

GOVERNMENT OF THE DISTRICT OF COLUMBIA
CONTRACT APPEALS BOARD

PROTEST OF:)	
)	
IIU Consulting Institute, Inc.)	CAB No. P-0656
Under IFB No. POHA-2002-B-0306)	

For the Protester: IIU Consulting Institute, Inc., Frank Ukoh, President, *pro se*. For the Government: Howard Schwartz, Esq. and Warren J. Nash, Esq., Assistants Corporation Counsel.

Opinion by Administrative Judge Matthew S. Watson, with Chief Administrative Judge Lorilyn E. Simkins and Administrative Judge Jonathan D. Zischkau, concurring.

OPINION

(Courtlink Filing ID 775133)

IIU Consulting Institute, Inc. ("IIU" or "protester") was the higher of two bidders on an open market solicitation for Landscaping Services for the Department of Parks and Recreation, bids for which were opened on May 9, 2002. It is undisputed that the low bid submitted by Holston Brothers, Inc., ("Holston") did not include EEO material as required by Section I.8 or a Tax Certification as required by Section K.2 of the solicitation, and was not signed in the Offer section of the bid (Box 17) as required by Section L.11 of the solicitation. The bid also did not include a resume of the designated chief horticulturist as required in Section L.17, or certification of the horticulturist as required in Section C.5.1. (See Holston Bid, Agency Report ("AR") Ex. 3). The protest of IIU raises two issues for the Board's consideration: 1) whether the contracting officer may accept the bid from a bidder which did not sign the bid, and 2) whether Holston's bid was nonresponsive due to: the lack of a tax certification affidavit; the lack of EEO material; and failure to submit a resume of the designated horticulturist with the bid. A certification as a horticulturist was submitted after opening in place of the resume.¹

The District asserts that: 1) the contracting officer may accept the unsigned bid of Holston since there is sufficient written evidence that Holston intended to be bound by its bid, and 2) that the contracting officer may permit correction of the additional deficiencies as minor informalities which are matters of responsibility, not responsiveness, permitted to be cured before award. The Board agrees with the District and dismisses the protest.

¹ The protester also alleges in its Comments on Agency Report that "the certificate accepted was issued in Maryland and not the District of Columbia as required by the IFB." The IFB only requires "a qualified part-time certified Horticulturist." In fact, there are no governmental certification programs for horticulturists. All such certifications are made by private associations. The certification submitted is from the Maryland Nurserymen's Association. It does not appear that there is any certifying association in the District of Columbia.

DISCUSSION

Unsigned Bid

Section 1535 of the Procurement Regulations deals with “Minor Informalities or Irregularities in Bids.” 27 DCMR §1535. Specifically sub§2(c) provides that an unsigned bid may be accepted when:

the bid is accompanied by other material with the bid that indicates the bidder's intention to be bound by the unsigned bid (such as the submission of a bid guarantee or a letter signed by the bidder, with the bid, referring to and clearly identifying the bid itself).

Holston's bid package included: 1) the bid envelope containing the sealed bid, the Representations and Certifications and Other Statements of Bidders (Section K), which were signed by Scott Deosaran, and 2) a list of key personnel, including the name of Scott Deosaran as Account Manager. Moreover, the bid envelope contained a label for the receipt of hand delivered bids that was signed by Scott Deosaran. (Exhibit 4). The certifications, as well as the bid receipt, identified the solicitation and signed by the representative of the bidder meet the requirements of the procurement regulations to allow acceptance of the bid without a signature in the proper box. The language of the District regulation is identical to the language of the corresponding Federal Acquisition Regulations. 48 CFR §14.405. The General Accounting Office and the Board interpret the language similarly. *See Wilton Corporation*, 64 Comp. Gen. 233 (1985), 85-1 CPD ¶128.

Lack of other specific items

We agree with the District that the lack of a tax certification affidavit, EEO material, and resume of the horticulturist were also minor informalities which could be corrected after bid opening in accordance with 27 DCMR §1535.3 which states:

When the bidder fails to provide timely certifications or information with respect to Equal Opportunity and Affirmative Action Programs or other IFB requirements, the contracting officer may allow additional time for the submission to be made prior to award.

Each of the bid deficiencies falls within the ambit of the regulation. Further, we find that attaching a certification from a recognized trade association is substantial compliance with the resume requirement and was reasonably accepted by the contracting officer. With specific reference to the resume requirement, this matter is distinguishable from *Trifax Corporation*, CAB No. P-624, Mar. 20, 2001, 49 D.C. Reg. 3346, cited by Protester. In *Trifax*, the bidder “concede[d] that it never intended to designate the employees to be provided under the contract,

but only the “names of some of our [employees]” at p. 7, while in the instant case the bidder committed itself to utilize the named horticulturist.²

For these reasons, the Board finds that it was in the discretion of the contracting officer to find each of the oversights in the bid were “minor informalities” and permit their cure after bid opening and prior to award.

June 28, 2002

/s/ Matthew S. Watson
MATTHEW S. WATSON
Administrative Judge

CONCURRING:

/s/ Lorilyn E. Simkins
LORILYN E. SIMKINS
Chief Administrative Judge

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

NOTE

Although the Board will not interfere with the award in this matter, the Board believes that the District should impress on contractors the need to carefully and fully prepare their bids. While one can find, as we have, that each separate impropriety is, by itself, minor, there is some question as to whether the contracting officer should have considered the numerous deficiencies, in total, to show a lack of responsibility. Certainly the bidder did not prepare the bid carefully. The expectation on the part of bidders of such cavalier treatment of bidder conformity with requirements may indicate why only two bids were received on this procurement. If there was such a lack of care by the successful bidder in meeting the formal bid requirements, there may have also been a lack of care in analyzing and understanding of substantive solicitation requirements and computing the bid price.

² The Board again notes that, as stated in the *Trifax* decision, the clause is not appropriate for formally advertised (IFB) solicitations.

Although a lower price may be paid, it does not benefit the District in the long run to award contracts to bidders who have an erroneous understanding of the nature or difficulty of the work to be done.

We also note that bidders often ignore District of Columbia licensing requirements. In this matter, Holston submitted Maryland, rather than District of Columbia, licenses. Although this may be sufficient for bidding purposes, since there is reciprocity between the District and Maryland, 27 DCMR §2310, there is no indication in the Agency Report that District licenses were obtained before award. Notwithstanding the availability of reciprocity permitting the District to issue a District license on the basis of a Maryland license, a contractor is subject to a \$500 per day fine if it fails to obtain issuance of a District of Columbia license, even if it possesses a valid Maryland license. *Department of Health v. Williams Pest Control*, DOH Office of Adjudication and Hearings, Case No.: I-00-20085 (June 6, 2001).

We believe that contracting agencies must demand attention to bid requirements and have an obligation to zealously enforce regulatory requirements of other District agencies, in particular, to insure that District licensing requirements are timely complied with.