

GOVERNMENT OF THE DISTRICT OF COLUMBIA
CONTRACT APPEALS BOARD

PROTEST OF:)
)
BROOKS & BROOKS SERVICES, INC.) CAB No. P-605
)
Under RFP No. 9046-AA-03-1-DD)

For the Protester: Mr. L. Randolph Brooks, President. For the Government: H. Christopher Malone and Howard S. Schwartz, Assistants Corporation Counsel.

OPINION

Brooks & Brooks Services, Inc. ("Brooks"), the incumbent contractor for janitorial services at the D.C. National Guard Armory, protests the District's failure to mail it a copy of the solicitation for city-wide janitorial services, which included the Armory location. Brooks also challenges the Office of Contracting and Procurement's decision not to extend the first year option for a full year. We deny in part and dismiss in part for the reasons stated herein.

BACKGROUND

On June 25, 1999, the Office of Contracting and Procurement ("OCP") issued RFP No. 90436-AA-03-1-DD ("RFP") seeking proposals from contractors to provide janitorial and related supplemental services to District facilities. (Agency Report ("AR"), Ex. 1). The RFP was limited to businesses certified as Small Business Enterprises ("SBE") under the provisions of 27 DCMR Chapter 8 and "The Equal Opportunity for Local, Small and Disadvantaged Business Enterprises Act of 1992, D.C. Code §§ 1-1153.1 through 1-1153.7. Additionally, only SBEs certified in the procurement category of General Services were eligible to respond. (AR, Ex. 1, Section I.13.1 and 2). OCP issued three amendments to the RFP on July 20, and 27, 1999 and August 2, 1999. The third amendment extended the closing date to August 13, 1999. (AR, Ex. 2).

On June 25, 1999, OCP published notice of the RFP in the Washington Times (AR, Exh. 3). On June 28, 1999, OCP posted notice of the RFP on the *CBDNet*, an online service of the United States Department of Commerce and the United States Government Printing Office. (AR, Exh. 4).

The Contract Specialist obtained a copy of the directory of the certified SBE's from the Local Business Opportunity Commission ("LBOC") on or about June 18, 1999. (AR, Ex. 6). The Contract Specialist mailed copies of the RFP and amendments to forty-six (46) SBE's listed in the LBOC directory as General Services. (AR, Ex. 5, pp. 1& 2, and Ex. 6). Between June 25 and early August 1999, the Contract Specialist also mailed copies of the RFP and amendments to twenty-four (24) businesses which had telephoned and requested copies of the solicitation (AR, Ex. 5, pp. 2 - 4), and five businesses which had written requesting copies of the RFP. (AR, Ex. 5, pp. 15 -21). Between June 25 and early August 1999, representatives of forty-seven (47)

other businesses visited the Bid Room in OCP and obtained copies of the RFP and current amendments. (AR, Ex. 5, pp. 5 - 14).

On July 7, 1999, representatives of fourteen businesses attended the pre-proposal conference held by the Contracting Officer. (AR, Ex. 7).

On August 13, 1999, the date of closing, the Contracting Officer received proposals from twenty offerors. (Ar, Ex. 8). OCP is evaluating the proposals. (AR, p.4).

On November 4, 1999, Brooks sent a letter to OCP protesting that it had not been given notice of the RFP despite its status as a certified SBE since 1991, and the incumbent janitorial contractor at the D.C. National Armory since November 26, 1998. Brooks' contract provided that the District could extend the term of the contract for two (2) one year option periods or fractions thereof. (Ex. 12, § F.2) Brooks also protests that the District did not exercise its first year option for the full year. On November 23, 1999, the Contracting Officer submitted Brooks' protest to the Board. On November 24, 1999, the District exercised the option and extended the contract from November 27, 1999 through January 31, 2000. (AR, Ex. 13).

In its Agency Report of December 13, 1999, the District responded that: (a) OCP complied with the public notice requirements of the Procurement Practices Act and the District Procurement Regulations; (b) OCP did not deliberately or consciously intend to exclude Brooks from the competition; (c) OCP obtained adequate competition; (d) the right to exercise an option is a unilateral and discretionary right of the District; and (e) the Board will not consider a protest of the District's decision whether to exercise an option, since that is a matter of contract administration. The District attached to the Agency Report copies of letters from LBOC which demonstrate that Brooks' SBE certification expired on January 9, 1999 and that it was not recertified until November 2, 1999. (AR, Exs 9 & 10). The Board has also examined the LBOC Directory obtained by the Contract Specialist in June 1999, and Brooks is not listed among the businesses. (AR, attachment to Ex.6) Brooks has not responded to the Agency Report.

DISCUSSION

It is well settled that "[p]rospective bidders have a duty to avail themselves of every reasonable opportunity to obtain solicitation documents" *Potomac Airgas, Inc.*, CAB No. P-450, Mar. 12, 1997, 44 D.C. Reg. 6810,6812. The risk of nonreceipt rests with the potential bidder, "unless there is evidence (beyond mere nonreceipt) establishing, for example, that: (1) the contracting agency deliberately or consciously intended to exclude the prospective bidder from the competition, (2) the potential bidder did not neglect reasonable opportunities to obtain the documents *and* the agency failed to comply with notice requirements for the solicitation documentation at issue, or (3) the agency did not obtain adequate competition or reasonable prices." *Technical Resolution Corporation*, CAB No. P-393, Mar. 22, 1994, 41 D.C. Reg. 4138, 4139.

OCP published notice of the solicitation in the Washington Times newspaper and on the CBDNet more than 30 days prior to the receipt of proposals. The record is thus clear that OCP complied with the notice requirements of the PPA and the District Procurement Regulations. The record is also clear that OCP did not deliberately or consciously exclude Brooks from the competition. Brooks' name did not appear on the list of LBOC vendors who were mailed the solicitation because Brooks' SBE certification lapsed on January 9, 1999 and was not renewed until November 2, 1999. Of the 122 businesses that received a copy of the RFP, 20 submitted proposals. We find that OCP received adequate competition.

As to Brooks' contention that OCP should have exercised the option for an entire year, we have held that the right to exercise an option or any portion of an option is a unilateral and a discretionary right of the District. The exercise of an option is generally a matter of contract administration which we will not consider. *Good Food Services, Inc.*, CAB No. P-494, July 8, 1997, 44 D.C. Reg. 6846, 6847-6848. Accordingly, this ground of protest is dismissed.

The protest is therefore denied in part and dismissed in part.

SO ORDERED.

DATE: January 6, 2000

/s/

LORILYN E. SIMKINS
Chief Administrative Judge

/s/

MATTHEW S. WATSON
Administrative Judge

/s/

PHYLLIS W. JACKSON
Administrative Judge