

## DISTRICT OF COLUMBIA CONTRACT APPEALS BOARD

### PROTESTS OF:

HUMILITY OUTREACH MISSIONARY )  
MINISTRIES, INC. )  
 ) CAB Nos. P-0788, P-0789, P-0793  
Under RFP No. RM-08-RFP-021-BY4-CPA )

For the Protester: Susan L. Schor, Esq., McManus, Schor, Asmar & Darden, LLP. For the District of Columbia Government: Talia S. Cohen, Esq., and Robert Schildkraut, Esq., Assistant Attorneys General.

### OPINION

*Filing ID 25459586*

Humility Outreach Missionary Ministries, Inc. (“Humility”) has protested the District’s award of four IDIQ contracts to provide supported residential services to consumers diagnosed as having a serious and persistent mental illness. Humility argues *inter alia* that the source selection decision and the technical evaluations were unreasonable and arbitrary and not properly documented and that the contracting officer used undisclosed and improper evaluation criteria in assessing the merits of the competing offers. Although the contracting officer’s own evaluations and selection decision were poorly documented, we conclude that the record as a whole supports the awards. Accordingly, we deny the consolidated protests.

### BACKGROUND

On May 16, 2008, the District issued solicitation RM-08-RFP-021-BY4-CPA for the District's Department of Mental Health (“DMH”) seeking offerors to provide supported residential services to consumers diagnosed as having a serious and persistent mental illness, who do not currently have a level of functioning that would allow them to live independently within the community, and who choose to live in a Mental Health Community Residential Facility (“MHCRF”). (Agency Report (“AR”) Ex. 1). A MHCRF is defined in Section C.3.10 as “a publicly or privately owned residence that houses individuals, 18 or older, with a principal diagnosis of mental illness and who require twenty-four (24) hours per day/seven (7) days per week on-site supervision, personal assistance, lodging, along with meals . . . .” Section B.2 of the solicitation stated that the District contemplated awarding multiple indefinite delivery indefinite quantity (“IDIQ”) contracts sufficient to ensure services to a maximum of 223 consumers. (AR Ex. 1). Section M of the solicitation provided the following technical evaluation criteria and maximum scores: technical understanding of the requirement and technical approach (30 points), management plan (20 points), quality improvement plan (10 points), and personnel (15 points). The other evaluation factors were: past performance evaluation (10 points) and price evaluation (15 points). On May 20, 2008, the District placed an advertisement announcing the solicitation in the Washington Times. (AR Ex. 2). On May 28,

2008, the District conducted a pre-proposal conference. (AR Ex. 2). Between May 28, 2008, and June 13, 2008, the District issued four amendments to the solicitation. (AR Ex. 1).

The solicitation closed on June 23, 2008. (AR Ex. 1). The District received proposals from ten offerors, including Humility. (AR Ex. 2). Samuel J. Feinberg, the Director of Contracts and Procurement and Agency Chief Contracting Officer for DMH, and the contracting officer and source selection authority for this solicitation, appointed three persons to conduct a technical evaluation of the proposals. On June 25-27, 2008, and July 2, 2008, the District's technical evaluation panel ("TEP") evaluated the proposals. The contracting officer states that during the evaluation of initial proposals, the evaluators always met as a group with the contract specialist present, each evaluator reviewed each technical proposal individually and assigned a preliminary score, and the evaluators then discussed each proposal as a group, including their preliminary scores for each evaluation factor, and the strengths and weaknesses noted by each evaluator. (Feinberg First Supplemental Declaration ¶¶ 5-9). After the group discussion, each evaluator reached his or her own final score for each evaluation factor, with the scores and supporting narratives for each evaluation factor being recorded on the technical evaluation criteria worksheets. (*Id.* ¶¶ 10-11). There was no separate consensus report of the TEP summarizing its findings. After all evaluations of all technical proposals had been completed, each evaluator then reviewed each price proposal, discussed each price proposal as a group, and made narrative comments on the price proposal review and comment sheets. (*Id.* ¶ 12). The summary score for each evaluation factor was the average of the scores of the three members of the TEP. (*Id.* ¶ 22).

After the TEP completed its evaluation, the contracting officer met with the contract specialist to review the TEP's evaluation criteria worksheets and to discuss details of the proposals. (AR Ex. 3, at 35). The contracting officer states that he reviewed each proposal and then analyzed the proposed capacities (number of consumers that could be served) of each offeror against the anticipated capacity required by the District as identified in section 8.2 of the solicitation to determine a competitive range. (AR Ex. 3). Capacity was not an evaluation factor and thus did not affect a competitive range determination. It is not clear that any offeror was excluded from the competitive range. We believe that the contracting officer simply misused the term "competitive range" in this context.

By letter dated July 16, 2008, the District entered into discussions with all offerors. (AR Ex. 2). By letter dated July 17, 2008, the District outlined for each offeror the deficiencies in its initial proposal and scheduled a meeting with each offeror to discuss its proposal. (AR Ex. 2). On July 21-24, 2008, the District met with each offeror and discussed its proposal. (AR Ex. 2). By letter dated July 25, 2008, the District notified each offeror that discussions had concluded and requested that each offeror submit a Best and Final Offer ("BAFO"). (AR Ex. 2). On July 31, 2008, each offeror submitted a BAFO. (AR Ex. 2).

On August 5-7, 2008, the TEP evaluated the BAFOs. (AR Ex. 3). On August 21, 2008, the contracting officer reviewed each BAFO and the findings of the TEP regarding the BAFOs. (AR Ex. 3). On August 21, 2008, the contracting officer also concluded a review of the tabulated final combined scores (technical, price, past performance, and CBE preferences) and rankings of each offeror and performed an independent assessment. (AR at 5; AR Ex. 2). The

contracting officer concurred with the TEP's evaluation of the offerors and concluded that awarding contracts to the four highest ranked offerors for the full consumer capacity that each had proposed would result in the award of contracts for services with a capacity of 225 consumers, two more than the 223 maximum slots stated in the solicitation. (AR at 5; AR Exs. 2, 3).

On September 19, 2008, DMH notified the successful and unsuccessful offerors of DMH's decision to award contracts, subject to the prior approval of the City Council, as applicable. (AR at 5-6; AR Ex. 2). On September 27-28, 2008, proposed contracts with Community Connections, Inc., Life Stride, Inc., and Careco Health Services, Inc., were deemed approved by the Council. (AR at 6; AR Ex. 2). On October 1, 2008, the contracting officer executed contracts with Deaf-REACH, Community Connections, Life Stride, and Careco Health Services, and the contractors began performance. (AR at 6; AR Ex. 2).

DMH conducted a debriefing for Humility on October 7, 2008, attended by the contracting officer and the contract specialist, as well as David Gilmore for Humility. (AR Exs. 2, 4). The contracting officer recorded in a declaration dated November 12, 2008 (AR Ex. 4), the comments he made at the October 7 debriefing. He states that Humility received an acceptable rating for the personnel factor because Humility had 3 years of experience as an organization while the successful offerors had many more years. (AR Ex. 4 ¶ 5). The contracting officer states that Humility's proposed solution for the licensed clinical supervisor to oversee residential services had deficiencies which was a weakness for its quality improvement plan and personnel, while the awardees scored higher not only because of longer experience but because their personnel credentials including the clinical supervisor were stronger. (*Id.* ¶ 5). The contracting officer also explained in the debriefing the reason for Humility's score for the quality improvement plan factor and the weakness associated with the experience and qualifications of Humility's proposed licensed clinical supervisor. (*Id.* ¶¶ 7-8).

Humility filed protests on October 15 and 20, and December 1, 2008.

## DISCUSSION

We exercise jurisdiction over these consolidated protests pursuant to D.C. Code § 2-309.03(a)(1). Humility raises a number of challenges to the awards, most of which question the propriety of the evaluations of Humility's and the awardees' proposals and the contracting officer's source selection decision.

Humility contends that the technical evaluation panel did not properly compare the offerors' proposals and failed to prepare the required documentation of its evaluations. In its first supplemental protest, Humility correctly observes that there is no consensus technical evaluation report of the panel containing the bases, analyses, and summary of findings. Humility points out that the record here contains only the evaluators' worksheets and evaluation score summaries of the initial proposals and BAFOs. Although Humility urges that the evaluations do not identify relative differences among the proposals, proposals' strengths or weaknesses, and proposals' risks vis-à-vis the stated evaluation criteria, we do not agree. The evaluators'

worksheets contain reasonably detailed proposal strengths and weaknesses and risks that highlight the relative differences among the proposals. Clearly, it would have made the record far stronger if the contracting officer had obtained a consensus evaluation report from the TEP. More importantly, the contracting officer's documentation of his independent evaluation of the offers is quite thin, limited to his concurrence with the TEP's evaluations, his evaluation narrative for the four awardees in the business clearance memoranda, and his notes of his debriefing explanations to Humility. The evaluation record should have been documented with a comprehensive evaluation narrative, scoring, and ranking of *all* offerors and supported by the TEP's evaluation work papers and preferably also a consensus report. Despite the shortcomings in the record, we are able to discern adequate documentation of the technical evaluation of the top four ranked offerors and Humility as contained in the evaluation worksheets, the scoring summaries, the business clearance memoranda, and the contracting officer's declarations including his notes of the debriefing. The contracting officer states that he concurred in the technical evaluation made by the TEP and we see adequate narrative and analysis by the evaluators with respect to the solicitation's evaluation criteria to support his conclusion.

Humility argues that it was improperly downgraded in the experience, quality improvement plan, and the qualified practitioner requirement. We have carefully considered Humility's arguments, but find that the evaluation was neither arbitrary nor contrary to the evaluation criteria stated in the solicitation. Nor can we conclude that the record shows that either DMH or the contracting officer determined in advance to limit the number of awardees to the offerors with the largest capacity. Clearly, the four offerors with the largest capacity were not the four ultimate awardees. We see no basis for concluding that the capacity of an offeror was improperly used as an undisclosed evaluation factor. The record supports the contracting officer's position that capacity of offerors was used only to determine how many awards would be made, beginning with the highest ranked offeror and proceeding to make awards until the maximum capacity was met.

In connection with the evaluation and selection challenge, Humility argues that the contracting officer failed to conduct a cost/technical tradeoff and support his decision that the successful proposals were the most advantageous to the District, price and technical factors considered. The business clearance memoranda, supported by the evaluation worksheets, provide adequate support for the contracting officer's conclusion that the offers of the four awardees were the most advantageous to the District.

Humility argues that the District never intended to award any contract to a number of the offerors including Humility. On June 9, 2008, the District issued solicitation amendment 2 which, *inter alia*, provided that only DMH-certified Mental Health Rehabilitative Services ("MHRS") providers could submit offers. (AR Ex. 1, Amendment 2 § L.21.3). This requirement was removed by Amendment 4. (AR Ex. 1, Amendment 4). According to Humility, the putative opening of the solicitation to contractors not certified as MHRS providers was a sham, with DMH intending only to award contracts to certified MHRS providers, notwithstanding the relaxation of the specifications. In fact, all of the awardees are certified MHRS providers. Humility infers that DMH never intended to award to a non-MHRS certified provider, and concludes that the award process and awards were unreasonable, arbitrary, and contrary to the law that requires full and open competition. We have reviewed the entire record and find no

evidence that DMH intended to award only to certified MHRS providers notwithstanding Amendment 4.

Humility also argues that the contracting officer did not fairly consider Humility for award and never intended to make an award to Humility even if it were the top ranked offeror. District counsel's comment that the "District has no intention of 'moving' [the existing six] . . . consumers [at Humility's facility] whether you win or lose the bid protest" refers, according to the contracting officer, to the fact that Humility has been operating as an independent MHCRF rather than as a contracted MHCRF. MHCRFs are licensed by DMH as part of the District's continuum of mental health care. (AR Ex. 43 ¶ 23, First Supplemental Declaration of Samuel J. Feinberg, dated December 18, 2008). Consumers are informed of their residential options by their core service agency and can elect to be placed at an independent MHCRF. A core service agency is a "community-based provider of mental health services and mental health supports that is certified by DMH and that acts as a clinical home for Consumers of mental health services by providing a single point of access and accountability for diagnostic assessment, medication-somatic treatment, counseling and psychotherapy, community support services, and access to other needed services." (RFP Section C.3.1). Independent MHCRFs determine on their own how they provide services and to whom, subject to licensing requirements contained in 22 DCMR Chapter 38. (AR Ex. 43). Some MHCRFs have a contract with the District and those contracted MHCRFs must abide by the contractual requirements they have with the District and presumably accept consumer slots referred to them by the District. Here, Humility was anticipating that if it won an award under the solicitation, it could convert its current six consumers from the lower reimbursement rates for independently placed consumers it now receives to the significantly higher contract rates. We need not address this issue because we find no legal error in the awards made by the contracting officer to the four higher ranked offerors. We do not believe it was reasonable, in any event, for Humility to assume that its six existing consumers would be converted necessarily to six of the 223 contracted consumer slots identified in the solicitation if Humility was selected for award. Humility should have sought clarification from the contracting officer prior to the submission of proposals on the question of the specific status of the six preexisting consumers receiving services from Humility.

Humility also raises a number of other challenges regarding whether the awardees were required to have MHCRF licensed properties when they submitted their proposals, whether the past performance evaluations of Careco and Life Stride were reasonable, and whether awards were made to offerors whose proposals were deficient. We agree with the District that these arguments have no merit. Humility does not demonstrate that the solicitation required properties to be purchased or rented at the time of the proposal due date. We have examined the record regarding the past performance evaluations of Careco and Life Stride and the alleged proposal deficiencies but we find no basis for sustaining the protests on these grounds.

## **CONCLUSION**

In sum, we have carefully considered each of the challenges raised by Humility, and conclude that the contracting officer's evaluation and selection actions were not contrary to the law or the terms of the solicitation. The detailed evaluation worksheets prepared by the technical evaluation panel members and the contracting officer's analysis found in the business clearance

memoranda and his declarations are adequate to support the awards. Accordingly, we deny the consolidated protests.

**SO ORDERED.**

DATED: June 2, 2009

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

CONCURRING:

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