

BEFORE THE
MARYLAND STATE BOARD OF CONTRACT APPEALS

Appeal of CHARLES CENTER
PROPERTIES)

Under DGS Contract No.)
#MSE-DN92, 95S-4)

) Docket No. MSBCA 1629
)
)

March 23, 1992

Responsibility - Questions concerning a bidder's qualifications and responsibility are for determination by the Procurement Officer. Such determinations will not be disturbed by the Board unless unreasonable.

APPEARANCE FOR APPELLANT:

Reverend Charles Cephas
Cambridge, MD

APPEARANCE FOR RESPONDENT:

Linda K. Boyd
Assistant Attorney General
Baltimore, MD

APPEARANCES FOR INTERESTED
PARTIES:

None

H&R Cleaning
Abacus Cleaning
Makro Cleaning
EI & Price Maintenance
All Commercial Cleaning
Kleen Rite Janitorial

OPINION BY MR. PRESS

Appellant filed a timely appeal of a Department of General Services (DGS) Procurement Officer's final decision rejecting Appellant's bid on responsibility grounds. Appellant withdrew his request for a hearing, and the appeal is based upon the record.

1. On December 17, 1991, DGS published an Invitation For Bids, for janitorial services to be performed at the Denton District Court/Multi-Service Center, Denton, Maryland for a three year period.

2. Section III of the IFB set forth the "Supplemental Terms and Conditions." Paragraph 12 required the successful bidder to agree to provide janitorial services in question for a period of three years. Paragraph 1 of Section III, "Qualifications Determined [sic] Responsibility of Bidder" provides as follows:

Prior to the Bid Date of this contract, the bidder must have successfully performed

janitorial services for the type and size specified in these Detailed Specifications. The experience of officials gained prior to the formation of a corporation or other business entity can be considered when evaluating responsibility. (Emphasis Added.)

3. In relevant part Paragraph 13 of Section III required the following information to be submitted with the bid:

13.1 With his bid, the contractor must submit a listing of buildings of similar size for which his company has performed janitorial service. This listing must include the name and address of the building, instructions [sic] or facility and its net square footage.

13.2 The contractor must submit the hourly wage rates, including fringe benefits, that he intends to charge for janitors and the on-site supervisor assigned to this contract for any extra work beyond the scope of this contract.

(Emphasis added)

4. Paragraph 14 of Section III directs that the bids set forth a separate price for each of the three years and provided for base bids and alternates broken down as follows:

1. A base bid for each year, to include all janitorial services as described in tasks 7.1 through 8.17 in Section IV "Detailed Specifications";

2. Bid Alternative No. 1: A separate bid by year for task 7.18, clean and shampoo carpet twice annually;

3. Bid Alternative No. 2: A separate bid by year for task 7.19, clean all exterior windows and glass walls twice annually;

4. Bid Alternative No. 3: A separate bid by year for task 7.20, clean all lighting fixtures once annually;

5. Bid Alternative No. 4: A separate bid by year for task 7.21, clean venetian blinds once annually.

5. Paragraph 15 of Section III provides for the contract to be

awarded as follows:

This contract will be awarded to the lowest, responsible bidder based on the total Base Bid alone, or, the total Base Bid Plus one or more alternates. Alternates are accepted sequentially that, is Alternate #1 will be the first included, Alternate #2 the second, etc. Should any Alternate be rejected all subsequently numbered Alternates will also be rejected. The State reserves the right to decide whether the contract will be awarded as a result of the Base Bid or the Base Bid plus any number of alternates.

6. The bids were opened on January 3, 1992. Appellant was the lowest of seven bidders in its base bid and alternate #1 for year two which were as follows:

<u>Bidder</u>	<u>Base Bid Year 1</u>	<u>Base Bid Year 2</u>	<u>Alt. #1 Yr. 2</u>	<u>Total</u>
Abacus	15,000.00	15,300.00	3,200.00	52,306.00
Makro	28,536.48	29,963.30	6,150.00	102,286.25
Kleen-Rite	21,360.00	42,720.00	8,000.00	148,160.00
H&R Cleaning	15,666.00	15,666.00	2,000.00	51,000.00
Appellant	12,000.00	12,000.00	1,800.00	39,600.00
EL Maintenance	25,145.33	25,145.33	2,664.00	80,763.99
All Commercial Cleaning	15,940.00	15,940.00	3,500.00	54,820.00

Appellant's base bid was 20% lower than the next closest bid. Its base bid for year two was 22% lower and its total for the three years in question using Alternate #1 was 22% lower than the other six bids.

7. After reviewing the bids, on January 3, 1992, William Cockey, building manager for Denton Center, telephoned Reverend Charles Cephas, Appellant,¹ to ask him for additional information with regard to his ability to perform the contract. In response, Reverend Cephas, on January 6, 1992, forwarded the

¹ Appellant is a sole proprietorship.

following:

January 6, 1992

MULTI-SERVICE CENTER
Centreville, Maryland 21617

Attention: Mr. Cockey

Dear Sir:

Please be advised that we intent to perform the contracted janitorial services for the Multi-Service Center in Denton, Maryland. We believe that our bid is adequate compensation to perform the tasks specified in your solicitation, since we will be performing the work personally along with family members and associates.

We anticipate no problems meeting your goals, as well as, ours since this job is located on the Eastern Shore and there is no problem for us travelling to the work site.

We look forward to performing the said contract and respectfully request that you allow us the opportunity to perform.

Sincerely,

Charles Cephas, Pres.
CHARLES CENTER PROPERTIES
1008 Maces Lane
Cambridge, Maryland 21613

8. Mr. Cockey concluded the January 6th letter lacked sufficient information with regard to Appellant's work experience and ability, and he contacted the four references listed in Appellant's bid. He also visited each facility and estimated the square footage. The result as indicated in a letter dated January 9, 1992 from the Procurement Officer to the Appellant were as follows:

1. "State Highway Administration, Annapolis, MD - Mike Johnson. He stated he could not recommend you, there were days when no one would show up for cleaning, some days only 1 person would come some days 2. He stated your company was not dependable.

2. Hurlock Community Bldg., Hurlock, MD - Thelma Warner. Ms. Warner said you did ok.
3. Full Gospel Church of God, Denton, MD - Barbara Dickerson. This is your church. Ms. Dickerson said you did ok. This is the same as giving yourself as a reference.
4. State Highway Administration, Centreville, MD - John Tucker. He stated you did not clean the Highway Administration building, you clean the rest stop on Route 301. He would not recommend you."

9. After the four references were contacted, Mr. Gerald Walls, the DGS Procurement Officer, determined that Appellant could not meet the responsibility requirements and thus was not a "responsible" bidder. Appellant was so informed by the aforementioned letter of January 9, 1992.

10. The letter, noting the bids submitted by Appellant and the subsequent information obtained by William Cockey, informed Appellant that "[b]ased on your contract prices submitted and the subsequent information, we have determined that your company is non-responsible and therefore we are rejecting your bid." Mr. Walls concluded that Appellant was not responsible in part because of the responses from Appellant's references and also because its bid was extremely low compared to other bidders, so much so that after calculating a minimum labor cost for two workers working five hours per evening at minimum wage, a mere \$11,810.00 remained for the first year to cover all "fringe benefits, overhead, profit and purchasing, all cleaning supplies and equipment needed to do the job." Mr. Walls' letter also informed Appellant that his January 6, 1992 response to DGS' telephoned request for additional information with regard to his work experience "really [did] not tell us anything," noting that Appellant stated that he would be performing personally along with his family members and associates.

Mr. Walls' letter also summarized the responses from Appellant's references, and noted that the "type and size of the building included in your references are not of the type and size

of the Denton Multi/Service Center. We therefore feel that your company does not have the experience to perform the work in accordance with all the Terms and Conditions of the contract. We also feel that the information given by the references submitted give further evidence that you cannot properly perform this contract."

Appellant protested this determination by letter dated January 13, 1992, for the following reasons:

"(a) I provided you with at least one (1) referenced that indicated that I performed services for or at least the same size of the building that I bid upon.

(b) That Mr. Johnson of the State Highway Administration in Annapolis, Maryland disagreed with the statements made in your letter and denied making any such statement. In fact, he advised me that he told you that our work was satisfactory.

(c) All the references given to you were to indicate our ability to provide custodial services as indicated in your bid package.

(d) You cannot indicate that the church is my personal company or business, since, it is a religious corporation of which my company was selected to provide services for such. Since there are more than 20 churches in said conference being contracted, you cannot justify your determination that the church has any indication to give me a favorable reference or not.

(e) You have failed to show that I do not have work references, since, I have over ten (10) years of supervisory and janitorial experience. By your failure to get written responses, as well as, verbal from my references seriously jeopardizes your ability to make a decision on hearsay and probable misinterpretation.

(f) It should be further noted that I have given you a reference from The Hurlock Company Center, Mrs. Warner, in which case, that building is larger than the Denton Multi/Service Center. Further, in my opinion it is your zeal to find additional justification for not awarding me this bid, in which case, I am the lowest responsive bidder."

Appellant's protest letter also complained about the Procurement Officer's "price determination" and noted that the Procurement Officer "failed to show that I cannot perform the services for the price quoted, since there is no overhead on my part. I have ample cleaning supplies to perform all necessary cleaning tasks. There is no need for a gross profit since the work will be performed by my wife, daughter, and myself."

11. The Procurement Officer issued a final decision on Appellant's protest on January 22, 1992. He noted Appellant's poor record of performance at SHA and that Appellant's bid was unjustifiably low.

12. Appellant appealed to this Board on January 24, 1992. On appeal, Appellant asserts that DGS failed to comply with the State Procurement laws and that Charles Center will prove its ability to perform the contract for the amount quoted in its bid. It further argues that DGS' decision was "biased and prejudice, and an attempt to award the contract to a white contractor," and that DGS failed to give Appellant proper notice of its rights to appeal or protest.

Decision

The Procurement Officer found Appellant to be a nonresponsible bidder and rejected its bid. Section 13-206 of the State Finance and Procurement Article provides as follows:

- (a) Rejection for nonresponsiveness or non responsibility. - (1) A procurement officer shall reject a bid or proposal if the procurement officer determines that:
 - (i) the bid is nonresponsive or the proposal is unacceptable; or
 - (ii) the bidder or offeror is not responsible.
- (2) The procurement officer shall include a determination under this subsection in the procurement file.

* * *

- (c) Grounds for determining nonresponsibility. - A procurement officer may determine that a person is not a responsible bidder or offeror for:
 - (1) unreasonable failure to supply information

promptly in connection with a determination of responsibility under subsection (a) of this section; or

(2) any other reason indicating that the person does not have:

(i) the capability in all respects to perform fully the requirements for a procurement contract; or

(ii) the integrity and reliability that will ensure good faith performance.

Implementing SF §13-206, COMAR 21.06.01.01 provides that:

B. A procurement officer may find that a person is not a responsible bidder or offeror for:

(1) Unreasonable failure to supply information promptly in connection with a determination of responsibility under this chapter; or

(2) Any other reason indicating that the person does not have:

(a) The capability in all respects to perform fully the contract requirements, or

(b) The integrity and reliability that will assure good faith performance.

Pursuant to SF §13-206 and COMAR 21.06.01.01, supra the DGS procurement officer determined that Appellant was nonresponsible because it lacked the "capacity . . . to perform fully the contract requirements," as well as the "reliability that will assure good faith performance." The DGS Procurement Officer's decision was amply supported by the reports from two references of unsatisfactory performance by Appellant at much smaller facilities than the Denton Center.

This Board has consistently held a Procurement Officer has broad discretion in determining whether a bidder is responsible. This Board finds the Procurement Officer's determination was not unreasonable, nor an abuse of discretion, or contrary to law or regulations. Lamco Corporation, 1 MSBCA ¶96 (1985); Allied Contractors, Inc., 1 MSBCA ¶ 79 (1984). The rationale for granting Procurement Officers such power has been addressed as follows:

"Deciding a prospective contractor's probable ability to perform a contract to be awarded involves a forecast which must of necessity be a matter of judgment. Such judgment should of course be based on fact and reached

in good faith; however, it is only proper that it be left largely to the sound administrative discretion of the [procurement] contracting officers involved who should be in the best position to assess responsibility, who must bear the major brunt of any difficulties experienced in obtaining required performance, and who must maintain day to day relations with the contractor on the State's [Government's] behalf. 39 Comp. Gen. 705, 711. ***"

43 Comp. Gen. 228, 230 (1963).

A Procurement Officer in making a determination concerning bidder responsibility may consider information relative to work experience and work ability submitted subsequent to bid opening. Aquatel Industries, Inc., 1 MSBCA ¶ 82 (1984). It is apparent from the record that Appellant's initial very general responses as set forth in its January 6, 1992 letter and its failure to provide work experience information to assure Appellant's ability to perform led to inquiries pertinent to Appellant's references. Following such inquiry the Procurement Officer determined that Appellant did not possess the requisite work experience and was incapable of performing this procurement contract considering the size and type of building to be cleaned.

Furthermore, it was proper for the Procurement Officer to evaluate and consider Appellant's work record for janitorial services for other State facilities. History of a bidder's prior and present work experience, this Board has held, is appropriate for a Procurement Officer to take into consideration, National Elevator Co., 2 MSBCA ¶ 114 (1985), when determining a bidder's responsibility.

The determination of the Procurement Officer that Appellant was not a responsible bidder, this Board concludes, was reasonable and within his discretion. We further find no evidence in the record that bias or prejudice affected the Procurement Officer's decision. DGS also complied with all applicable notice requirements concerning the protest and appeal. Therefore, the appeal is denied.

dated: March 23, 1992

Sheldon H. Press
Sheldon H. Press
Board Member

I concur:

Robert B. Harrison III
Robert B. Harrison III
Chairman

Neal E. Malone
Neal E. Malone
Board Member

* * *

I certify that the foregoing is a true copy of the Maryland State Board of Contract Appeals decision in MSBCA 1629, appeal of CHARLES CENTER PROPERTIES, under DGS Contract No. #MSE-DN92, 95S-4.

Dated: March 23, 1992

Mary F. Priscilla
Mary F. Priscilla
Recorder