

DISTRICT OF COLUMBIA CONTRACT APPEALS BOARD

PROTEST OF:

I.C.A.STAR.N.U)	
)	CAB No. P-0795
Under IFB No. CFSA-08-I -0004)	

For the Protester: Ms. Sherry J. Bailey, *pro se*. For the District of Columbia Government: Talia S. Cohen, Esq., Assistant Attorney General.

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

OPINION

Filing ID 25506948

i.c.a.STAR.n.u (“STAR”) has protested the contracting officer’s decision not to award it a youth mentoring contract. The District has moved to dismiss the protest on the ground that STAR lacks standing. STAR has not challenged the two awards made by CFSA and does not allege that CFSA violated any law, regulation, or the terms of the solicitation. Even if we could discern a valid challenge to the awards, STAR lacks standing to protest, as it would not be next in line for an award if we were to sustain its protest grounds. Accordingly, we dismiss the protest.

BACKGROUND

On September 24, 2008, the District of Columbia’s Child and Family Services Agency (“CFSA”) issued IFB No. CFSA-08-I-0004 (“IFB”) for a proposed indefinite delivery indefinite quantity (“IDIQ”) contract. The IFB sought qualified contractor(s) to provide mentoring services for up to 500 clients, with a bid opening date of October 24, 2008. (District’s Motion to Dismiss, Ex. 1). CFSA set forth in Section B.3 the method of bid evaluation, based on the hourly rate for each CLIN times 288 hours for each CLIN. The 288 hours represented the number of hours of mentoring services one client could receive during the contract term. (Motion to Dismiss, at 2; Exs. 1, 14). On October 15, 2008, CFSA issued Amendment No. 1, which provided responses to bidders’ questions. (Motion to Dismiss, Ex. 2). On October 24, 2008, CFSA received a total of 23 bids, four of which were received after bid opening and not opened. (Motion to Dismiss, at 2).

CFSA prepared bid tabulation sheets of the bidders (Motion to Dismiss Ex. 13) indicating that M.M.G. LLC (“M.M.G.”) offered the lowest total bid price of \$24,480. Our Future offered the second lowest total bid price of \$25,056. Culbreth & Culbreth Consultant, Inc. (“Culbreth”) offered the third lowest total bid price of \$28,494.72, and Family Enrichment Center offered the fourth lowest total bid price of \$28,512. (Motion to Dismiss, Ex. 13; District Reply, dated March 19, 2009, Ex. A). CFSA determined M.M.G., the lowest bidder, to be nonresponsible. (Motion to Dismiss, Ex. 14), and on December 31, 2008, CFSA awarded Contract No. CFSA-09-C-0133 to the second lowest bidder, Our Future. (Motion to Dismiss, Ex. 11). On January 31, 2009, CFSA awarded Contract No. CFSA-09-C-0130 (“Contract No. 0130”) to the third lowest

bidder, Culbreth. (Motion to Dismiss, Ex. 12). The contracting officer has not awarded a contract for the remaining 80 clients. (Motion to Dismiss, at 3; District Reply, at 3).

On February 6, 2009, STAR filed the instant protest with the Board alleging that:

1. STAR did not fully understand the contracting process;
2. STAR's contract has always been negotiable on price when it pertains to keeping the clients' services in place;
3. STAR has contracted with CFSA for 11 years and the price has never increased or decreased;
4. Six years ago CFSA had two companies servicing hundreds of children and CFSA hired more contractors to avoid the displacement of children should one of the contractors be unable to perform;
5. STAR cannot understand why CFSA would sever an excellent relationship with STAR when STAR is willing to negotiate a reduction in price; and
6. STAR mentors will not work with the two companies that CFSA awarded contracts to pursuant to the IFB.

On February 26, 2009, the District filed a motion to dismiss asserting that STAR lacks standing to protest since STAR is not next in line for award even if the protest were sustained, and, moreover, even on the merits, none of the six protest grounds raised by STAR is an adequate ground for protest. On March 8, 2009, the STAR filed its opposition, raising two new issues: (1) the District incorrectly indicates in the bid tabulation sheets (Exhibit 13) that STAR was eighth in line for award when in fact STAR was tied for fourth place with three other bidders, and (2) that Family Enrichment is a nonresponsible bidder. As a result of the STAR's opposition, CFSA conducted a complete and thorough review of the bids and CFSA produced a revised bid tabulation sheet which was submitted as Exhibit A to the District's March 19, 2009 reply to STAR's opposition. Below is a table summarizing the revised bid tabulation of Exhibit A (excluding bidders ranked below STAR):

BIDDERS	Total Price Per Client for the Base Year and Four Options	LSDBE Preference	Adjusted Value
1. M.M.G.	\$24,480.00	0	\$24,480.00
2. Our Future	\$25,056.00	0	\$25,056.00
3. Culbreth	\$28,494.72	0	\$28,494.72
4. Family Enrichment	\$28,512.00	0	\$28,512.00
5. Kidd International	\$37,324.80	10 %	\$33,592.32
6. Steppingstones	\$38,992.32	12 %	\$34,313.24
7. Greater Fellowship	\$34,560.00	0	\$34,560.00
7. Way of the Word	\$34,560.00	0	\$34,560.00
7. GANG	\$34,560.00	0	\$34,560.00
7. STAR	\$34,560.00	0	\$34,560.00

As can be seen from the revised bid tabulation sheet, the rankings of the first four bidders did not change even though CFSA corrected several bid prices. M.M.G. still offered the lowest total bid price of \$24,480.00 but was determined nonresponsive and therefore eliminated from the competition. Our Future still offered the second lowest total bid price of \$25,056, Culbreth still offered the third lowest total bid price of \$28,494.72, and Family Enrichment still offered the fourth lowest total bid price of \$28,512. (District's March 19 Reply, Ex. A). However, the revised bid tabulation sheet shows two other bidders with the fifth and sixth low evaluated bids – namely, Kidd International Home Care, and Steppingstones Management Services, LLC, based on their right to a bid reduction based on preferences for being local, small, and disadvantaged business enterprises. In addition, CFSA determined that there was an error in the unit prices for both Steppingstones and for STAR. Accordingly, the revised bid tabulation indicates that beyond the awardees (Our Future and Culbreth), Family Enrichment, Kidd International, and Steppingstones have lower evaluated bids than STAR. STAR challenged the responsibility of Family Enrichment in its opposition to the District's motion to dismiss. STAR has never responded to the District's reply with the revised bid tabulation sheet showing STAR is tied for seventh with three intervening bidders ahead of it.

DISCUSSION

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

The Board notes that none of STAR's six protest grounds allege that CFSA violated any procurement law or regulation or the terms of the solicitation. STAR does not challenge the two awards but rather argues that CFSA should have continued to contract with STAR notwithstanding the new procurement. STAR misunderstands the nature of a competitive procurement under District procurement law. We see nothing in the record demonstrating that CFSA improperly conducted this procurement. In response to the District's motion to dismiss, raising STAR's lack of standing to challenge the awards (which STAR really does not challenge), STAR has only alleged that one bidder should have been determined nonresponsive. Thus, this protest can be dismissed on two bases. First, STAR does not properly challenge the awards made to Our Future and Culbreth and alleges no violation of the law in its protest grounds. Second, even if we could treat the protest as challenging the awards, STAR lacks standing because it is not in line for award if we were to find merit in its protest grounds. *Commando K-9 Detectives, Inc.*, CAB Nos. P-0405, Aug. 18, 1995, 42 D.C. Reg. 4597, 4598 (protester lacks standing because it is not next in line for award even if the protest were sustained).

CONCLUSION

STAR has not challenged the two awards made by CFSA and does not allege that CFSA violated any law, regulation, or the terms of the solicitation. Even if we could discern a valid challenge to the awards, STAR lacks standing to protest, as it would not be next in line for an award if we were to sustain its protest grounds. Accordingly, we dismiss the protest.

SO ORDERED.

DATED: June 4, 2009

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

CONCURRING:

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