

GOVERNMENT OF THE DISTRICT OF COLUMBIA
CONTRACT APPEALS BOARD

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C.A.B., D.C.

Protest of

Koba Associates, Inc.
1156 15th Street, NW
Suite 200
Washington, DC 20005

CAB No. P-359

of Award of MHC Letter Contract JA/92575
(Multimodality Substance Abuse)

PROTEST OF KOBA ASSOCIATES, INC.

Koba Associates, Inc., (Koba) by counsel, pursuant to the District of Columbia Procurement Practices Act of 1985 (PPA), District of Columbia Code sections 1-1189.3 and 1-1189.8, and the District of Columbia Municipal Regulations, Protest Procedures of the Contract Appeals Board, 27 DCMR 300 et. seq., hereby protests the award of Letter Contract No. JA/92575 by the District of Columbia Department of Human Services (DHS), to Providence Hospital (Providence) under Medical and Human Care (MHC) Solicitation JA/92575 (the Solicitation), on the following grounds:

STATEMENT OF FACTS

1. The Solicitation was issued by DHS as a medical and human care procurement, on June, 5, 1992. It requested qualified vendors to provide daily outpatient medical and substance abuse services to a static population of 300 adults in Ward 7, the District of Columbia.
2. In response to the Solicitation, Koba prepared and submitted to DHS its Workplan to Provide Daily Outpatient Medical and Substance Abuse Multi-Modality Treatment ("Workplan"), along with its Policies and Procedures Manual, on July 2, 1992. Subsequently, DHS contacted Koba and requested it to submit a Budget proposal at a meeting to be held August 21, 1992. In response, Protestor prepared and submitted its Budget Proposal, dated August 21, 1992, and which included total costs of \$999,952, including an indirect cost rate of 24%.
3. At the August 21, 1992, meeting the DHS Contracting Officer said that DHS would limit the indirect cost rates for G&A to 20%, and that he would dump (reject) any offeror with a rate over 20%. He further said that even if Koba was the offeror with the lowest total cost, he would reject the offer if its indirect cost rate was over 20%.

4. Subsequently, on August 25, 1992, Koba submitted its Best and Final Offer (Budget), with a total first year cost of \$912,806, and including an indirect cost rate of 24%. A copy of the Best and Final Offer (Budget) is attached as Exhibit One.

5. On September 23, 1992, Koba received a fax copy of a letter from DHS, dated September 24, 1992, stating that the District and Koba had failed to reach a mutually satisfactory contract under the Solicitation, and that negotiations were being terminated in accordance with 27 DCMR 1911.4. A copy of the DHS letter to Koba is attached as Exhibit Two.

6. On December 14, 1992, Koba received notice from the District of Columbia Corporation Counsel, by letter dated December 10, 1992, that DHS had awarded Letter Contract JA/92575 to Providence Hospital, on December 8, 1992. The Letter Contract is for 120 days in an amount not to exceed \$303,710. The Letter Contract further provides that a definitized contract is intended to be entered into, for the one year period December 10, 1992 to December 9, 1993, in an amount not to exceed \$911,131, which is only one tenth of a percent less (\$1,674 less) than Koba's Best and Final Offer price of \$912,806. A copy of the Corporation Counsel letter dated December 10, 1992, including a copy of Letter Contract JA/92575 between DHS and Providence Hospital, is attached as Exhibit Three.

7. Koba is an aggrieved person under District of Columbia Code section 1-1189.8(a) and 27 DCMR 300.2, and files this protest within ten (10) working days of knowledge of the facts and circumstances upon which it is based, pursuant to 27 DCMR 301.1 and District of Columbia Code section 1-1189.8(b).

STATEMENT OF CLAIM

(Failure to Award Contract for
Medical and Human Care Services to
Koba at Fair and Reasonable Price)

8. The Procurement Regulations governing Medical and Human Care Services require the Contracting Officer to make a final selection of qualified firms to perform the required services, 27 DCMR 1907.1. The regulations further provide that the final selection shall be a listing, in order of preference, of the firms or individuals considered most highly qualified to perform the work, 27 DCMR 1907.2

9. The regulations further provide that the final selection shall constitute authority for the Contracting Officer to begin negotiation, and that beginning with the most preferred firm in the final selection, the Contracting Officer shall request a proposal,

27 DCMR 1911.1 and 1911.2. Only if negotiations with the most preferred firm are terminated shall the Contracting Officer initiate negotiations with the next firm or individual, 27 DCMR 1911.4.

10. The regulations further require that the Contracting Officer shall negotiate contracts for medical and human care services based on the competence and qualifications of the prospective contractor to perform the services required at fair and reasonable prices, 27 DCMR 1905.2. In this regard, the regulations provide that Contracting Officer shall determine a cost, including an indirect cost, to be reasonable, if it does not differ from or exceed that which would be incurred by a prudent person in the conduct of a competitive business, 27 DCMR 3307.1. Furthermore, the regulations list specific factors that the Contracting Officer shall consider in determining the reasonableness of a given cost, including whether the cost is of a type generally recognized as ordinary and necessary for the conduct of the contractor's business, 27 DCMR 3307.2

11. DHS has failed to comply with these regulations, because the Contracting Officer terminated negotiations with Koba even though Koba was ranked more preferred than Providence Hospital in this medical and human care Solicitation, and even though Koba's price, \$912,806, was only one tenth of a percent higher (\$1,675 higher) than the price of \$911,131 which the Contracting Officer later determined was fair and reasonable, and at which he intends to award the definitized contract under Solicitation JA/92575 to Providence Hospital.

On these grounds, Koba Associates, Inc., Protestor, pursuant to Contract Appeals Board Rule 116, 27 DCMR 116, respectfully requests that the Contract Appeals Board expedite the decision in this protest, and decide it within ninety (90) days hereof, for good cause shown, namely, because the award of Letter Contract JA/92575 by DHS in Solicitation JA/92575 has been arbitrary and capricious, and not in accord with regulations, and because the definitized contract under Solicitation JA/92575 has not yet been awarded, and this procurement can be rendered valid and in the best interests of the District of Columbia by a prompt decision of the Contract Appeals Board, pursuant to Rule 116 and the District of Columbia Code, Section 1-1189.8(c).

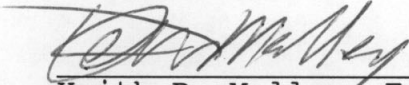
In addition, on these grounds, Koba Associates, Inc., Protestor, pursuant to Contract Appeals Board Rule 314, 27 DCMR 314, respectfully requests that the Contract Appeal Board order the Department of Human Services to do as follows:

- (a) Terminate the award of Letter Contract JA/92575 to Providence Hospital pursuant to Rule 314.1(a);

- (b) Award the Contract under Medical and Human Care Solicitation JA/92575 to Koba Associates, Inc., pursuant to Rule 314.1(e);
- (c) Pay to Koba Associates, Inc. its reasonable proposal preparation costs in connection with Medical and Human Care Solicitation JA/92575, pursuant to Rule 314.4.; and
- (d) Provide Koba Associates, Inc. such other further legal and equitable relief to which it is entitled.

Respectfully submitted

Koba Associates, Inc.


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