

GOVERNMENT OF THE DISTRICT OF COLUMBIA
CONTRACT APPEALS BOARD

PROTEST:

SCIENTIFIC GAMES, INC.)	
)	CAB No. P-294
Under Contract No. DC-91-001)	

For the Protestor: David P. Towey, Esquire, and Joseph J. Petrillo, Esquire. For the Government: Anne Cauman and Nancy Hapeman, Assistants Corporation Counsel. For the Intervenor, G-Tech Corporation: Robert P. Watkins, Esquire.

Opinion by Administrative Judge Cynthia G. Hawkins-León, with Administrative Judges Zoe Bush and Terry Hart Lee concurring.

OPINION

On August 16, 1991, Scientific Games, Inc. ("Protestor" or "Scientific Games") timely filed the instant protest of the award of a contract for instant or "scratch off" ticket production under Request for Proposal No. DC-91-001 by the District of Columbia Lottery and Charitable Games Control Board ("District" or "Lottery Board").^{1/} The awardee of this contract is G-Tech Corporation ("G-Tech").

Scientific Games alleged the following: (1) the Lottery Board failed to disclose both the identity of the offerors and any justification for the award of the contract; and (2) the choice of G-Tech as the awardee is neither appropriate nor justifiable.

In its October 10, 1991 response^{2/} to the District's Agency Report, which had been filed on September 16, 1991, Protestor presented eight (8) additional allegations. The Board granted the District's motion to dismiss those allegations.^{3/} The Board limited the scope of the protest to two issues as follows: (1) whether the Lottery Board properly determined G-Tech to be responsible in carrying out security measures as required by the modified

^{1/}The Lottery Board is an independent agency of the District of Columbia. This protest of an action of an independent agency is properly before the Board pursuant to Board Rule 101.8, 36 DCR 2686 (1989).

^{2/}By an Order dated October 3, 1991 (Bush, AJ), the Board granted Protestor's Motion for an Enlargement of Time to file its comments to the Agency Report. Thus, Protestor's comments were filed in a timely manner.

^{3/}Order and Opinion, issued March 11, 1992 (Turner, AJ (retired)).

contract document(s); and (2) whether the Lottery Board awarded the contract to the lowest and most technically competent bidder as required by D.C. Code § 2-2536(b) (1988).^{4/}

G-Tech intervened in the proceeding and filed its comments on the Agency Report on September 30, 1991.

As an independent government agency, the Lottery Board is not subject to the Procurement Practices Act of 1985, D.C. Code §§ 1-1181 et seq. (1992) ("PPA"). Pursuant to Section 4 of D.C. Law 3-172, D.C. Code § 2-2536, the Lottery Board has promulgated its own procurement regulations. See 36 DCR 6681 et seq. (September 22, 1989). Certain portions of the D.C. Procurement Regulations, 27 DCMR §§ 1000 et seq. (1988), are incorporated in the Lottery Board's procurement regulations. Specifically, the Lottery Board's definition of "responsible bidder or offeror" in section 2099 of its procurement regulations (36 DCR 6706) tracks the definition in the PPA. Compare D.C. Code § 1-1181.7(4). In addition, the Lottery Board has adopted the responsibility provision of the D.C. Procurement Regulations. See § 2014.1 of Lottery Board Regulations. (36 DCR 6691).

FINDINGS OF FACT

1. On March 25, 1991, the Lottery Board issued Request for Proposals No. DC-91-001 ("RFP") for the production of instant lottery tickets, including the manufacture of the instant tickets, lottery consultation and validation. (Exhibit 1).^{5/}

2. On March 29, 1991, the Lottery Board issued Amendment No. 1 to the RFP changing the date of the pre-proposal conference from April 12, 1991, to April 9, 1991. (Exhibit 2). On April 17, 1991, the Lottery Board issued Amendment No. 2 to the RFP amending several sections of the RFP. (Exhibit 3). On the same date, the Lottery Board also issued responses to questions raised at the pre-proposal conference. (Exhibit 4).

3. The Lottery Board received timely proposals from three offerors, G-Tech, Scientific Games, and Dittler Brothers, prior to the April 25, 1991 4:30 p.m. deadline. (Exhibits 5, 6, and 7).

4. After preliminary evaluation of the three proposals, the Lottery Board held separate telephone conferences with each of the offerors concerning their proposals. (Exhibits 11, 12, and 13). As a result of the telephone conferences, the offerors were requested to submit Best and Final Offers ("BAFOs") by May 25, 1991.

^{4/}In light of the fact that the procedural history of this case is rather tortuous and, for the most part, has been previously reported, the Board, in this opinion, will not repeat the procedural history in its entirety. Id.

^{5/}Unless otherwise specified, all exhibits referred to are exhibits to the initial "Agency Report of the District of Columbia" filed with the CAB on September 16, 1991.

5. The RFP established evaluation criteria for both technical and price aspects of the proposals and provided the maximum possible points available in both areas. The price accounted for 50 points and the technical score accounted for 80 points. The maximum possible points available were 130 points. (Exhibit 1, sec. 2.1, as amended by Exhibit 3).

6. Technical proposals and BAFOs were evaluated by a four member committee. (Exhibit 13). The proposals and BAFOs were evaluated in accordance with the evaluation factors of the RFP. (Exhibits 1 and 13). The technical evaluation committee's report indicates that all three offerors met the Lottery Board's minimum needs and that Scientific Games had the highest technical score by a slight margin. In summarizing the results of the evaluation, the report stated: "All of the offerors demonstrate the ability to provide the Agency with instant ticket production services. However, based on the points awarded the technical proposal, Scientific Games has a slight edge over the others." The final average technical scores were:

Scientific Games	75.8
G-Tech	72.9
Dittler Brothers	72.1

(Exhibit 13, including attached Evaluation Report for Instant Ticket Production, dated May 24, 1991).

7. The price proposals were evaluated by the Lottery Board's Financial Officer. After submission of BAFOs, G-Tech had submitted the proposal with the lowest price. The final price scores were:

G-Tech	50.0
Dittler Brothers	41.2
Scientific Games	33.7

(Exhibit 13).

8. With technical scores and price scores added together, the final total scores were:

G-Tech	122.9
Dittler Brothers	113.3
Scientific Games	109.6

(Exhibit 13)

9. With the highest total score, G-Tech became the recommended awardee. (Exhibits 13 and 14A).

10. The RFP provided the Lottery Board with the option of conducting a pre-award survey of the production facility of the recommended awardee. (Exhibit 1, sec. 2.4, as amended by Exhibit 3).

11. On June 6, 1991, representatives of the Lottery Board conducted, as part of the responsibility determination, a pre-award survey of G-Tech's ticket production facilities in Providence, Rhode Island. (Exhibits 13 and 14A). The survey team consisted of Sylvia Kinard, Contracting Officer and Acting Executive Director of the Lottery Board; a Lottery Board member; the Security Chief of the Lottery Board; and the Automated Information Systems Chief of the Lottery Board. (Exhibit 14A). The survey showed that G-Tech's security system was accurately described in G-Tech's proposal and that overall the system was good. However, the survey indicated four areas where the Lottery Board's Security Chief wanted minor modifications to enhance the system. G-Tech agreed to make the requested modifications. The requested modifications did not involve modifications of aspects of the security system evaluated in terms of the Lottery Board's minimum needs as stated in the RFP. (Exhibits 14A and 14).

12. On June 25, 1991, the Contracting Officer issued a Determination and Findings ("D&F") of G-Tech's responsibility and at the same time approved the recommended contract award to G-Tech. (Exhibits 13 and 14A). In issuing the D&F of Contractor's Responsibility, the Contracting Officer had reviewed considerable information about G-Tech. The information reviewed included: two positive references from satisfied customers for whom G-Tech had provided instant lottery tickets and related administrative and marketing support; evidence of G-Tech's extensive experience in providing instant tickets in foreign countries; significant financial information; and a Security Inspection Report. (Exhibit 14A). The Contracting Officer had also reviewed the technical and price evaluations of the proposals and a comparison of G-Tech's proposed prices with those of an existing contractor in recommending award of the contract to G-Tech. (Exhibits 13 and 14A).

13. On that same date Karen Rootes, Procurement Officer of the Lottery Board, formally presented the responsibility determination and recommendation of award to the Lottery Board. (Exhibits 13 and 14A; Exhibit 1 to Protestor's Opposition to the District's Motion to Dismiss New Allegations). The Lottery Board had some questions about the responsibility determination and G-Tech's security system. (Exhibit 1 to Protestor's Opposition to the District's Motion to Dismiss New Allegations).

14. On June 28, 1991, at the request of the Contracting Officer, Ms. Rootes presented to the Lottery Board further information concerning G-Tech's responsibility. This information included confirmation that G-Tech agreed to make all recommended minor modifications to the security system prior to award. On receipt of this information, the Lottery Board voted unanimously to award the contract to G-Tech. (Exhibit 1 to Protestor's Opposition to the District's Motion to Dismiss New Allegations).

15. On August 5, 1991, the Lottery Board sent letters to the other offerors notifying them of the recommended award to G-Tech. (Exhibits 15 and 16).

16. On August 9, 1991, the Lottery Board awarded Contract No. DC-91-001 to G-Tech. The minor modifications to the security system made pursuant to the responsibility determination were memorialized in the contract. (Exhibit 17).

17. On August 15, 1991, the Lottery Board sent letters to the other offerors notifying them of the award to G-Tech and of their right to request a debriefing. (Exhibits 18 and 19).

18. On August 16, 1991, Scientific Games filed the instant protest with the Board.

DECISION

As the facts demonstrate, Scientific Games was third in line for the contract award. (Finding of Fact No. 8). Consequently, it is not in line for the award of the contract should the protest be sustained and, therefore, is not an interested party for purposes of the Board's jurisdiction. See Unfoldment, Inc., CAB No. P-358, 6 P.D. 5399 (September 17, 1993); O'Donnell Construction Company, CAB No. P-340, 40 DCR 5063 (April 2, 1993); MTI Recyc. A Joint Venture, CAB P-287, 40 DCR 4554 (October 10, 1992).

In its Agency Report, the District stated that Scientific Games' allegations of G-Tech's nonresponsibility are "not based on or supported by any evidence. . . , and are merely speculative and should be totally disregarded. . . ." (Agency Report at 5). The Board agrees.

Therefore, even if Scientific Games were an interested party and had standing to bring this protest, Scientific Games has failed to prove by a preponderance of the evidence that the responsibility determination of the contracting officer should be overturned. See Pentagrid Communication & Engineering, CAB No. P-331, 40 DCR 5041 (March 22, 1993); Androsphinx Cleaning Service, Ltd., CAB No. P-113, 38 DCR 2989 (October 30, 1989). In addition, the Board's reversal of an affirmative determination of responsibility would require that the protestor prove possible fraud or bad faith on the part of government officials or that the determination lacks any reasonable basis. See Ideal Electrical Supply Corp., CAB No. 372, 6 P.D. 5346 (August 13, 1993); Theodor Arndt GmbH & Co., B-237180, 90-1 CPD ¶ 64 (1990). The Board finds that Scientific Games has failed to meet any of these requirements.

The Protestor alleged that certain documents have been withheld by the District the release of which would enable the Protestor to more accurately determine whether the District had properly awarded the contract. The Board has received copies of all documents, a listing of all exhibits, and reasons for non-disclosure, if any, in accordance with

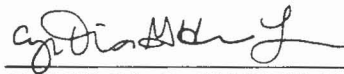
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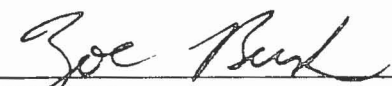
Board Rule 305.3. (See Agency Report, Index of Exhibits). Our review reveals no reason for further disclosure to the Protestor of documents relating to trade secrets held by G-Tech or that may provide a competitive advantage to Scientific Games. The purpose of the limited discovery procedure is not to allow unspecified and uncharted "fishing expeditions" by the Protestor into confidential documents in search of grounds for their protests.

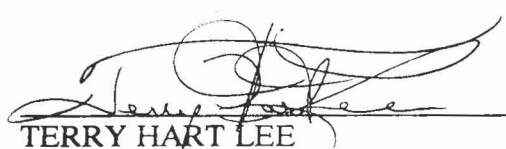
Therefore, based upon the facts, legal precedent and reasoning as set forth above, the protest is **DISMISSED**, with prejudice.

DATE: September 24, 1993


CYNTHIA G. HAWKINS-LEON
Administrative Judge

CONCUR:


ZOE BUSH
Chief Administrative Judge


TERRY HART LEE
Administrative Judge