by removing the unacceptable condition, increasing its prices by approximately 4.5 percent, and submitting updated financial statements. All other offerors maintained their price and technical proposals as previously submitted. (AR at 5, Ex. 6).

After reviewing the offers, including GWDS's offer as modified by the second BAFO, the contracting officer determined that GWDS was entitled to 20 points for the price criterion, followed by DBP with 17.75 points for price. GWDS received the high score of 100.85 which includes five points for LBE certification, followed by DBP with a score of 96.27, followed by The Dental Network with a score of 96.02. In her Source Selection Statement of July 10, 2000, the contracting officer states in relevant part:

> I hereby determine that the best and final offer of [GWDS] . . . is most advantageous to the District, considering price and other factors included in the solicitation. After reviewing and evaluating the proposals, the best and final offers, the second best and final offers, the report of the evaluation panel and the reports of the employee benefit consultant . . . , I recommend award of the contract for union employees . . . , along with non-union employees, alternative B.5.2, to [GWDS].
>
> . . . .
>
> Based upon the Contracting Officer's independent review of the proposals, the reports of the evaluation panel, the Cost/Price Analys[is], and reports of the employee benefits consultant, award of the contract is recommended to [GWDS], the top ranked offeror. Since all the proposals were technically acceptable, price and local, small, disadvantaged business preference points became the determining factor. The price proposed for all alternatives and all option years by GWDS is 11.23% lower than the next low offeror, [DBP]. For alternative B.5.2, the base year price proposed by GWDS is 20.8% lower than the base year price of DBP, while the five year price is 15.63% lower.
>
> A preaward survey has found [GWDS] to be in compliance with District tax laws and equal employment requirements. A determination of responsibility has been made.

(AR, Ex. 6). The contracting officer had requested an analysis of all six offerors by the independent consultant. The consultant's report, dated July 11, 2000, continues to recommend DBP. The consultant identified risk factors associated with GWDS, summarized in relevant part:

> GWDS is offering the lowest price; however, concerns of their financial status and network adequacy raise valid questions about their ability to deliver on the services requested in the RFP. The District needs to assess whether the potential for significant price reductions is worth these risks. . . .

(AR, Ex. 6). On August 1, 2000, the District awarded the contract to GWDS for an estimated amount of $4,086,546.10 for the base period covering union employees in Compensation Units I and II and non-union employees. (AR, Ex. 8). DBP filed its protest on August 15, 2000. The District filed its Agency Report on September 5, 2000. DBP filed comments to the Agency Report on September 14, 2000, and added as a supplemental ground for protest that the District failed to perform a cost or price analysis of GWDS's proposal as required by 27 DCMR §§ 1625 and 1626. On October 12, 2000, the District responded to DBP's comments and the additional protest ground. Additional filings have been made by DBP, the District, and intervenor GWDS.

DISCUSSION

We exercise protest jurisdiction pursuant to D.C. Code § 1-1189.3(a)(1).

A. The Award of 5 Preference Points to GWDS

DBP argues that the contracting officer improperly awarded 5 preference points to GWDS for evaluation of its proposal because GWDS cannot, as required by D.C. Code § 1-1153.3(c), perform 50 percent of the contract work with its own organization and that most of the contract work is to be performed by dentists who are not certified LBEs, DBEs, or SBEs under D.C. Code §§ 1-1153.4 and 1-1153.5. The District and GWDS respond that the solicitation is directed to administration and management of the dental program, that GWDS will perform that work, and that in any event the dentists should not be treated as subcontractors.

D.C. Code § 1-1153.3 provides in relevant part:

> (a) To achieve the goals set forth in § 1-1153.2, programs designed to assist contractors who are certified as local business enterprises, disadvantaged business enterprises, or small business enterprises shall be established by rules issued by the Mayor pursuant to § 1-1153.6. Such programs shall be implemented by each agency within 10 days of March 17, 1993. Local, small, or disadvantaged business enterprises shall not be limited to bidding only on contracts within these programs.
>
> (b)(1) The Mayor shall include among these programs a bid preference mechanism for local business enterprises and disadvantaged business enterprises and a two-tier small business set-aside program at the contract level, which shall include a separate set-aside program for small business enterprises with gross revenues of $1,000,000 or less, which shall provide that a business becomes ineligible for participation in this set-aside program when the business has gross revenues in excess of $1,000,000 for 2 consecutive years, and a separate set-aside program for all small business enterprises, and for local and disadvantaged business enterprises at the subcontracting level. In evaluating bids and proposals, agencies shall award

preferences, in the form of points, in the case of proposals, or a percentage reduction in price, in the case of bids, as follows:

(A) Five points or 5% for local business enterprises;
(B) Five points or 5% for disadvantaged business enterprises; and
(C) Two points or 2% for businesses located in enterprise zones.

(2) A bid or proposal may be entitled to any or all of the above preferences for which it is qualified.

(c) A prime contractor certified by the Commission shall perform at least 50% of the contracting effort, excluding the cost of materials, goods, and supplies, with its own organization and resources, and if it subcontracts 50% of the subcontracted effort excluding the cost of materials, goods, and supplies shall be with certified local, disadvantaged, or small business enterprises. The contract will include a certified statement to this effect. Waivers of the above requirements may be given in writing by the Director of the Local Business Development Administration.

The intent of an offeror to comply with the 50 percent subcontractor limitation is generally a matter of contractor responsibility, not responsiveness. *American Bristol Industries, Inc.*, B-249108, Oct. 22, 1992, 92-2 CPD ¶ 268; *cf. National Medical Staffing, Inc.*, 69 Comp. Gen. 500, 90-1 CPD ¶ 530 (awardee took exception to RFP requirement concerning small business subcontracting limitations). The 50 percent subcontracting requirement is not a "status" criterion, such as the LBE, DBE, and enterprise zone certification requirements. *See* D.C. Code § 1-1153.1(3), (5), (7). For purposes of awarding preferences under D.C. Code § 1-1153.3(b), the certification requirements are by their nature to be ascertained at the closing date for proposals or bids. *E.g.*, *Trifax Corp.*, CAB No. P-539, Sept. 25, 1998, 45 D.C. Reg. 8842, 8849. The requirements in D.C. Code § 1-1153.3(c) that the prime contractor "shall perform at least 50% of the contracting effort" and that "if [the prime contractor] subcontracts 50% of the subcontracted effort excluding the cost of materials, goods, and supplies shall be with certified local, disadvantaged, or small business enterprises" are performance requirements. Thus, absent GWDS taking an exception in its offer to these performance requirements – which would render its offer nonresponsive – GWDS would be required to abide by the requirements during its performance of the contract work. *A.B. Chelini Co.*, CAB No. P-556, Jan. 25, 1999, 46 D.C. Reg. 8545, 8548. As we read the provision in section 1-1153.3(c) for waiver of these requirements by the Director of the Local Business Development Administration, we see no limitation on when a waiver may be made by the Director. The best practice is to obtain any needed waiver prior to issuing the solicitation. Nevertheless, we can envision situations where the contracting officer would seek a waiver during the procurement phase because the unsuitability of the subcontracting requirements might be brought to the attention of the contracting officer by a prospective offeror. Further, it is possible that the unsuitability of the subcontracting requirements only becomes clear after the contractor commences performance. In the present case, the contracting officer that issued Amendment No. 2 probably did not consider the implications of the subcontract requirement vis-à-vis D.C. Code § 1-1153.3(c) and its preference provisions and 50 percent contract effort requirement.

DBP may be right that neither the District nor GWDS realized the 50 percent requirement presented an issue until it was raised by DBP in its protest. The contracting officer appears to state in

her affidavit that she realized there was a subcontracting issue when she assumed contracting officer responsibility in December 1999, but that she interpreted the answer to Question 19 as applying only to the optical benefits solicitation, not the dental benefits solicitation. In light of the clear answer to Question 19 of Amendment No. 2, the contracting officer should have issued another amendment revising the applicability of the subcontractor definition. Because she did not do so, we are unable to agree with the District's various arguments that the dentists should not be considered subcontractors, that the FAR subcontractor definition applicable to federal health benefit contracts, which excludes providers of direct medical services, is applicable here, or that industry standards do not treat dental providers as subcontractors. We conclude that the preference award to GWDS is sustainable on another basis. It is clear that GWDS in its offer did not take exception to meeting the subcontractor requirements. Although it could have been difficult, GWDS may have been able to employ dentists or have sufficient subcontracted dentists certified as small business enterprises ("SBEs"), LBEs, or DBEs. However, under the circumstances, we do not find that the District violated law by seeking and obtaining a waiver from the Director of the LBDA after contract performance had begun when the contracting officer realized from the protest filing that the subcontracting requirements were an issue.

For the reasons stated above, it is irrelevant that the LBDA Director attempted to make the waiver retroactive to June 16, 1999. The waiver was valid even though executed after award and after GWDS started performance. DBP cites 27 DCMR § 805.2 which provides:

> Waiver of the subcontracting requirements of section 805.1 [which reflect the requirements contained in D.C. Code § 1-1153.3(c)] shall be given in writing by the contracting officer, prior to acceptance of bids or proposals, with the prior approval and consent of the Director of The Department of Human Rights and Minority Business Development (DHRMBD) [now the Director of the LBDA].

Although this regulation authorizes a contracting officer to seek a waiver prior to acceptance of bids or proposals, we do not read this section in conjunction with the remainder of section 805 as attempting to limit the authority of the LBDA Director, under D.C. Code § 1-1153.3(c), to issue a waiver after contract award. There is the possibility for abuse of the preference system and outcomes that contradict the goals sought by the statute. The Council is the proper forum for addressing such issues.

Having reviewed the arguments of DBP, the District, and GWDS, we conclude that the contracting officer did not violate law, regulation, or the terms of the solicitation when she awarded 5 points to GWDS for being a certified LBE.

B. Minimum Requirements of the Solicitation

DBP contends that GWDS failed to meet the minimum requirements of the solicitation and lacked the capacity to provide services as specified in the solicitation. Specifically, DBP states that GWDS cannot provide with only 36 dentists adequate coverage for the 9,700 union and 8,700 non-union employees and their dependents as provided in the contract executed with GWDS. Using the District's benchmark of 1 dentist per 500 patients, DBP argues that GWDS would need a network of 92 dentists. The District responds that the contracting officer properly determined that GWDS is a responsible contractor who can meet all contractual requirements. The District contends that the benchmark set forth in the solicitation is 10,000 persons, and using that standard GWDS's network of

dentists is adequate.

When the contracting officer was making the final evaluation and selection decision in July 2000, there was no doubt that the District was intending to contract for the approximately 9,700 union and 8,700 non-union employees. In any event, the District has determined that GWDS's rather small network of dentists is adequate to meet the minimum requirements. It is primarily the role of the contracting agency to make the technical determination of whether GWDS's existing dental network, and its ability to expand that network, satisfy the relevant minimum requirements for the proposed contract award. Although several of the evaluators and the independent consultant expressed reservations, and those reservations may have merit, we cannot say that the agency's determination violates the terms of the solicitation or lacks any rational basis.

C. Technical Evaluation of the Proposals

DBP contends that the contracting officer's technical evaluation of GWDS's and DBP's proposals was unreasonable, arbitrary, and capricious. Contrasting GWDS's dental network of 36 dentists with DBP's network of 517 general dentists and 416 specialists, DBP labels as irrational and unreasonable the District's assigning GWDS the highest score under the Quality of Dental Services factor and the third highest score under the Accessibility of Network Facilities/Provider Locations factor, given that GWDS had the lowest network capacity of the six offerors. DBP also complains that the contracting officer failed to act on the independent consultant's recommendation to consider the risks associated with GWDS's network in her evaluation. DBP alleges that the technical evaluation of DBP's proposal was unreasonable in two respects: (1) DBP was downgraded under the Financial Practices Evaluation factor, receiving the third highest score; and (2) DBP was penalized under the Dental Management and Plan Design factor (receiving the second highest score) for proposing a capitation-based payment scheme when its proposal made clear that it used a combination of capitation and fee-for-service payments. Finally, DBP alleges that the contracting officer failed to properly document her source selection decision.

Our standard of review for proposal evaluations and the selection decision is whether they were reasonable and in accord with the evaluation and selection criteria listed in the solicitation and whether there were material violations of procurement laws or regulations. *Trifax Corp*., CAB No. P-539, Sept. 25, 1998, 45 D.C. Reg. 8842, 8847. We conclude that the technical evaluations and selection decision were adequately documented and rationally supported.

The Quality factor, M.3.1, focuses on quality of the services, which is not necessarily dependent on the size of the network. Having reviewed the technical evaluations and the consensus report, we see no basis for concluding that the evaluation under this factor was unreasonable or irrational. The evaluation of the Accessibility factor, M.3.2, presents a closer question, but even here our role is not to substitute our own evaluation for the one conducted by the evaluation panel and contracting officer. The evaluators did an evaluation according to the factor and subfactors, and reasonably documented their evaluation and scoring. Based on the record presented, the small differential between DBP's score and GWDS's score does not render the evaluation irrational or unreasonable. We have reviewed the supporting documentation for the evaluation and scoring of DBP under the Financial Practices and Dental Management factors. Although these present close questions as well, we are unable to conclude from the record the evaluation of these factors and associated subfactors were unreasonable or

irrational.

The contracting officer had adequate documentation of the technical evaluation and performed her own independent evaluation of the offers, guided by the evaluation panel's consensus evaluation report. The contracting officer augmented the evaluation with analysis provided by an independent employment benefits consultant. The record shows the basis for the evaluations, an assessment of each offeror's ability to accomplish the technical requirements, and relative differences among the proposals, their strengths, weaknesses, and risks. We believe the contracting officer considered the entire evaluation record in reaching her selection decision. For these reasons, we conclude that the contracting officer properly conducted the evaluation and selection and supported her decision with adequate documentation.

D. Responsibility Determination and Price/Cost Analyses

DBP contends that the District's determination that GWDS is a responsible contractor was unreasonable because (1) GWDS lacks the technical capacity and experience to perform a contract of this magnitude and technical complexity; (2) GWDS lacks the financial resources to perform a contract of this size; (3) GWDS's evaluated price of $41,880,616 is unrealistically low. DBP also argues that OCP's price analysis was seriously inadequate and that OCP failed to perform a cost analysis as required by 27 DCMR § 1626

Under the circumstances, we cannot say that the District's responsibility determination lacked any reasonable basis. The District conducted a pre-award survey of GWDS, GWDS has a satisfactory past performance record, OCP analyzed GWDS's financial soundness, taking into account the updated financial statements submitted in its second BAFO, and OCP performed a price analysis of GWDS's prices with the prices proposed by the other offerors. We believe that the price analysis meets the standard of rationality and is consistent with the pricing terms of the solicitation and 27 DCMR § 1625. Because the contract was of a firm-fixed unit price type, there was adequate price competition, and the solicitation did not require the submission of detailed cost data, the District was not required to perform a cost analysis under 27 DCMR § 1626 beyond the cost considerations that were made in connection with the price analyses and historical cost figures known by the District. Although the District might have profitably obtained more detailed cost information from GWDS in connection with the responsibility determination, its failure to do so does not render the responsibility determination irrational under the circumstances presented here. Regarding the responsibility of GWDS to perform the technical requirements of the contract, we give weight to the technical evaluation determination conducted by the evaluators and the contracting officer. Taken together, the record provides a reasonable basis for the responsibility determination.

CONCLUSION

We have carefully considered each of DBP's protest arguments. Having concluded that DBP has not shown that the District violated law, regulation, or the terms of the solicitation in evaluating and selecting GWDS for award, we deny DBP's protest.

SO ORDERED.

DATED: December 1, 2000

/s/
JONATHAN D. ZISCHKAU
Administrative Judge

CONCURRING:

/s/
PHYLLIS W. JACKSON
Administrative Judge

/s/
MATTHEW S. WATSON
Administrative Judge