

DISTRICT OF COLUMBIA CONTRACT APPEALS BOARD

PROTEST OF:

CERTIFIED LEARNING CENTERS)	
)	CAB No. P-0861
Under IFB Solicitation CFSA -09-I-0004)	

For the Protester: Patricia M. Felton, President, Certified Learning Centers. For the Government: Janice N. Skipper, Assistant Attorney General, D.C.

Opinion by Administrative Judge Warren J. Nash with Chief Administrative Judge Marc D. Loud, Sr., concurring.

OPINION

Filing ID 36021303

On July 10, 2010, Certified Learning Centers (“CLC”) protested the District’s Child and Family Services Agency’s (“CFSA”) decision to award contracts under this solicitation to bidders other than CLC. The protester alleged that CFSA discriminated against CLC during the selection process. CLC alleges that CFSA did not visit CLC’s work site, and therefore, did not evaluate CLC in the same manner that CFSA evaluated other bidders. The District responded in its Motion to Dismiss that CLC is not next in line for award even if CLC succeeds in its protest, and that CLC lacks standing to bring the protest.

BACKGROUND

On December 9, 2009, CFSA issued IFB CFSA-09-I-0004 for an indefinite delivery indefinite quantity (“IDIQ”) contract to provide home based and community based supplemental educational services, tutoring, and remediation services in individual sessions or group settings to wards (students) of the District of Columbia in the care, custody and control of CFSA. The IFB contemplated award of an IDIQ contract with fixed unit hourly prices. (AR Ex. 2). CFSA received 20 bids by December 29, 2009. (AR Ex. 1 and 3). CFSA prepared a bid tabulation sheet that set forth the rankings of the 20 bidders. (AR Ex. 3). CLC’s offer was the seventeenth lowest priced bid, out of the 20 bids received.

Between June 2 and June 9, 2010, CFSA awarded four contracts to bidders with higher rankings and lower prices than CLC. CLC filed this protest on July 16, 2010.

DISCUSSION

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

CLC Asserts that the District did not visit CLC’s work site, and that CLC was not given the

opportunity to show its capabilities to the District. The District replies that even if CLC's assertion were true, CLC could not be awarded the contract because CLC, at rank number 17, is not next in line for award. The District asserts that there are six bidders between CLC and the lowest priced bidder that did not get a contract. Accordingly, CLC is not next in line for award unless CLC can somehow remove six bidders whose bids are lower priced than CLC's.

This Board has granted District motions to dismiss protests when the bidder is not next in line for award. In *Commando K-9 Detectives and Executive Security & Engineering Technologies, Inc.*, CAB Nos. P-405, P-406 (Consolidated), 42 DCR 4597 (Aug 18, 1995), this Board sustained a District Motion to Dismiss the Protest because the protester was seventh in line for award and would not be next in line for award even if the Board sustained the protest. The Board stated:

Only aggrieved persons have standing to protest agency award decisions. In order to have standing, an actual or prospective bidder or offeror must show that it has suffered, or will suffer, a direct economic injury as a result of the alleged adverse agency action. *District of Columbia v. Group Insurance Administration*, 633 A.2d 2, 18-19 (D.C. 1993). A protestor lacks standing where it would not be in line for award, even if its protest were upheld. *Unfoldment, Inc.*, CAB No. P-358, (Sept. 17, 1993), 6 P.D. 5399, 5401-02. The record demonstrates that neither Commando nor Executive would be in line for award even if their protests were sustained.

See also American Combustion Industries, Inc., CAB No. P-499, (August 14, 1997).

Accordingly, we dismiss the protest.

CONCLUSION

For the reasons discussed above, we grant the District's motion and dismiss CLC's protest.

SO ORDERED.

DATED: February 17, 2011

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

CONCUR: /s/ Marc D. Loud, Sr.
MARC D. LOUD, SR.
Chief Administrative Judge

Electronic Service:

Ms. Patricia M. Felton, President
Certified Learning Centers
11309 Classical Lane
Silver Spring, MD 20901

Janice M. Skipper, Esq.
Assistant Attorney General
441 4th Street, N.W., Suite 700
Washington, D.C. 20001