

BEFORE THE
MARYLAND STATE BOARD OF CONTRACT APPEALS

Appeal of
COLUMBIA ELEVATOR COMPANY, INC.

Under Towson State University
Contract No. TSU-SC-0001-88

)
)
)
)
)
)

Docket No. MSBCA 1404

September 22, 1988

Responsibility - Under Maryland procurement law a procurement officer has broad discretion in determining whether a bidder is responsible. In the instant case this discretion was properly exercised where the procurement officer determined that Appellant did not meet certain definitive responsibility requirements of the RFB involving previous experience in providing certain elevator services for institutions of comparable size and function to Towson State University.

APPEARANCES FOR APPELLANT:

D. Joseph May, Esq.
Regina B. Edwards, Esq.
Ellicott City, MD

APPEARANCES FOR RESPONDENT:

Michael A. Anselmi
William F. Howard
Assistant Attorneys General
Baltimore, MD

OPINION BY CHAIRMAN HARRISON

Appellant timely appeals the denial of its bid protest in which it alleges that its low bid should have been accepted because Appellant is, in fact, a responsible bidder.

Finding of Facts

1. Appellant which was established in November, 1987 submitted the apparent low bid for a contract for the maintenance, repair, and testing of thirty-six elevators, dumbwaiters, and handicap lifts which service the academic, administrative, and auxiliary services buildings on

the Towson State University (TSU) Campus.

2. The request for bids (RFB) for the above included the following definitive responsibility requirements.

a. The Contractor, to whom this Contract is awarded, shall have a minimum of five (5) years full-time experience in fully maintaining and repairing and proper testing of elevators and handicap lifts and dumbwaiters of the type described herein.

b. The Contractors shall furnish to Service Contract Manager a listing of the names of the contact persons and their telephone numbers and addresses of at least five (5) colleges, universities, hospitals, or similar institutions of comparable size and function for which the Bidder has or is presently providing similar services.

Section III. Supplementary General Conditions, Page S-3

3. In response to the requirement to list five references as set forth in subsection b above, Appellant submitted the following with its bid:

- 1) Woodward & Lothrop
2800 Eisenhower Avenue
Alexandria, VA. 22314-4579
Bert Weller (703) 329-5404

- 2) Brown Construction
P.O. Box 1747
Rockville, MD. 20850
George Brown (301) 340-7850

- 3) Howard County Community College
Little Patuxent Parkway
Columbia, MD. 21044
Terry Aubaugh (301) 992-4847

- 4) Beltway Plaza Developers
University Plaza Office Bldg.
1835 University Blvd., Suite 200
Hyattsville, MD. 20783
Robert Dozier (301) 422-3300

5) Pardoe Builders
P.O. Box 12
Cabin John, MD. 20818
Robert West (301) 299-8514

4. TSU contacted four of the five references provided and discussed the fifth (Brown Construction) with Appellant. The procurement officer then determined that Appellant could not meet the definitive responsibility requirements in certain respects and thus was not a responsible bidder pursuant to COMAR 21.05.02.13A and COMAR 21.01.02.59 having the capability in all respects to perform fully the contract requirements.

Specifically in a letter dated June 28, 1988 the procurement officer advised Appellant that:

This letter is to inform you that I have recommended that Consolidated Standard Elevator Company be awarded the referenced contract. I based my decision on "Section III. Supplementary General Condition, Paragraph 1. Pre-Qualifications; subparagraph b. page S-3 which states, "The contractor shall furnish to Services Contract Manager a listing of the names of contact persons and their telephone numbers and addresses of at least five (5) colleges, universities, hospitals or similar institutions of comparable size and function for which the bidder has or is presently providing similar

hospitals or similar institutions of comparable size and function for which the bidder has or is presently providing similar services."

The University contacted four (4) of the five (5) references you provided and discussed the fifth one with you. In all cases you are not providing the similar services, preventive maintenance and testing as required under the referenced contract. All of your references spoke highly of you and your company's repair, renovating and installation of elevators.

5. Appellant timely protested this determination on the basis that it had "complied with all your requests for information as to their qualifications and ability to fulfill the contract in question and their bid will provide TSU with a savings of \$52,298.00 over a three year period when compared to the other bid received by Towson State University."

6. The procurement officer issued his final decision on July 7, 1988 stating in pertinent part:

As we stated in our letter of June 28, 1988 to your client, the basis for our decision primarily rested on the fact that

your client could not supply this office with a list of at least five (5) client references for whom the complete set of services called for in our specifications which [sic] had been provided. In particular, your client has not provided either preventative maintenance nor testing services to any of the references we contacted. Based on our review, this lack of experience in this highly critical area was enough justification to reject your client's bid.

As a matter of interest, the university granted extreme latitude to your client in the area of required experience. The specifications called for at least five years experience in this field. While your client has not been in business for more than one year, the university allowed for the substitution of the combined experience of the company's key personnel. Despite this latitude, your client failed to qualify as noted above.

7. On appeal Appellant asserts (in its comment on the Agency Report) that the procurement officer erred in concluding that Appellant did not meet the definitive responsibility requirements of the RFB.

Specifically Appellant argues:

The Agency, Towson State University, stated that Columbia Elevator Company, Inc., was determined not to be a responsible bidder because it had "not provided either preventative maintenance nor testing service to any of the references we contacted" as per the letter of final decision from the Procurement Officer for Towson State University to Columbia Elevator Company, Inc. It is apparent that either the Procurement Officer did not check the references given or was given incomplete information.

Columbia Elevator Company, Inc., provided inspections and testing for Woodward & Lothrop, one of the referenced companies, in December, 1987. Since that time, the Company has provided testing to other companies and schools and has also been providing the requisite maintenance services (see the attached Affidavit for a list of the type services performed by Columbia Elevator Company, Inc.).

Columbia Elevator Company, Inc. supplied information as to its qualifications and ability to fulfill the contract in question

to Towson State University. Such information and references if contacted, would be sufficient for a reasonable person to conclude that Columbia Elevator Company, Inc., is a "responsible and responsive bidder" as defined under COMAR 21. Towson State University's failure to contact the references given and/or its decision that Columbia Elevator Company, Inc. is not a responsible bidder was arbitrary and unreasonable based on the facts in this case.

8. Appellant's affidavit, referenced above, purports to represent all work performed by Appellant that it considers significant to the procurement officer's determination of its responsibility. However, a review of the services performed or being performed by Appellant as set forth in its affidavit, to include the services at Woodward and Lothrop, does not demonstrate that such services are being or have been performed at "colleges,¹ universities, hospitals, or similar institutions of comparable size and function."

9. Appellant did not request a hearing.

¹While one of the references listed is Howard County Community College (HCCC), HCCC is not of comparable size to TSU. See TSU's response to Appellant's comment on the Agency Report.

Decision

The procurement regulations define "responsible bidder" as one who possesses "the capability in all respects to perform fully the contract requirements, and the integrity and reliability which shall assure good faith performance." COMAR 21.01.02.59. The RFB required the bidder to furnish the names of at least five institutions of comparable size and function for which the bidder has or is presently providing services similar to those called for in the RFB. Appellant has not challenged the appropriateness of these definitive responsibility requirements but asserts that the information provided in its affidavit filed in response to the Agency Report demonstrates that it meets the requirements. We find, however, that the information contained in the affidavit (assuming arguendo that it contains the same information presented or made available to TSU)² fails to satisfy the definitive responsibility requirements. The scope of services performed at the various locations set forth in the affidavit is not as extensive nor as comprehensive as that called for in the RFB nor are the locations (institutions) listed of comparable size and function to TSU. See Finding of Fact No. 8.

The procurement officer determined that Appellant was not a responsible bidder because of its lack of previous experience in providing maintenance, repair, and testing services to institutions of comparable

²Since the affidavit is dated August 31, 1988, it is possible that certain of the work listed therein was begun subsequent to the procurement officers final decision on July 7, 1988.

broad discretion in determining whether a bidder is responsible, and such a determination will not be disturbed unless clearly unreasonable, arbitrary, an abuse of discretion, or contrary to law or regulations." (citations omitted). Customer Engineer Services, Inc., MSBCA 1332, 2 MSBCA ¶156 (1987) at p. 3. See also Environmental Controls, Inc., MSBCA 1356, 2 MSBCA ¶168 (1987) at p. 5; National Elevator Company, MSBCA 1252, 2 MSBCA ¶114 (1985) at p. 5. In the present case Appellant has not demonstrated that the procurement officer's discretion was exercised unreasonably and his conclusion that Appellant was not a responsible bidder will not be disturbed.

Accordingly we deny the appeal.