



Office of the Public Auditor

Commonwealth of the Northern Mariana Islands

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)	APPEAL NO. BP-A066
)	
In Re Resources Management)	RFP 10-CHC-092
International Corporation)	
)	Medical / Dental Bill Collection
)	Services for the
)	Commonwealth Health Center
_____)	

DECISION ON APPEAL

I. SUMMARY

This is a Decision on Appeal from the denial of the protest on RFP 10-CHC-092 filed by Resources Management International Corporation (“RMIC”) initially on April 6, 2011 and then again on April 13, 2011 after the April 12, 2011 issuance of the Protest Decision by the Director of the Division of Procurement and Supply, Department of Finance. The Public Auditor has jurisdiction over this appeal pursuant to NMIAC Section §70-30.3-505(a) of the Department of Finance’s Procurement Regulations (the CNMI Procurement Regulations).

II. FACTUAL AND PROCEDURAL HISTORY

Appellant Resources Management International Corporation filed its Protest in the instant case on March 14, 2011.

When no Decision had been issued by the Director of the Division of Procurement and Supply, RMIC appealed to the Office of the Public Auditor on April 6, 2011.

The Director of the Division of Procurement and Supply subsequently issued his Decision on April 12, 2011.

RMIC then re-filed its appeal on April 13, 2011.

The Office of the Public Auditor issued the Notice of Appeal on April 14, 2011.

The Director of the Division of the Procurement and Supply transmitted the Report and supporting file to OPA on June 8, 2011.

III. Jurisdiction

The Appeal was timely filed. The Public Auditor has jurisdiction over this appeal pursuant to NMIAC Section §70-30.3-505(a) of the CNMI Procurement Regulations.

IV. Issues and Analysis

A. Lowest Cost to CHC

RMIC argues that the Decision by the Director “contains no measurable basis for disregarding the lowest bid submission. . . . which implicates the issue of the qualifications of the evaluators.” RMIC Appeal to OPA, April 13, 2011 at page 1.

The RFP clearly states that the relevant technical criteria are: experience and capability (35 points), project organization and staffing (25 points), service delivery (25 points), and financial capability (15 points). See page 6 of the RFP. The RFP further states: “Price is also a factor which will be considered and evaluated in comparison with the overall merit of proposals. **Technical merit is more important than prices and the Government reserves the right to award to other than the lowest proposer. As proposals become more equal in technical merit, the importance of price will increase.**” RFP at page 7, emphasis added.

In contrast to RMIC’s assertion that there was “no measurable basis” to distinguish the bids, the technical merit scores were dramatically disparate. The winning bidder’s score was 275, while RMIC and Marianas Medical came in at 153 and 151, respectively. See the Cumulative Totals Scores from Evaluation Criteria Worksheets, attached. See also *Burnside–Ott Aviation Training Center, Inc.; Reflectone Training Systems, Inc*, B- 233113, B- 233113.2, 89-1 CPD P 158, (February 15, 1989) where agency action to not select the lowest bidder was deemed appropriate where there was significant performance risk and the technical superiority of the other proposal was 45.6 to Reflectone’s 34.6.

B. Local Preference

RMIC argues that Mr. Manglona signed on behalf of RMIC that it met one of the criteria listed to qualify for the local bidder preference. RMIC Appeal to OPA, April 13, 2011 at page 1. But RMIC failed to identify the relevant applicable criteria. See the last three pages of the RMIC bid (pages not consecutively numbered). The form has a small underline before each of the criteria, which is clearly meant to have a check mark or “X” placed on the line next to the applicable criterion. RMIC left all of the underlines blank but allegedly signed so as to certify that it met at least one of the criteria. It is not the duty of the evaluators or the Director of Procurement and Supply to solicit additional information to substantiate which criteria RMIC allegedly met.

C. Qualification of Evaluators

RMIC argues the evaluators were “persons with no known competence in financial analyses, medical billing procedures, or legal procedures surrounding the validity of the bidder.” RMIC Appeal to OPA, April 13, 2011 at page 2. As the Director stated in his Decision on page 2, the agency has the discretion to appoint the evaluators. The agency decision will not be examined absent a showing of fraud, bad faith, conflict of interest, or actual bias. *Haworth, Inc.* B- 215638, B-215638.2, 84-2 CPD P 461 (October 24, 1984); *Paul G. Koukoulas et. al* B-229650, B- 229650.2, B- 229650.3, B- 229650.4, B- 229650.5, B- 229650.6, B-229650.7, 88-1 CPD P 278 (March 16, 1988). Moreover, because the protestor must present evidence to affirmatively establish its case, mere disagreement with the evaluation does not render the evaluation unreasonable. *Blurton Banks and Assoc., Inc.*, B-211702 83-2 CPD P 454 (Oct. 13, 1983). Appellant here has made no affirmative showing of fraud, bad faith, conflict of interest, or actual bias.

D. Corporate Status of Contract Awardee and Corporate Relationships of Contract Awardee

RMIC argues that the bid was made by a sole proprietorship but the contract was awarded to a corporation. RMIC Appeal to OPA, April 13, 2011 at page 2. RMIC further argues that no “check was made to establish the relationships of the various entities involved in the Guam Marianas Collection Agency.” *Id.* As the Director concluded in his Decision on page 2, the awardee is “Guam Marianas Management Services” doing business as “Guam Marianas Collection Agency.”

E. Qualification of Contract Awardee to Do Business in the CNMI

RMIC argues that the awardee was not qualified to do business in the CNMI at the time of its bid, which establishes that the evaluators negligently performed their evaluations. RMIC Appeal to OPA, April 13, 2011 at page 2.

OPA has recognized in other cases (see, e.g., BP-AO65, In Re MegaBYTE and Marianas Wireless at page 4; Decision available at the OPA web site, opacnmi.com) that unless the business license requirement is incorporated into the RFP or IFB, the bidder need only possess the business license at the time of the signing of the contract, not at the time of award. This serves the governmental purpose of encouraging potential bidders to bid, particularly, off island bidders who have not done business before in the CNMI, which assists the government in obtaining the best price for the service or goods.

V. Decision

In his Decision on Appeal, the Public Auditor affirms the denial of the protest by the Director of the Division of Procurement and Supply.

RMIC, any interested party who submitted comments during consideration of the protest, the Director, or any agency involved in the protest, may request reconsideration of a decision by the Public Auditor. The request must contain a detailed statement of the factual and legal grounds for which reversal or modification is deemed warranted, specifying any errors of law made or information not previously considered. NMIAC §70-30.3-505(i)(1). Such a request must be received by the Public Auditor no later than ten (10) days after the basis for reconsideration is known or should have been known, whichever is earlier. NMIAC §70-30.3-505(i)(2).

Dated this 6th day of July, 2011.



Michael Pai, CPA
Public Auditor