

DISTRICT OF COLUMBIA CONTRACT APPEALS BOARD

PROTEST OF:

DECISION SUPPORT LLC)	
)	CAB No. P-0853
Under RFP No. DCTO-2010-R-0028)	

For the Protester, Decision Support, LLC.: President Mike Sibley, *pro se*. For the District of Columbia Government: Robert L. Dillard, Esq., Assistant Attorney General, Office of the Attorney General.

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

OPINION

Filing ID 37689633

On June 17, 2010, Decision Support LLC (“Decision”) protested the award made to Hart Inter Civic, Inc. (“Hart”), under the above RFP. The District of Columbia moved to dismiss the protest on July 6, 2010, asserting that Decision lacks standing to bring this protest because the protester is not next in line for award. We agree with the District and hereby dismiss the protest.

BACKGROUND

On January 13, 2010, the District of Columbia, Office of Contracting and Procurement (“OCP”), on behalf of the Board of Elections and Ethics (“BOEE”), issued RFP DCTO-2010-R-0028 (“RFP”) in the open market for a contractor to provide Electronic Poll Books. (Agency Report (“AR”) Ex. 1, RFP). The poll books printed on paper contain a listing of all voters registered in a specific precinct by the close of registration. (AR Ex. 1). This solicitation would allow the BOEE to keep voter data electronically and would provide BOEE with other benefits that are set forth in paragraph C.2 of the specifications.

Five offerors submitted proposals by the due date of February 17, 2010: Election Systems & Software (“Election Systems”), Hart, Datacard Group (“Datacard”), Robis Elections, Inc. (“Robis”), and Decision, the protester. (AR Ex. 2). On March 23, 2010, the evaluation panel submitted its report to the Contracting Officer. (AR Ex. 2). The five offerors submitted Best and Final Offers, and the evaluation panel submitted its final report to the Contracting Officer on May 7, 2010. The cost price analyst submitted a report to the Contracting Officer on May 10, 2010.

After review, the Contracting Officer (“CO”) determined that Hart had the highest overall evaluation score. Decision’s proposal was ranked in fourth place. The Contracting Officer notified the offerors of an award to Hart on June 8, 2010. Decision filed its protest on June 17, 2010. OCP issued a Determination and Findings to Proceed with Contract Performance While a Protest is Pending on June 25, 2010. Decision challenged the D&F by letter dated July 2, 2010. The District filed a Motion to Dismiss the Protest on July 6, 2010, for lack of standing, alleging that the protester was not next in line for award. Decision filed its response to the Motion to

Dismiss on July 15, 2010. In its response, Decision argues that several offerors could not meet certain requirements of the Omnibus Election Reform Act of 2009.

DISCUSSION

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

The District presented its D&F to proceed on June 25, 2010, asserting that BOEE had an extremely tight schedule to implement the electronic poll books in time for the scheduled September, 2010, primary election. The D&F set forth OCP's urgent and compelling circumstances to proceed with the procurement without waiting for this Board's decision on the protest. Decision's response to the D&F alleges that the contract had been improperly awarded to a vendor that allegedly had never met the requirements of the Omnibus Election Reform Act of 2009. However, Decision's response to the D&F did not provide any specific details of Hart's failure to meet the requirements of the Reform Act. Those more specific allegations appeared, for the first time, in Decision's Response to the District of Columbia Motion to Dismiss, dated July 25, 2010. And, this Board notes that the response to the D&F alleged that Hart could not meet the requirements of the election reform Act.

The Response to the D&F made no mention of the other vendors (Datacard, and Robis) that had higher evaluation scores than Decision. Additionally, the response did nothing to counter the assertions made by the District regarding the need to proceed with performance. Accordingly, we determine that OCP's D&F to Proceed set forth adequate circumstances allowing the District to proceed with contract performance.

The District's Motion to Dismiss asserts that Decision lacks standing to file a protest because it is not next in line for award. The District's argument is based on the relative ranking of the vendors set forth in the District's motion and in exhibit 3 to the Motion to Dismiss, the Business Clearance memorandum. After evaluation of the Technical proposals and the cost proposals, Decision's proposal is the fourth ranked proposal out of the group of five. In order to survive the evaluation process as the highest ranked proposer, Decision would have to move three proposers out of consideration for the award (Hart, Datacard, and Robis). In the protest, Decision argues that Hart should not receive the award. Decision does not mention the existence of any other vendor in the protest. Additionally, Decision's protest reserves the right to amend the protest after the June 17 debriefing and after it receives copies of Hart's proposal in response to a Freedom of Information request. However, Decision did not amend its protest at any later date.

As the District properly determined that Decision's bid was the fourth highest ranked bid, then Decision is not in line for award and therefore lacks standing to raise the other challenges with respect to the award to Hart. See *Configuration, Inc.*, CAB No. P-0819, November 9, 2009, and *C.P.F. Corp.*, CAB No. P-0521, Jan. 12, 1998, 45 D.C. Reg. 8697, 8699 (the Board will not consider protests by bidders who are not next in line for award if the protest is sustained). Our review of the record reveals that the District properly evaluated the proposals, that Decision's bid was properly evaluated as the fourth highest ranked bid, and that the District set forth adequate grounds to proceed with performance in spite of the protest.

CONCLUSION

For the reasons discussed above, we deny Decision's challenge of the contracting officer's determination, and we dismiss its challenge to the award for lack of standing.

SO ORDERED.

DATED: May 19, 2011

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

CONCUR:

/s/ Marc D. Loud, Sr.
MARC D. LOUD, Sr.
Chief Administrative Judge

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