

DISTRICT OF COLUMBIA CONTRACT APPEALS BOARD

PROTEST OF:

S3 Integration L.L.C.)	
)	CAB No. P-0868
)	
Solicitation No.: DCAM-2010-B-0166)	

For the Protester: Michael Simmons, Vice President, pro se. For the District of Columbia Government: Jon N. Kulish, Esq., Assistant Attorney General.

Opinion by Administrative Judge Warren J. Nash, with Chief Administrative Judge Marc D. Loud, Sr., concurring.

OPINION

Filing ID 38422837

S3 Integration L.L.C (“S3 Integration” or “S3”) protests the award of a contract for electronic security systems to Orion Systems Group LLC (“Orion”). S3 Integration challenges the award on the grounds that the contracting officer did not understand S3 Integration’s bid, and mistakenly awarded the contract to the wrong bidder. The District responds that S3 Integration did not understand the bidding requirements of the IFB, and that S3 Integration submitted a bid that was more than twice as high as the low bid submitted by Orion. After carefully reviewing the entire record herein, we conclude that the contracting officer did not violate law, regulation, or the terms of the solicitation in determining Orion to be the low bidder. Accordingly, we deny the protest.

BACKGROUND

On August 12, 2010, the District of Columbia government, acting through the Contracting and Procurement Division of the Department of Real Estate Services (“DRES”) and on behalf of the Protective Services Police Department (“PSPD”), issued IFB DCAM-2010-B-0166. Agency Report (“AR”) Ex. 1. The District was looking for a contractor to provide all management, supervision, labor, materials, supplies, transportation, and equipment for the Electronic Security Systems Operation, Installation and Maintenance Conversion for District owned and leased facilities. The statement of work required the contractor to both maintain the current hardware and software in the city wide Electronic Security System, and to convert the present system to a New Security Management System (“NSMS”) that has more capabilities than the current system. The IFB contemplated award of a firm fixed price contract. AR Ex. 1, section B.2.

Bids were opened on September 17, 2010, the date set forth in IFB Amendment 005 AR Ex. 6. Three bidders submitted bids, as follows:

Bidder	Price
Orion Systems Group LLC	\$869,000.00
S3 Integration LLC	\$2,093,713.00
Condortech Service, Inc.	\$997,096.66

(AR Ex. 10)

The solicitation required bidders to submit prices for the items set forth in Sections B.5.1 and B.5.2 of the solicitation. The bidders were required to add the Service Lump Sum Price of Section B.5.1 to the Conversion Lump Sum Price of Section B.5.2 to equal the bid price for the project. Amendment No. 4 to the solicitation, issued on September 2, 2010, set forth explicit instructions in attachment b on page 1 regarding the items that would determine the bidder's price. AR Ex. 5.

For the bidders, the sum of the two Lump Sum prices in B.5.1 and B.5.2 were as follows:

Bidder	Sum
Orion Systems Group LLC	\$869,000.00
S3 Integration LLC	\$881,266.00
Condortech Service, Inc.	\$997,096.66

(AR Ex. 10)

In the bid document, S3 Integration had entered the larger amount set forth in the first table above. The amount of \$2,093,713.00 is the sum of the lump sum prices set forth in items B.5.1 and B.5.2 of S3's bid document. The bid form did not require bidders to add the lump sum items into one entry.

In the protest, S3 Integration alleges that the District's contract specialist, Ms. Helena Barbour, made a number of statements regarding the evaluation of bids. The specialist, in a declaration attached to the agency report (AR Ex. 16), dated December 9, 2010, sets forth her own recollections regarding statements made at the bid opening. She denies making the statements alleged by the protester. The protester did not submit a response to the agency report.

The District completed its evaluation of the bids by October 27, 2010. The contract specialist determined that S3 Integration had improperly prepared its bid, and had included extra work in the bid items in B.5.2. AR. Ex. 16. She also noted that the written Questions and Answers issued after the pre-bid conference set forth the District's intended method of evaluating the prices that were to be set forth on the bid form.

The Contracting Officer awarded the contract to Orion on October 27, 2010, for a price of \$869,000. AR Ex. 8. S3 Integration filed this protest on November 12, 2010.

DISCUSSION

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

S3 Integration alleged in its protest that the contract specialist at the bid opening announced that each bidder had a different interpretation of the bid form requirements of the IFB. S3 Integration further alleges that the contract specialist announced that the District would request more information from S3 to aid in bid evaluation. S3 alleges that it forwarded information to the contract personnel after the bid opening, but did not receive any confirmation of receipt of that information from the District. S3 Integration alleges that after S3's price is broken down to one door and one panel, S3 is the lowest bidder. S3 in the protest requests award of the IFB, or a re-bidding of the solicitation.

In response, the District argues that S3 Integration's bid is not responsive to the IFB. S3 Integration presented a bid that included, in Section B, a price to convert all remaining doors and all remaining panels to the new system. However, the District did not request a price for that work. As the District asserts in the agency report, the District may not make an award to S3 Integration pursuant to a bid that is not responsive to the IFB. In support of its analysis, the District presented the declaration of the contract specialist, Ms. Helena Barbour, who provided information regarding her statements at the bid opening. (AR Ex. 16). S3 Integration did not respond to the District's agency report.

The District may not make an award to a bidder that presented a bid that is not responsive to the IFB. A responsive bid must present an unequivocal offer to provide the exact item set forth in the solicitation. When the District accepts a bid, the offeror is bound to perform the contract in accordance with all of the material terms of the solicitation. In *Advance Medical Systems, Inc.*, CAB No. P-0202, April 1, 1992, 39 D.C. Reg. 4516, 4518, we quoted the following from *Trail Equipment Co.*, B-241004, Feb. 1, 1991, 91-1 CPD ¶ 102: "Responsiveness must be determined at the time of bid opening, and, in general, solely from the face of the bid and the material submitted with the bid. To allow a bidder to make its nonresponsive bid responsive after bid opening is tantamount to allowing the bidder to submit a new bid." *Parsons Precision Products, Inc.*, 92-2 CPD ¶ 431 ("A bid which is nonresponsive on its face may not be converted into a responsive bid by post opening bid clarifications or corrections.").

The District correctly asserts that it cannot award a contract based on a non responsive bid. Therefore, we see no reason to express an opinion regarding whether S3 had presented the lowest bid.

CONCLUSION

For the reasons discussed above, we dismiss S3 Integration's protest to the award of the contract.

SO ORDERED.

DATED: June 29, 2011

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

CONCURRING:

/s/ Marc D. Loud, Sr.

MARC D. LOUD, SR.

Chief Administrative Judge

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