

## **DISTRICT OF COLUMBIA CONTRACT APPEALS BOARD**

### **PROTEST OF:**

Camille Howe Cleaning Service	)	
	)	CAB No. P-0768
Under IFB No: RM-08-B-049	)	

### **OPINION**

*(Filing ID 19286433)*

For the Protester, Camille Howe Cleaning Service: Camille Howe, pro se. For the District of Columbia Government: Howard Schwartz, Esq., Talia Sassoon Cohen, Esq., Assistant Attorneys General.

Opinion by Administrative Judge Warren J. Nash, with Chief Administrative Judge Jonathan D. Zischkau, concurring.

Camille Howe Cleaning Service (“Camille Howe”) filed a protest of an award on January 7, 2008. Ms. Howe argues that the District of Columbia Department of Mental Health (“DMH”) awarded the contract to a nonresponsive bidder under IFB No. RM-08-B-049 (“IFB”) in violation of applicable statutes and regulations. Camille Howe claims that the awardee (Marcellus Cobb) failed to attend a mandatory site visit, rendering the bid nonresponsive. The District submitted an un rebutted affidavit stating that the awardee did attend the site visit. In any event, the failure of a bidder to attend a site visit is not a matter of responsiveness. Accordingly, we deny the protest.

### **BACKGROUND**

OCP issued the IFB on October 26, 2007, after the cancellation of a previous IFB on September 27, 2007. (Agency Report, Ex. 4). The IFB for the fixed unit price contract required the prospective contractor to provide cleaning services at five Community Services Facilities seven days a week, including holidays. The IFB set forth a contract base term of one year with the possibility of four one-year options.

Camille Howe submitted its response to the IFB on November 16, 2007. Two other prospective contractors, Marcellus Cobb and Building Services, also submitted responses. The bid tabulation sheet (Agency Report, Ex. 3) sets forth the ranking of the three prospective contractors after tabulation of their bid prices. Camille Howe’s prices for the contract are the highest prices of the three bidders in the base year and in three out of the four option years. Camille Howe filed its protest on January 7, 2008. In the Agency Report, the District submitted an affidavit of the contracting officer, Samuel J. Feinberg, indicating that the awardee in fact attended the mandatory site visit. (Agency Report, Ex. 7). By Determination and Findings to Proceed (“D&F”) dated January 9, 2008, DMH determined that it had a compelling need to proceed with contract award,

despite the protest. On January 11, 2008, the Chief Procurement Officer (“CPO”) signed the Determination and Findings to Proceed with Award pending decision on the protest.

On January 26, 2008, the protester filed a “Rebuttal to Incorrect Facts Contained in the Determination & Finding to Proceed with Performance While Protest is Pending.” The Board denies the protester’s challenge to the D&F to proceed. There is no question that providing for cleaning services at the facilities is a compelling and urgent requirement of the government. In the D&F, the CPO sets forth the District’s compelling need to proceed with contract award, because any disruption of cleaning services at the facilities could present health and safety risks to the public and to the staff who provide services to the patients.

### DISCUSSION

We exercise jurisdiction pursuant to D.C. Code § 2-309.03(a)(1).

In the protest, Howe argues that the other bidders submitted nonresponsive bids because those bidders did not attend the mandatory site visit required by the IFB. OCP responded to that allegation by submitting the affidavit of the contracting officer stating that the other bidders did attend the site visit. Howe did not respond to the Feinberg affidavit.

The Comptroller General has previously held that the failure to attend a mandatory site visit is not a matter of bid responsiveness. In *Edw. Kocharian & Company, Inc.*, B-193045, 58 Comp. Gen. 214, 79-1 CPD ¶ 20, Jan. 15, 1979, the Comptroller General set forth the rule regarding mandatory site visits and responsiveness. Kocharian argued that failure on the part of the bidder to attend the mandatory site inspection should cause the bid to be rejected as nonresponsive. The Comptroller General stated that the test to be applied in determining the responsiveness of a bid is whether the bid as submitted is an offer to perform the exact thing set forth in the IFB. If the bidder promises to perform the work as set forth in the IFB, then the bid should not be rejected as being nonresponsive because the bidder did not attend the site visit. In the instant matter, the un rebutted evidence from the District shows that the awardee did attend the site visit. However, even if the awardee had not attended the site visit, the failure to attend the site visit does not render its bid nonresponsive. Accordingly, we deny the protest.

DATED: April 5, 2008

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

CONCURRING:

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