

BEFORE THE  
MARYLAND STATE BOARD OF CONTRACT APPEALS

Appeal of BUREAU OF REHABILITATION, )  
INC. )  
 ) Docket No. MSBCA 1524  
Under DJS Contract No. )  
90-DJS-0041(S) )

August 8, 1990

Protests are Contract Specific - The correctness of the bidding process is related to each separate and independent invitation for bids. The fact that two separate, independent IFB's are advertised for similar services at the same time is no ground to argue that the outcome of both must be identical.

APPEARANCE FOR APPELLANT: Harry A. Monley  
Executive Director  
Lanham, MD

APPEARANCE FOR RESPONDENT: Robert Fontaine  
Assistant Attorney General  
Baltimore, MD

OPINION BY MR. MALONE

Appellant files a timely appeal of a Department of Juvenile Services (DJS) procurement officer's final decision denying its bid protest.

Findings of Fact

1. On April 6, 1990, DJS issued an Invitation for Bid (IFB) which advertised for counseling and support services for youth in foster care in Prince George's County, Contract No. 90-DJS-0041(S). Appellant was the incumbent provider of the services sought.
2. Bids were due on May 4, 1990 and award was made to the lowest bidder.
3. Appellant protested the award by letter dated June 1, 1990 on the basis that DJS had rejected all bids under an IFB for

similar services in Baltimore City (Contract No. 90-DJS-0042(S) due to funding problems and later issued a Request for Proposal (RFP) for such services. Appellant believes the same procedure should be required in this procurement in Prince George's County.

4. On June 13, 1990 the final decision of the procurement officer was issued denying Appellant's protest as to the single issue raised in the protest.

5. On June 28, 1990, a Notice of Appeal was filed with the Appeals Board titled under Department of Juvenile Services Contract Nos. 90-DJS-0041(S) and 90-DJS-0042(S). In its Notice of Appeal Appellant raised issues not raised before the procurement officer. Those issues are: (1) Appellant should have been given the budget range of the contract prior to bid opening through the Freedom of Information Act and; (2) Appellant must be awarded the Baltimore City Contract as low bidder since DJS could not properly cancel the Baltimore City procurement and reject all bids.

6. The specifications set forth in the procurements were different in scope, location, and budget and were similar only in that they both called for counseling and support services for youth in foster care. The record reflects no other connection between the two contracts.

7. The record reflects that Appellant made attempts at a pre-bid conference on April 17, 1990 to discover the funding range for the Baltimore City contract which DJS initially refused to give to the Appellant. However, the DJS procurement officer

eventually provided this information to Appellant prior to bid opening for the original Baltimore City solicitation.

### Decision

The Appeals Board has decided this case based on the written record since no hearing was requested. COMAR 21.10.07.06.

We first deal with Appellant's protest as filed with DJS. Maryland's Bid Protest regulations are contract specific. The correctness of the bidding process is related to each separate and independent invitation for bids.

The fact that two separate, independent IFB's are advertised for similar services at the same time is no ground to argue that the outcome of both must be identical. There is no logical nexus to tie the two procurements together for disposition. Neither procurement refers to the other or is conditional on the other. There is no factual or contractual link in performance, bidding or otherwise which demonstrates an intent for a uniform result.

The regulations, definitions and contract language are written in the singular: there is no grammatical or logical base from which to argue that the bid protest remedy could be interactive among separate procurements. The Appeals Board rejects Appellant's argument and denies the appeal on the ground asserted in its protest.

We now turn to the issues first raised by Appellant on Appeal to the Appeals Board. Bid protests must be timely filed. COMAR 21.10.02.03. Appellant argues that Appellant should have been given the budget range of the contract prior to bid opening

through the Freedom of Information Act.<sup>1</sup> Appellant further argues that it should have been awarded the Baltimore City Contract as low bidder and that Respondent should not be allowed to cancel the IFB and reject all bids.

These two arguments were not filed within the 7 day time limit for filing with the Procurement Officer. Therefore the Appeals Board does not reach the merits of Appellant's two remaining issues as they are both untimely and do not arise out of the protest timely filed with the procurement officer under the Prince George's County Solicitation.<sup>2</sup>

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<sup>1</sup>The Appeals Board notes that a possible conceptual conflict exists between the Freedom of Information Act (Md. State Gov't. Art., Code Ann, § 10-615 et seq (1984) and the duty of a procurement officer to obtain the best contract for the State. It is obviously contrary to the basic purpose of the procurement bidding process to allow one bidder budget information during the procurement process. This bidder could use this information to have an unequal advantage over the other bidders to put forth their best price. The Appeals Board further notes that the Freedom of Information Act provides for procedural safeguards which could be used to prevent the release of information at a time when it could prejudice the procurement process.

<sup>2</sup>The Appeals Board notes that COMAR 21.06.02.02 provides for the State's authority to reject all bids in certain cases to include rejection due to funding problems.