

DISTRICT OF COLUMBIA CONTRACT APPEALS BOARD

PROTEST OF:

Brentworks, Inc.)	
)	CAB No. P-0943
Solicitation No.: DCKA-2013-B-0035)	

For the Protester: Doris H. Brent, *pro se*. For the District of Columbia Government: Alton E. Woods, Esq., Assistant Attorney General.

Opinion by Administrative Judge Maxine E. McBean with Administrative Judge Monica C. Parchment, concurring.

OPINION

Filing ID #54359083

Brentworks, Inc. (“Brentworks” or “protester”) filed a protest on July 9, 2013, challenging the District’s decision to award a contract to Premier Office & Medical Suppliers, LLC (“Premier”) under Solicitation No. DCKA-2013-B-0035 (“IFB” or “Solicitation”). The protester challenges the award on the grounds that the Office of Contracting and Procurement (“OCP”) incorrectly awarded preference points to Premium Suppliers, LLC and designated them, instead of Brentworks, the lowest responsible bidder. However, the District contends that Brentworks mistakenly identified a company other than Premier as the awardee and, in fact, OCP correctly applied preference points to Premier’s bid. In addition, the District argues that since the contract work was completed by the time the protest was filed, the protest should be denied. Having reviewed the record, the Board finds that OCP correctly evaluated and applied preference points to the submitted bids, which resulted in Premier having the lowest responsible bid. Furthermore, since the scope of work under the Solicitation was completed by the time the protest was filed, the Board dismisses the protest as moot.

BACKGROUND

On June 18, 2013, OCP issued IFB No. DCKA-2013-B-0035 for a contractor to provide 16,000 20-gallon Treegator watering bags for the District’s Department of Transportation (“DDOT”) on behalf of the Urban Forestry Administration (“UFA”). (AR 3.) The IFB was posted in the Washington Times newspaper and on OCP’s website. (*Id.*) The IFB was designated for certified small business enterprise (“SBE”) bidders only pursuant to the provisions of the “Small, Local, and Disadvantaged Business Enterprise Development and Assistance Act of 2005,” (the “Act”). D.C. Code § 2-218.01, *et seq.* (AR, Ex. 1, § B.2.) Due to time-sensitivity, the IFB included a shortened advertising period of 5 days, and required the contractor to deliver the items within two business days upon receipt of an order. (AR 3; AR, Ex. 1, § C.3.2.) Proposals were due by 2:00 p.m. on June 24, 2013. (AR, Ex. 1, § L.5.)

Four contractors submitted bids by the deadline: (1) Swann Construction, Co., Inc. (“Swann Construction”) in the amount of \$560,000.00; (2) Brentworks in the amount of \$266,720.00; (3) C&E Services, Inc. of Washington (“C&E”) in the amount of \$253,920.00; and (4) Premier in the amount of \$280,000.00 (AR, Ex. 4). Under the provisions of the Act, certified businesses receive a reduction in price for a bid submitted in response to the IFB. (AR, Ex.1, § M.1.) The District has to apply the following preferences in evaluating bids from businesses certified as: small (3%), resident-owned (5%), longtime resident (5%), local (2%), local with a principal office located in an enterprise zone (2%), disadvantaged (2%), veteran-owned (2%), or local manufacturing (2%). (*Id.*) Twelve percent (12%) is the maximum number of preference points to which a certified business enterprise may be entitled. D.C. Code § 2–218.43(b). (AR, Ex.1, § M.1.2.)

Based on the criteria delineated by the Act, the bidders were entitled to the following preference point deductions: Swann Construction was entitled to a 9% discount, resulting in a bid total of \$509,600.00; Brentworks was entitled to a 7% discount, resulting in a bid total of \$248,049.00; C&E was entitled to a 7% discount, resulting in a bid total of \$236,156.60; and Premier was entitled to a 12% discount, resulting in a bid total of \$246,400.00. (AR, Exs. 4, 5.) After the preference point deductions, C&E was the apparent low bidder; however, C&E is listed as “Ineligible” on the General Services Administration’s Excluded Parties List System (“EPLS”).¹ (AR, Ex. 7.) Therefore, C&E was precluded from being awarded the contract. *See (Id.)*; 27 D.C. Mun. Regs. tit. 27, § 2212 (1988).

Consequently, on June 27, 2013, OCP awarded the contract to the next lowest bidder, Premier, and issued a Determination and Findings for Award to Other Than Low Bidder. (AR, Ex. 6.) Premier completed the contract by delivering 5,905 Treegator bags on June 28, 2013, and 10,095 Treegator bags on July 3, 2013. (AR, Ex. 11, ¶ 7.) OCP sent a letter to Brentworks on July 3, 2013, notifying it that Premier, with its estimated bid of \$280,000.00 (the price before preference points were applied to the bid), had been awarded the contract having submitted the lowest responsive bid. (AR, Ex. 8.)

After receiving the letter from OCP, Brentworks contacted DDOT to question the award, claiming that “Premium Supplier, LLC” is not a DC Certified Business Enterprise. (Protest 1.) On July 9, 2013, Brentworks filed the instant protest with the Board. (*Id.*)

DISCUSSION

We exercise jurisdiction over this protest and its underlying allegations pursuant to D.C. Code § 2-360.03(a)(1) (2011).

In its protest, Brentworks alleges that “Premium Suppliers, LLC” is not a “DC Certified Business Enterprise.” (Protest 1.) However, it appears that Brentworks mistook “Premium Suppliers, LLC” as the contract awardee instead of “Premier Suppliers, LLC,” the company identified in OCP’s July 3, 2013, letter to Brentworks. (AR 6; AR, Ex. 8.) In the Certified Contractors database for the Department of

¹ The Board notes that although the District cites EPLS as the source for its information concerning C&E, the District actually obtained the information from the System for Award Management which replaced EPLS for suspension and debarment information effective November 21, 2012. System for Award Management, *Exclusion Summary, C&E Services, Inc. of Washington*, <https://www.sam.gov/portal/public/SAM/> (accessed June 25, 2013).

Small and Local Business Development (“DSLBD”), “Premium Suppliers, LLC” does not produce any results; however, “Premier Office & Medical Suppliers, LLC,” the full business name of Premier, is actively listed in the database. (AR 6; AR, Ex. 5.) Furthermore, information from the DSLBD website confirms that Brentworks’ bid was entitled to receive a 7% preference point deduction, but Premier was entitled to receive a 12% preference point deduction. (AR, Ex. 5.)

The District’s procurement regulation provides that, “[t]he contracting officer shall award each contract to the responsible and responsive bidder whose bid meets the requirements set forth in the IFB, and is the lowest bid price or lowest evaluated bid price, considering only price and price-related factors included in the IFB.” 27 D.C. Mun. Regs. tit. 27, § 1541.1. The contracting officer correctly applied the evaluation criteria and preference factors as specified in the IFB, discounting Brentworks’ bid from \$266,720.00 to \$248,049.60 and discounting Premier’s bid from \$280,000.00 to \$246,400.00. (AR 7; AR, Ex. 1, § M; AR, Ex. 4.) The contracting officer then chose Premier as the responsible and responsive bidder with the lowest evaluated bid price. (AR 7; AR, Ex. 1, § M.)

In determining the propriety of an evaluation decision, “we examine the record to determine whether the decision was properly documented, reasonable and in accord with the evaluation criteria listed in the solicitation and whether there were any violations of procurement laws or regulations.” *Busy Bee Env’tl. Servs., Inc.*, CAB No. P-0617, 48 D.C. Reg. 1564, 1567 (July 24, 2000) (citing *Trifax Corp.*, CAB No. P-0539, 45 D.C. Reg. 8842, 8847 (Sept. 25, 1998)). Implicit in the foregoing is that the evaluation and selection decision must be documented in sufficient detail to show that it is not arbitrary. *Health Right, Inc., D.C. Health Coop., Inc., George Washington Univ.*, CAB Nos. P-0507, P-0510, P-0511, 45 D.C. Reg. 8612, 8635 (Oct. 15, 1997). Based on the above calculations, OCP’s award to Premier was reasonable, consistent with the criteria listed in the Solicitation, and the record contains sufficient documentation on the bids and selection decision to support the District’s contract award.

Moreover, although the protest was timely filed on July 9, 2013, within 10 days of notice of contract award, the issues raised in this protest are now moot because Premier completed the IFB’s scope of work on July 3, 2013. (AR 8.) A case is moot when the issues are academic and there is no possible remedy which the Board could order were it to grant the protest. *Fort Myer Constr. Corp.*, CAB No. P-0641, 49 D.C. Reg. 3378, 3380 (Aug. 16, 2001) (citing *C & E Services, Inc.*, CAB No. P-0360, 40 D.C. Reg. 5020, 5022 (Mar. 12, 1993)). Per the IFB, the Treegator bags were to be delivered within two business days of receipt of contract award. (AR, Ex. 1, § C.3.2.) Although Premier did not complete delivery until July 3rd, six days after contract award, the Treegator bags were “immediately used by the District.” (AR 8.) DDOT has also indicated that it will not purchase any additional bags. (AR 8; AR, Ex. 11, ¶ 8.) Because the scope of work under the Solicitation has been performed, eliminating any further need for the services solicited, the issue is moot as there is no available remedy to the protester. *Fort Myer Constr. Corp.*, CAB No. P-0641, 49 D.C. Reg. at 3380.

CONCLUSION

For the reasons discussed herein, we find that OCP correctly applied the certified business preference points to each bidder and properly awarded the contract to Premier, the responsible and

responsive bidder with the lowest evaluated bid price. In addition, the contract work was already completed by the time Brentworks filed the instant protest. Accordingly, we dismiss the protest as moot.

SO ORDERED.

DATED: October 9, 2013

/s/ Maxine E. McBean
MAXINE E. MCBEAN
Administrative Judge

CONCURRING:

/s/ Monica S. Parchment
MONICA S. PARCHMENT
Administrative Judge

Electronic Service to:

Doris H. Brent, President
Brentworks, Inc.
1776 Eye Street, N.W., Suite 900
Washington, D.C. 20006

Alton E. Woods, Esq.
Assistant Attorney General
Office of the Attorney General
55 M Street, S.E., 7th Floor
Washington, D.C. 20003