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GOVERNMENT OF THE DISTRICT OF COLUMBIA
CONTRACT APPEALS BOARD

PROTEST OF:

TRACK-TECH INTERNATIONAL)

Under IFB No. 9179-AA-PS)

CAB No. P-231)

For the Protester: Everett E. Bell. For the Government: Howard S. Schwartz and Anne Cauman, Assistants Corporation Counsel.

Opinion by Administrative Judge Claudia D. Booker, with Judges Marlin and Davis concurring.

OPINION

On February 28, 1989, the Department of Administrative Services (DAS) issued Invitation for Bids No. 9179-AA-PS (IFB) to secure electronic monitoring services to be used by the Department of Correction for individuals in the home detention program.

At the time of the bid opening on September 1, 1989, nine bids had been received. DAS found Trak-Tech International (Trak-Tech) to be the apparent second lowest bidder and Hitek Community Control Corporation (Hitek) to be the apparent fifth lowest bidder. See, the District of Columbia's Agency Report (Agency Report), filed on June 11, 1990.

It took the District several months to evaluate the bids, and as a result of the protracted delay the District requested bid extensions from the bidders. On November 15, 1989, Mr. Bell of Trak-Tech spoke with the District's contracting agent and questioned the reason for the District's bid extension request. According to the District, Mr. Bell stated that he expected the extension had been requested by a bidder who needed additional time to obtain the 300 devices. (Agency Report, p. 4.)

On March 28, the District issued a Determination and Finding that Hitek had been determined to be a prospective responsible contractor, pursuant to 27 DCMR §2200. The following week, on April 3, 1990, DAS issued a Determination and Findings that the bids submitted by Trak-Tech and the first four apparent lowest bidders were nonresponsive because each bid failed to comply with the IFB specifications. (Agency Report, Exh. 12.)

Trak-Tech filed a protest with the Board on April 11, 1990, citing the following six grounds for protesting the then-pending award of the contract to Hitek:

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1. Hitek, on August 28, 1989, did not have a product in the market that met your bid specifications. This is a fact and it is just in the last two - three months that they have had a product that might comply!
2. Because of reason #1, their bid should not have been allowed.
3. I do not believe that they can or will deliver even now, 200 units in 24 hours as the bid requested!
4. It is obvious that you have delayed issuing the contract until a pre-selected vendor could qualify their equipment and then have probably not required them to deliver product as you did others. This is blatantly violation of the bid process and is an insult to the integrity of companies like ourselves who met your specification completely and maintained the inventory for several months to comply!
5. Addendum #5 deleted any requirements to bid monitoring services. If this aware (sic) is for any monitoring service, then you have violated the bid process by not allowing us to bid services which we could have done. Copy attached.
6. We were called by the District to confirm our stock. See attached copy of letter to Helen Thomas which confirmed stock on hand.

In its Agency Report the District asserts that the grounds of Trak-Tech's protest are not "totally clear," and argues that the protest should be dismissed for several reasons. Firstly, the District contends that Trak-Tech is not an aggrieved party with standing to bring a protest before the Board. It is the District's position that Trak-Tech's bid was found to be nonresponsive and, as a consequence, Trak-Tech is not eligible for contract award. Therefore, since Trak-Tech has suffered no loss or injury in fact which would qualify it to be adjudged an "aggrieved" bidder under §§1-1189.3 and 1-1189.8(a) of the District of Columbia Procurement Practices Act of 1985 (PPA), it does not come within the jurisdiction of the Board.

Secondly, the District contends that Trak-Tech has failed to include in its protest a clear and concise statement of the legal and factual grounds of the protest, as required by Board Rule 302.1(c). See, 36 DCR 2711 (April 21, 1989). The District asserts that Trak-Tech's allegations in its protest appear to be "sheer conjecture and speculation, completely devoid of any evidentiary underpinnings and unclear in regard to the monitoring services." (Agency Report, p. 12.) Further, as to the allegation concerning Hitek's ability to timely deliver goods, the District argues that, since the government awarded the contract to Hitek on April 3, 1990, effective April 14, 1990, this is a

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question of contract performance and is not subject to the protest jurisdiction of the Board.

The Board has reviewed the protest and has been unable to definitively ascertain the grounds of the protest. The protest letter is not explicit; and neither the PPA nor the Board's rules of practice and procedure imposes upon the Board the responsibility to untangle the grounds of a protest and the evidence to support such grounds. Instead, the responsibility to provide a clear and concise statement of the protest is placed upon the protester and is expressly stated under section 302 of the rules:

302.1 All protests shall be in writing, addressed to the Board, and shall include the following:

- (c) A clear and concise statement of the legal and factual grounds of the protest, including copies of relevant documents, and citations to statutes, regulations or contract provisions claimed to be violated. (36 DCR 2711, April 21, 1989.)

Here, the Board finds that Trak-Tech's April 11, 1990 letter falls considerably short of satisfying the clear and concise statement required by §302.1(c). See, U.S. Sprint Communications Company, 1 PD 33, 34 (D.C. CAB 1987); and Metropolitan Pest Control, Inc., 1 PD 408,409, 410 (D.C. CAB 1989).

For the reasons discussed above, the Board finds that Trak-Tech failed in its protest to make a clear and concise statement of the legal and factual grounds of its protest and, therefore, its protest is denied.

DATE: October 12, 1990

Claudia Booker
CLAUDIA D. BOOKER
Administrative Judge

CONCUR:

David H. Marlin
DAVID H. MARLIN
Administrative Judge

William L. Davis
WILLIAM L. DAVIS
Chief Administrative Judge