

GOVERNMENT OF THE DISTRICT OF COLUMBIA
CONTRACT APPEALS BOARD

Protest of:

B&B SECURITY CONSULTANTS, INC.

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CAB No. P-0708

Under RFP No. POAM-2004-R-0015-DW

For the Protester, B&B Security Consultants, Inc.: Robert A. Klimek Jr., Esq., Klimek, Kolodney & Cassale, P.C. For the Government: Howard Schwartz, Esq., and Jon N. Kulish, Esq., Assistant Attorneys General.

Opinion by Administrative Judge Matthew S. Watson together with Chief Administrative Judge Jonathan D. Zischkau, and Administrative Judge Warren J. Nash, concurring.

OPINION

(LexisNexis Filing ID 6225689)

B&B Security Consultants, Inc. timely filed a protest against award to Hawk One Security, Inc., of Contract No. POAM-2004-D-0015-DW for citywide security services at District owned and leased facilities that are open to the public. B&B asserts that the award is improper on three bases: (1) while the RFP explicitly stated that the District would make four distinct determinations for each of the four aggregate award groups, the District made only one such determination and awarded a single contract to Hawk One. (Count I); (2) the District had discussions/negotiations with Hawk One after the receipt of Best and Final Offers and held no such discussions with the other offerors (Count II); and (3) the District's evaluation of B&B's proposal was unreasonable, arbitrary, capricious and irrational (Count III). The District denies B&B's allegations asserting that they are not supported by the facts. The Board agrees with the District and denies the protest.

BACKGROUND

Solicitation No. POAM-2004-R-0015-DW was issued August 4, 2004, requesting initial proposals by September 7, 2004, from small business enterprises. The solicitation requested offers for 4 aggregate award groups and provided for evaluation and award to take place in a three step process:

First, a technical evaluation by an evaluation team¹ based on the following criteria contained in the solicitation:

The technical evaluation criteria are outlined below in descending order of importance. Selection of an offeror for contract award will be based on an evaluation of proposals against the following factors:

M.5 TECHNICAL CRITERIA 0-60 POINTS

M.5.1 EXPERIENCE AND PAST PERFORMANCE 0-40 POINTS

Offeror's shall detail its experience with providing security services as required in the RFP. See Paragraph L.3.1.

M.5.2 MANAGEMENT CAPABILITY 0-20 POINTS

Offerors shall submit a management and technical plan that will detail its understanding of the requirements and its approach to successfully provide services to satisfy the District's requirements. See Paragraph L.3.2.

Second, a price evaluation as follows:

M.5.3 PRICE CRITERIA 0-40 POINTS

The price evaluation will be objective. The offeror with the lowest price for the base plus option years will receive the maximum points. All other proposals will receive a proportionately lower total score. The following formula will be used to determine each offeror's evaluated price score:

Lowest price proposal x 40 = Evaluated Price of proposal being evaluated price score

In addition, up to 12 points could be added for local, disadvantaged, resident and enterprise zone businesses (§ M.10.5), for a possible total of 112 points. Based

¹ ¶ M.1.1 of the solicitation provides:

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 the award. Rather, the total scores will guide the District in making an intelligent award decision based upon the evaluation criteria.

Upon receipt of proposals, an evaluation team composed of representatives of PSD and such other persons as the CO may designate will evaluate the proposals. Every member will evaluate the proposals based on the evaluation criteria and assign a numerical rating. The CO shall make a substantive independent evaluation of the proposals and shall review the ratings assigned by the evaluation team. The CO shall make a selection decision based on the CO's independent judgment of the relative merits of the competing proposals.

on the technical and price evaluation the offerors shall be ranked based on the evaluation scores.

Third, award shall be made as follows:

M.2.2 After the District has determined the highest scored offeror for each aggregate award group, the District will then determine whether that offeror is a responsible contractor for that aggregate award group. For each determination of responsibility for each aggregate award group, the District will consider any impact on that offeror's responsibility of any awards to that offeror under other aggregate award groups.

Nine offerors submitted timely proposals of which three were from entities not qualifying as small businesses. The evaluation team reviewed and ranked the proposals after which best and final offers ("BAFOs") were requested from 5 qualified proposers and evaluated² by the evaluation team. After completion of the technical evaluation, the technical point score was combined with preference points and the price point score and ranked by the combined score. The combined technical, preference and price evaluation resulted in Hawk One being ranked first for each award group and B&B being ranked last.³

DISCUSSION

Evaluation of individual aggregate award groups

The Protester asserts that the District violated the terms of the solicitation by utilizing a single technical evaluation of each BAFO to rank the proposals for each of the 4 aggregate groups, rather than making a separate technical evaluation of each proposal for each aggregate group taking into account whether the proposer was awarded earlier aggregate groups. The Board disagrees. The technical criteria in the solicitation are generic and identically applicable to each of the 4 aggregate award groups. None of the technical criteria relate to capacity which would cause different evaluation scores depending on the aggregate groups awarded to a particular offeror. The technical evaluation is essentially a determination of responsiveness. Evaluation of capacity taking into account award of previous aggregate groups is a separate

² Protester questioned whether the BAFOs were actually evaluated (Reply to Agency Report, 4) since the attachment to the Business Clearance Memorandum ("BCM") (AR Ex. 10f), purporting to report the BAFO evaluation scores, appears to show the evaluation scores after the BAFOs unchanged from the initial scores. The attachment is apparently erroneous. The text of the BCM shows the revised scores resulting from the BAFOs for each proposal. (§ 13.8). The BAFO technical scores increased between 1 and 5 points for each of the proposals, except the protester's proposal for which the evaluation was unchanged. (§13.6).

³ In the evaluation, B&B was granted 9 preference points. B&B contends that it is entitled to 12 preference points as a local, disadvantaged, resident business located in an enterprise zone. Since B&B's point score was nearly 20 points below the next lowest rated proposal, correction would not change the ranking.

determination of responsibility. *Dental Benefits Providers, Inc.*, CAB No. P-0623, Dec. 1, 2000, 49 D.C. Reg. 3234.

The language of the solicitation is clear. The evaluation criteria make no distinction as to aggregate groups. (§ M.5). This constitutes the first phase of consideration of proposals. The solicitation directs consideration of capacity in the second phase of the consideration of proposals. “After the District has determined the highest scored offeror for each aggregate award group, the District will then determine whether that offeror is a responsible contractor for that aggregate award group. For each determination of responsibility for each aggregate award group, the District will consider any impact on that offeror’s responsibility of any awards to that offeror under other aggregate award groups.” (§ M.2.2). It is therefore clear that the same technical evaluation is intended to be applied for each offeror to each aggregate group. The application of the technical scores is no different than the award of preference points. An offeror who is in a disadvantaged category for one aggregate award group is similarly in a disadvantaged category for all other aggregate award groups.

The District appropriately followed the award procedures set out in the solicitation by making a single technical evaluation applicable to all 4 aggregate groups and considering capacity only with regard to responsibility. The contracting officer made a determination that Hawk One has capacity to perform all 4 aggregate groups together. (AR Ex. 10g). Implicit in that determination is a determination for each aggregate group sequentially that Hawk One has capacity to perform the subject aggregate group together with each previous aggregate group awarded. Upon that determination, the solicitation mandates that all four aggregate groups be awarded to Hawk One.

Improper discussions with Hawk One

B&B’s assertion that the District preferentially conducted further negotiations with Hawk One after receipt of the BAFOs is not supported by the evidence B&B cites. B&B asserts that because Hawk One solicited B&B employees on May 2, 2005, to work for Hawk One on the new contract, prior to the award of the contract, Hawk One must have improperly had prior knowledge of the award. (Complaint, 6-7). The record indicates that the contract was deemed approved by the Council on May 9, 2005. (AR Ex. 5). To have been deemed approved, the contract must have been submitted to the Council by April 29 (D.C. Code § 1-204.51(b) (2)), and the District’s intent to award to Hawk One would therefore have been public record prior to May 2, 2005. The fact that Hawk One was aware that it was in line for award of all 4 award groups on May 2, 2005 does not indicate that there was any improper communication.

In its reply to the Agency Report, B&B further notes that Hawk One submitted a “funding letter” dated January 14, 2005 (AR Ex. 10(g)), well after submission of the BAFOs indicating further impermissible negotiations with Hawk One after receipt of its final offer. (Reply, 6). Funding capacity is an element of responsibility, not of responsiveness. Financial resources were not included in the solicitation’s technical criteria, but rather in the criteria for determining responsibility. Section L.17 provides:

STANDARDS OF RESPONSIBILITY

The prospective Contractor must demonstrate to the satisfaction of the District the capability in all respects to perform fully the contract requirements, therefore, the prospective Contractor must submit the documentation listed below, within five (5) days of the request by the District.

L.17.1 Furnish evidence of adequate financial resources, credit or the ability to obtain such resources as required during the performance of the contract.

Documentation of responsibility may be obtained after receipt of offers. (*Fort Myer Construction Corp.*, CAB No. P-0685, May 5, 2004; 27 DCMR § 2204.2). The receipt of the funding letter after submission of BAFOs was not improper.

Evaluation of B&B's proposal

Lastly B&B contends that the evaluation was "unreasonable, capricious, irrational and arbitrary." As support for this contention B&B cites 3 areas that the evaluation was incorrect. B&B asserts that, although it was entitled to 12 preference points as a Local Business Enterprise, Disadvantaged Business Enterprise, located in an Enterprise zone, and District resident owned, it was only awarded 9 preference points. (Reply, 5). B&B asserts that the contracting officer's narrative in the Business Clearance Memorandum erroneously fails to recognize that B&B's BAFO submitted an additional reference bringing the number of references to the required 5 references. (Reply, 7). In addition, B&B asserts that it was the lowest priced offeror, yet did not receive award of any award group. (Complaint, 8). Specifically, B&B asserts:

that it was prejudiced by the determination that it was only in the competitive range for aggregate award group 4. For instance, there was little difference between aggregate award group 3 and 4, and B&B had a price for aggregate award group 3 that was \$2,439,611.95 lower than the award made to Hawk One. (A.R.; Ex. 10(b)) The contracting officer was required to make an independent determination and findings for each aggregate award group. Had this been done, B&B's significantly lower price would have offset Hawk One's higher technical score as being in the best interest of the District.

(Reply, 7)

For purposes of this protest, the Board accepts each of the allegations concerning the evaluations. Nevertheless, the protest must still be denied. Following the precedents of the Comptroller General, we "will not sustain a protest unless the protester demonstrates a reasonable possibility that it was prejudiced by the agency's actions, that is, unless the protester demonstrates that, but for the agency's actions, it would have had a substantial chance of receiving the award." *McDonald-Bradley*, B-270126, 96-1 Comp. Gen. Proc. Dec. ¶54; *see also Statistica, Inc. v. Christopher*, 102 F.3d 1577 (Fed. Cir. 1996).

B&B's total technical score allowing 12, rather than 9 preference points, would have been 29. (BCM § 13.8). Hawk One had a technical score, including 9 preference points, of 62.5, or a difference of 33.5. (*Id.*). The maximum price point difference between B&B and Hawk One was 1 point. Thus, the respective total point scores combining technical, preference and price scores were B&B 69 and Hawk One 101.5. There is no reasonable possibility that had the contracting officer realized that B&B submitted an additional reference, its technical score would have nearly tripled to overcome Hawk's 32.5 point advantage.

The protest is denied.

July 18, 2005

/s/ Matthew S. Watson
Administrative Judge

/s/ Jonathan D. Zischkau
Chief Administrative Judge

/s/ Warren J. Nash
Administrative Judge