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Commonwealth of the Northern Mariana Islands

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In re:) **APPEAL NO. BP-A088**
)
Appeal of Island Business Systems) **ITB15-CDD-054**
& Supplies)
)
) **"Council on Developmental Disabilities**
Copy Machine"

BACKGROUND

On February 26, 2015, the Director of Procurement and Supply ("the P&S Director" or "the Director") solicited sealed bids for a 36 month lease, with option to renew one (1) or two (2) years, of a Digital Color Copier, Network Printer, Scanner, I-Fax and Fax for the CNMI Council on Developmental Disabilities ("the ITB"). The ITB also included two pages of specifications. On March 13, 2015, Xerox Corporation – Saipan ("Xerox") submitted a sealed proposal in response to the solicitation. The Xerox proposal included a one page cover sheet, one page cover letter, two (2) pages of proposal terms, and thirteen (13) pages of pamphlet information about the capabilities and functions of the Xerox product offered in response to the solicitation. Prior to the bid closing, Island Business Systems & Supplies ("IBSS") also submitted a sealed proposal. On March 13, 2015 bids were opened and reviewed. Xerox was the lowest bidder. On March 18, 2015, the Council on Developmental Disabilities sent a letter to the Director selecting Xerox as the winning proposal. On March 18, 2015, the Director sent a notice of intent to award to Xerox and notice to IBSS that they were not selected.

On March 23, 2015 IBSS lodged a written protest with the P&S Director claiming the Xerox bid was non-responsive. *IBS Protest Letter*, at pp. 1-2 (March 23, 2015) ("Protest"). On April 6, 2015, Xerox submitted a two (2) page response to the IBSS protest to the Director. On April 29, 2015, the P&S Director issued Director's Decision No. PSDD 15-002 denying IBSS's protest, finding the Xerox proposal responsive to the ITB. *See Director's Decision*, p. 1 (April 29, 2015).

On May 8, 2015, IBSS appealed the P&S Director's protest decision to OPA. *IBSS Appeal*, (May 8, 2015) ("Appeal"). OPA sent notice of the Appeal to the Director, requesting the Director's report on May 11, 2015. On May 20, 2015, the P&S Director submitted his report and solicited comments by interested parties to OPA. Xerox submitted comments to OPA on June 3, 2015. Rebuttal comments from IBSS were not received on or before June 10, 2015 when they would have been due pursuant to NMIAC § 70-30.3-505 (d)(4).

OPA has jurisdiction to decide this appeal pursuant to NMIAC § 70-30.3-505 (a).

DISCUSSION

The crux of IBSS's protest and appeal is that Xerox's proposal failed to meet the requirements of the ITB. *Protest*, at pp. 1-2; *Appeal*, at pp. 1-2. The ITB required the leased machine provide:

Accessibility for people with disability (i.e., mobility or dexterity impairment): Must be able to provide an alternative access for people with disability (like mobility or dexterity impairment) thru a software that emulates the multifunction machine's control panel and hard keys on the computer screen, thereby allowing person with disability to operate all systems functions including copy, print, fax, scan, and send from a network connected computer.

ITB at p. 3. IBSS contends the Xerox proposal fails to meet this requirement.

At the protest level, IBSS pointed out the "Xerox Copier Assistant software" referenced in the third page of the Xerox proposal only remotely operates the copy feature of the machine and does not support the other functions required by the ITB including print, fax, scan, and send. *Protest*, at p. 2. Xerox responded to point out the machine proposed (the Xerox WC 7830) also includes as a standard feature called "Remote Control Panel", which allows users to remotely operate the control panel from any network computer and controls all functions of the machine. The brochure materials, included as part of the Xerox proposal, described the capabilities of the "Remote Control Panel." *Proposal*, at p. 12. The Director cited the capabilities of the "Remote

Control Panel” in finding the Xerox proposal responsive in the protest decision. *See, Director’s Decision*, p. 1 (April 29, 2015).

In the present appeal, IBSS essentially claims the Director erred in his decision by looking beyond the first several pages of the Xerox submission and allowing Xerox to rely on a feature only mentioned in the attached brochure to satisfy the bid specifications. Indeed, IBSS has treated the “brochure” materials as if they simply do not exist, failing to mention them in either the protest or appeal, and failing to attach them as part of the Xerox proposal materials in submitted as an exhibit in support of this appeal. While OPA can sympathize with IBSS for having to search through advertising materials to evaluate whether a competitor’s bid is compliant, the fact that the brochure materials were submitted as part of the proposal and the proposal included “see attached brochure for reference” at the bottom cannot be ignored. The brochure materials are part of the Xerox proposal and they adequately describe the “Remote Control Panel” feature which the Director found to be responsive to the ITB.

The decision of the procuring agency will not be disturbed unless the Public Auditor finds fraud or a failure to follow applicable regulations. *In re: Appeal of Chong’s Corp.*, BP-A073 (April 11, 2013). In the present matter the applicable regulations were satisfied with respect to bid responsiveness.

OPA takes this opportunity to note that while Xerox’s proposal was technically sufficient, the present appeal could have likely been avoided had more care been taken in its preparation. The entire procurement system: bidding parties (both winning and losing), soliciting parties, and those who administer the procurement of goods and services in the CNMI all benefit from clear, concise, and thorough proposals. Proposals that are tailored to the requests for proposals or invitations to bid and take measure to describe how they meet the requirements thereof are more likely be successful and less likely to prompt costly challenges from unsuccessful competitors.

DECISION

For the reasons set forth above, IBSS's appeal is DENIED.


Dated this 18th Day of June 2015.

BY:

CONCUR:



JOSEPH J. PRZYUSKI
OPA Legal Counsel



MICHAEL PAI, CPA
Public Auditor

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