

DISTRICT OF COLUMBIA CONTRACT APPEALS BOARD

PROTEST OF:

INCLUSION RESEARCH INSTITUTE)	
)	CAB No. P-0762
Under RFQ No. POHC-2007-RQ-158143)	

For the Protester Inclusion Research Institute: Carl T. Cameron, Ph. D, President. For the District of Columbia Government: Howard Schwartz, Esq., Talia S. Cohen, Esq., Office of the Attorney General.

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

OPINION

Filing ID 17513780

By letter dated August 31, 2007, and received by the Board on September 7, 2007, protester Inclusion Research Institute (“IRI”) protests the award by the Office of Contracts and Procurement (“OCP”) of a contract for activities in support of a Medicaid Infrastructure Grant issued to the District by the United States Department of Health and Human Services (“HHS”). IRI argues that it was the only contractor proposed in the District’s grant application to HHS, that it had the most experience in performing the solicited services, and that OCP wrongfully excluded IRI from the competition by limiting the procurement to firms on the District of Columbia Supply Schedule (“Supply Schedule”). The District filed a combined motion to dismiss and Agency Report on October 15, 2007, asserting that the protest is untimely because the protester should have filed the protest by August 2, 2007. The District also asserts that the District properly purchased services for this RFQ under the Supply Schedule. We dismiss the protest as untimely.

BACKGROUND

HHS’s Center for Medicare and Medicaid Services (“HHS/CMS”) issued a request for grant proposals for states and the District to compete for Medicaid Infrastructure Grants (“MIGs”). (Agency Report, Ex. 2). These federal grant funds are used by the states to improve the services to maintain employment for workers with disabilities. The District submitted its grant proposal on July 13, 2006. In the grant proposal, the District stated that IRI “will be asked to serve as a contractor for the MIG project. . . .” (Agency Report, Ex. 3).

By letter dated November 14, 2006, HHS/CMS informed the District that the District had received a grant award. (Agency Report, Ex. 4). HHS/CMS attached to that letter an award profile, the terms and conditions of the grant award, and a notice of grant award. (Agency Report, Ex. 5). HHS/CMS did not include language in the grant award documents that required the District to enter into a contract with IRI.

On July 31, 2007, the District issued Request for Quotations No. POHC-2007-RQ-158143 (“RFQ”) to seven firms on the District of Columbia Supply Schedule for a contractor to develop key components to launch a Medicaid Buy-In for persons with disabilities in the District. (Agency Report, Ex. 6). IRI did not receive a copy of the RFQ from the District because it is not on the D.C. Supply Schedule. IRI observes that D.C. Supply Schedule contracts are set aside for District certified local, small, and disadvantaged business enterprises and IRI as a non-profit entity is ineligible to be so certified. (IRI Response, at 4 & n.1). On August 3, 2007, the District received two quotations, one from HGM Management (“HGM”), for \$120,095, and the other from Motir Services, Inc., for \$367,500. (Agency Report, Ex. 8). Motir included in its quotation a letter from IRI dated August 2, 2007, stating that IRI would participate as a subcontractor to Motir. (Agency Report, Ex. 11). IRI states in its response to the motion to dismiss that it first received notification of the RFQ when it was contacted by Motir to be a subcontractor if Motir received a contract award. On August 20, 2007, the District issued a task order under the RFQ to HGM, the lowest responsive and responsible bidder. (Agency Report, Ex. 13). On September 7, 2007, IRI filed the instant protest.

DISCUSSION

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

In the motion to dismiss, the District asserts that IRI filed its protest more than 10 business days after August 2, 2007, the date of the letter in which IRI stated that it would participate with Motir as a subcontractor. (Agency Report, Ex. 11). The District asserts that because IRI knew that the District had issued the RFQ under the D.C. Supply Schedule as of August 2, 2007, IRI should have filed its protest within 10 business days of that date, that is, by August 17, 2007. IRI’s other contention, that the District committed to awarding it a sole source contract by mentioning IRI in the grant application to HHS, is no different from the first contention in alleging an impropriety in the solicitation and deciding to competitively procure the services rather than obtain them non-competitively through a sole source award.

Both of IRI’s grounds of protest are untimely. D.C. Code § 2-309.08 (b)(1) requires a protester to file, prior to bid opening or the time set for receipt of initial proposals, its protest based upon alleged improprieties in a solicitation. D.C. Code § 2-309.08 (b)(2) allows the protester to file a protest, in cases other than those covered in paragraph b(1), not later than 10 business days after the basis of the protest is known or should have been known, whichever is earlier. When IRI submitted its August 2, 2007, letter to Motir for inclusion in Motir’s quote, IRI knew, or should have known, that IRI was not listed in the RFQ as a “preferred contractor.” Moreover, because the RFQ limited responses to contractors with D.C. Supply Schedule contracts, and because IRI did not have a Supply Schedule contract, IRI knew, or should have known, by August 2, 2007, that it could not submit to the District a response to the RFQ. Accordingly, we agree with the District that the protest is untimely and that it should have been filed earlier than September 7, 2007.

The Procurement Practices Act favors competitive bidding. D.C. Code § 2-303.02 sets forth the hierarchy of methods to be used by the District government to award contracts. Competitive sealed bidding and competitive proposals are favored above all other methods for

contract awards. D.C. Code § 2-303.04 sets forth the standards to be used for contracting by competitive sealed proposals. D.C. Code § 2-303.04(b) requires proposals from the maximum number of qualified sources, with adequate public notice of the intended procurement. D.C. Code § 2-303.05 sets forth the limited bases for conducting sole source procurements. Those standards require that the District certify that there is only one source for the required commodity, service or construction item. In this matter, the contracting officer did not certify that only one contractor could provide the services set forth in RFQ POHC-2007-RQ-158413 for activities in support of a Medicaid Infrastructure Grant. Further, there is nothing in the record demonstrating that the District was legally bound to award a sole source contract to IRI solely based upon a statement made in a grant application to HHS.

CONCLUSION

For the reasons discussed above, we dismiss the protest.

DATED: December 4, 2007

/s/ Warren J. Nash

WARREN J. NASH

Administrative Judge

CONCURRING:

/s/ Jonathan D. Zischkau

JONATHAN D. ZISCHKAU

Chief Administrative Judge