

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**

**CONTRACT APPEALS BOARD**

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March 26, 1999

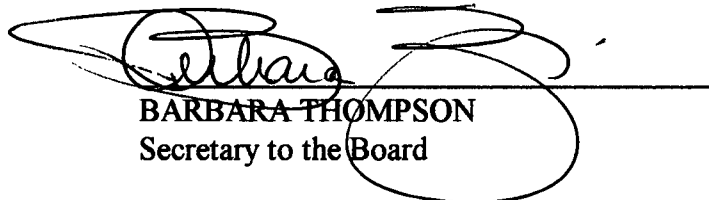
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SUBJECT: CAB No. P-563, (Protest Of: Sunshine Multi Service Center, Inc.)

Attached is a copy of the Board's Opinion denying protest with prejudice.



BARBARA THOMPSON  
Secretary to the Board

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
CONTRACT APPEALS BOARD

PROTEST OF:

SUNSHINE MULTI SERVICE	)	
CENTER, INC.	)	CAB No. P-563
	)	
Under RFP No. JA-SC-CS-70019-01,	)	
Group No. 96GH57ES	)	

For the Protester: David C. Beck, Esq. and Karen S. Lovitch, Esq., Powers, Pyles, Sutter & Verville, P.C. For the Government: Howard Schwartz, Esq. and M. Christopher Malone, Esq., Assistants Corporation Counsel, D.C.

Opinion by Chief Administrative Judge Lorilyn E. Simkins, with Administrative Judges Jonathan D. Zischkau and Phyllis W. Jackson, concurring.

**OPINION**

Sunshine Multi Service Center Inc. ("Sunshine" or "Protester"), the incumbent provider of community residential services for eight mentally retarded consumers, challenges the Department of Human Services' proposed award of the successor contract to Multi-Therapeutic Services, Inc. ("MTS"). The Protester alleges that the contracting officer failed to adequately evaluate MTS' ability to provide the required services, and failed to consider the susceptibility of these eight consumers to "transfer trauma." We deny the protest.

**BACKGROUND**

On February 12, 1997, the Department of Human Services, Commission on Social Services ("CSS"), the Mental Retardation Developmental Disabilities Administration ("MRDDA") issued Request For Proposal No. JA-SC-CS-70019-01 ("RFP") seeking to award a firm-fixed-unit-price requirements contract for community residential services for 268 person in 58 customer groups, including Customer Group No. 96GH57ES. (Agency Report ("AR") Ex 1, RFP § C.5.1). Customer Group No. 96GH75ES includes eight mentally retarded adult males ranging in ages from 24 to 58 years, who function in the severe to profound range of mental retardation, and who possess other secondary handicaps.<sup>1</sup> (AR Ex. 1, J.1

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<sup>1</sup> In 1976, United States District Court Judge John H. Pratt signed a consent decree to de-institutionalize residents of Forest Haven, the District's institution for persons with mental retardation and other developmental disabilities in Laurel, Maryland. In 1978, the Council of the District of Columbia enacted the Mentally Retarded Citizens Constitutional Rights and Dignity Act (D.C. Law 2-16). Both the law and the consent decree were designed to secure the rights of the District's citizens with mental retardation to

Customer Profiles). Sunshine had provided services to these eight consumers in one group home setting since 1983. (Protest). DHS issued eight amendments to the RFP between March 14, 1997 and May 16, 1997. Seven of the amendments only extended the date for submission of proposals. The eighth amendment issued on May 16, 1997, extended the submission date to May 20, 1997, corrected what groups various customers were in, and provided responses to vendor questions. On March 28, 1997, Multi-Therapeutic Services, Inc. ("MTS") and Sunshine, responded to the RFP for Customer Group No. 96GH57ES. The composition of Customer Group 96GH57ES was unaffected by the eighth amendment. (AR Ex. 2 and 3).

On June 20, 1997, Wanda Moorman, who was then the Chief Contracting Officer of DHS' Office of Contracts, Grants and Procurement, transferred to Frances Bowie, Administrator of MRDDA, copies of the 97 technical proposals which DHS had received. (AR Ex. 4). A three-member Technical Evaluation Panel ("TEP") reviewed MTS' and Sunshines' proposals. On July 2, 1997, the Chairperson of the TEP reported the evaluation results to Ms. Moorman. (AR Ex. 5).

The RFP § M.11 allowed for a maximum of 60 technical points (up to 25 points for Technical Approach; up to 15 points for Technical Experience; and up to 20 points for Technical Expertise). Price accounted for a maximum of 40 points with the lowest price receiving the maximum points and other proposals receiving a proportionately lower score. The RFP also provided for a maximum of 12 preference points to firms qualifying under the Equal Opportunity for Local, Small, and Disadvantaged Business Enterprises Act. Neither firm qualified for any preference points. (AR Ex. 1, § M.9, and AR Ex. 5). The TEP average scores were:

	MTS	Sunshine
Technical	53.00	46.67
Price	36.80	40.00
Total	89.80	86.67

(AR Ex.5)

On September 16, 1997, DHS notified MTS and Sunshine by fax that DHS had completed its evaluation of the proposals and would hold discussions on September 18, 1997. On September 18, following the discussions, the contracting officer requested best and final offers from both firms by September 23, 1997. (AR., Ex. 6). On September 25, 1997, Ms. Bowie recommended to the contracting officer that DHS award the contract to MTS.<sup>2</sup> (AR Ex.7). On September 27, 1997, the

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habilitative care and treatment, freedom from harm and service delivery in the least restrictive setting. Upon the closing of Forest Haven, the city began to contract with private vendors to provide individualized care in homelike settings.

<sup>2</sup> The actual TEP scores for the first set of BAFOs was not in the record.

contracting officer requested that agency personnel proceed with contract award. (*Id.*).

Despite the recommendation for award, there was no activity on this procurement until February 19, 1998, when the contracting officer wrote to MTS and Sunshine to reopen discussions on February 23, 1998. (AR Ex. 8). After the discussions, the contracting officer requested a second BAFO from each vendor by February 27, 1998. (AR Ex. 8). The TEP average scores for the second BAFOs were:

	MTS	Sunshine
Technical	57	58.33
Price	40.00	33.60
Total	97.00	91.93

(AR Ex. 9).

DHS recommended awarding the contract to MTS. (AR Ex. 10). Thereafter, DHS began its responsibility review. In that regard, on or about July 28, 1998, MTS submitted to DHS officials a Certificate of Occupancy issued by the Community Residential Facility Section of the Department of Consumer and Regulatory Affairs authorizing 6 residents to live at 1200 Tewkesbury Place, N.W. (AR Ex. 13). On July 30, 1998, the contracting officer awarded to MTS a one year contract for Customer Group 96GH57ES to begin on November 27, 1998, and run until November 26, 1999. (AR Ex. 11). By letter dated August 5, 1998, the contracting officer notified Sunshine of the award of the contract to MTS. (AR Ex. 12). On August 10, 1998, Sunshine wrote to DHS requesting that the contracting officer provide it with a debriefing on the award process, and requested that the award decision be reconsidered. (Protest). DHS never responded to Sunshine's letter.<sup>3</sup>

On September 30, 1998, Sunshine states that MTS had expressed an interest in leasing the home where Sunshine had provided services to the eight consumers covered by the contract award. On October 9, 1998, Sunshine filed its protest with the Board. Based upon MTS' inquiry about leasing Sunshine's facility, Sunshine alleged upon information and belief that MTS could not provide a satisfactory facility to meet the requirements of the RFP, and that DHS improperly evaluated MTS' ability to perform. Sunshine further alleges that DHS failed to include in the contract adequate and sufficient provision to effect an orderly transfer of these eight individuals, as required by 27 DCMR § 1900.7, and failed to consider the

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<sup>3</sup> On February 25, 1999, the Board requested counsel for DHS to inquire whether DHS provided a debriefing for Sunshine. On March 8, 1999, counsel for DHS responded that the Office of Contracting and Procurement had no record of the letter dated August 10, 1998, from Sunshine requesting the debriefing, and therefore did not conduct a debriefing. Sunshine also requested that DHS provide a debriefing in its protest. The District should make contracting officers aware of their responsibility to conduct debriefings, when requested by offerors, in accordance with 27 DCMR §§ 1630.5, 1630.6 and 1630.7.

potential ill effects of transferring the eight from Sunshine's care when deciding to award the contract. On November 20, 1998, MTS received a certificate of occupancy for 1200 Tewkesbury Place, NW, for eight residents.<sup>4</sup>

## DECISION

We exercise protest jurisdiction pursuant to D.C. Code § 1-1189.3 (Supp.1998).

In response to Sunshine's general challenge to the evaluation of proposals, we carefully reviewed the initial proposals, the first and second sets of BAFOs, and the evaluation materials from the TEP. We find that the contracting officer and the TEP reasonably evaluated the offers and selected MTS for award of the contract. For the technical components of the second BAFOs, Sunshine received 58.33 average points, while MTS received an average score of 57. Because the offerors' technical scores were close, price became the decisive factor. MTS received the maximum 40 points for its proposed price of \$1,309,075 for five years. Sunshine received 33.6 points for its higher price of \$1,554,845 for five years. There is no dispute on the price scores.

Beyond Sunshine's general challenge to the evaluation of proposals, its arguments are directed at the contracting officer's failure "to adequately evaluate MTS' ability to provide the required services." Sunshine asserts that MTS did not timely demonstrate to DHS that it had a suitable site to provide community residential services for eight consumers, as required by the RFP. The Protester asserts that the RFP required the contractor to show how it intended to provide "a clean, licensed furnished group home" (RFP § C.6.3.1.1) that would conform to health, fire, licensing and other legal requirements (RFP § H.2.1). The Protester argues that the contracting officer failed to adequately evaluate MTS' ability to perform satisfactorily under the contract, as required by 27 DCMR § 1618.2.<sup>5</sup> Sunshine asserts that the RFP required the contractor to submit a certificate of occupancy for the eight consumers covered by the contract within five calendar days after contract award. (RFP § H.3). On or about July 30, 1998, the date of

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<sup>4</sup>MTS intervened in this case on November 13, 1998, but neglected to submit the November 20 certificate of occupancy to the Board until March 15, 1999, pursuant to a request by the Board during a telephone conference.

<sup>5</sup> Sunshine's reference to 27 DCMR § 1618.2 seems misplaced. Section 1618.2 provides:

The contracting officer shall evaluate the cost estimate or price, not only to determine whether it is reasonable, but also to determine the offeror's understanding of the work and ability to perform the contract.

This section is specifically related to whether a contractor's costs estimate or price are within a range which demonstrates an understanding of the scope of work and an ability to achieve the goals of the contract. MTS' prices are not substantially below Sunshine's.

contract award, MTS submitted a certificate of occupancy covering only six residents, not the eight contemplated by the contract. It was not until November 20, 1998, a week before performance was to begin, that MTS received its certificate of occupancy for eight residents. Sunshine complains that the contracting officer improperly evaluated MTS' ability to meet the requirements of § H.3.1 of the RFP which provides:

The Contractor's facility, for those located in the District of Columbia, shall be in compliance with all applicable zoning ordinances. The Contractor's facility shall conform to all codes as established by the Department of Consumer and Regulatory Affairs, Office of Inspection. **The Certificate of Occupancy shall be submitted within five (5) calendar days after contract award to the Contract Administrator identified in Section G.3.2.** (Emphasis in the original).

But these facts do not compel the conclusion the contracting agency improperly evaluated the proposal, including the second BAFO in the Spring of 1998.

Sunshine also argues that the contracting officer failed to properly assess MTS' responsibility by not inspecting the intended living facilities before award in accordance with § E.1.1 which provides:

Prior to award of any contract for these services, the District will inspect the prospective Contractor's facility(ies) it intends to use for performance under any resultant contract in order to substantiate the prospective Contractor's ability to provide the services as outlined in Section C and H.


By awarding the contract before MTS had the certificate of occupancy in hand, DHS officials committed a technical violation of District regulations. Contracts may only be awarded to responsible prospective contractors. 27 DCMR § 2200.1. In the absence of information clearly indicating that the prospective contractor is responsible, the contracting officer shall make a determination of nonresponsibility. *Id.*, 2200.3. At the time that DHS awarded the contract, MTS was not in compliance with applicable District licensing requirements, and accordingly was not responsible. *Id.*, at 2200.4(f). DHS should have delayed award of the contract to MTS until MTS obtained the correct certificate of occupancy. However, MTS was able to obtain a certificate of occupancy for eight people prior to the date set for contract performance. We find that this was a minor and inadvertent breach of the procurement regulations, which does not merit our disturbing the award.

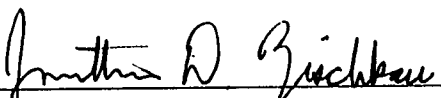
Sunshine also alleges that DHS failed to include in the contract adequate provision to effect an orderly transition to the successor contractor as required by 27 DCMR § 1900.7. Sunshine reports that disabled individuals may experience a medical condition known as "transfer trauma" when forced to make significant changes in their living environment. Section I.11.1 of the RFP, which was incorporated into MTS' contract, requires an orderly transition to a successor contractor should MTS' contract expire or terminate. We believe that it is now incumbent upon Sunshine to cooperate with the contracting officer and


with MTS to effect the orderly transfer of services pursuant to its contractual obligations. We discern no violation of 27 DCMR § 1900.7.

The protest is therefore denied with prejudice.

DATE: March 25, 1999

  
LORILYN E. SIMKINS  
Chief Administrative Judge

  
JONATHAN D. ZISCHKAU  
Administrative Judge

  
PHYLLIS W. JACKSON  
Administrative Judge