



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: L. Washington & Associates, Inc.

File: B-276556; B-276556.2; B-276556.3

Date: June 26, 1997

Lawrence J. Sklute, Esq., for the protester.
George R. Barbosa, The Barbosa Group, Inc., an intervenor.
Scarlett Grose, Esq., General Services Administration, for the agency.
Linda C. Glass, Esq., and Paul I. Lieberman, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

1. Protest that agency unreasonably delayed award in order to allow awardee opportunity to apply for and obtain required license is dismissed where unsupported by the record.
2. Protest that awardee's bid should have been rejected as mistaken where contracting agency accepted awardee's bid verification is not for consideration because only the contracting parties are in a position to assert rights and bring forth all the necessary evidence to resolve mistake in bid questions.

DECISION

L. Washington & Associates, Inc. (LWA) protests the award of a contract to The Barbosa Group (Barbosa) under invitation for bids (IFB) No. GS-02P-96-CID-0012, issued by the General Services Administration (GSA) for armed and unarmed guard services at various locations in six New Jersey State counties. The procurement was conducted competitively pursuant to section 8(a) of the Small Business Act, 15 U.S.C. § 637(a) (1994). LWA argues that Barbosa's bid should have been rejected as nonresponsive because Barbosa did not possess a required New Jersey State guard license at time of bid opening, that GSA "indefinitely delayed" the award in order to permit Barbosa to obtain the required license, and that GSA was aware of a mistake in Barbosa's bid but failed to take appropriate action.

We dismiss the protests.

The IFB, issued on July 22, 1996, contemplated the award of a fixed-priced, indefinite quantity contract for a 12-month base period with four 12-month option periods. The IFB required bidders to submit per-hour prices for both armed and unarmed guard services, with these prices to be multiplied by stated quantities and the results used to establish total aggregate price. Award was to be made to the

responsible bidder submitting the lowest total price. The solicitation provided that the "successful bidder must obtain all New Jersey State Permits and Licenses prior to award of the contract."

The agency received 16 bids by the August 27, 1996, bid opening date, ranging from \$6,028,067.30 to \$9,500,739.68. The lowest bid was submitted by Sheen & Shine, Inc. (S&S); Barbosa's bid of \$6,544,474.03 was next low; and LWA's was fourth low. The low bidder, S&S, was requested to verify its bid on three separate occasions and on December 24, S&S was allowed to withdraw its bid because of numerous errors it made in its estimate.

By letter dated October 16, the agency advised Barbosa, the second low bidder, that a mistake in bid was suspected and requested that it verify its bid. Barbosa agreed to a bid extension and by letter dated October 21, verified its bid. By letter dated November 21, GSA informed the SBA office in Houston, Texas, that it was evaluating the bid submitted by Barbosa for possible award and requested the SBA to verify Barbosa's eligibility under the 8(a) program and to provide a detailed statement regarding the firm's past experience in performing the type of services required by the solicitation.

Even though Barbosa had verified its bid, by letter dated November 22, GSA again requested Barbosa to verify the accuracy of the bid and to provide specified bid documentation. By letter dated November 22, Barbosa provided the requested documentation and again verified its bid prices. In early December, Barbosa informed GSA that the paperwork for the required New Jersey license had been completed and was being processed. Barbosa was reminded by GSA on December 11 about the necessity of obtaining the license prior to award and was further advised that when GSA was ready to make award, the award could not be held up to allow Barbosa time in which to obtain the required license. After reviewing the documentation submitted by Barbosa with its second bid verification, GSA again requested Barbosa to verify its bid prices, which Barbosa did by letter dated January 9, 1997, providing specific responses to each of the areas of concern as identified in GSA's bid verification request.

On January 17, GSA advised Barbosa that the worksheet for Monmouth County it had submitted with its bid verification letter dated November 22 appeared to use the wrong DOL hourly wage rate in calculating the prices for certain of the guards and again asked Barbosa to verify whether or not a mistake had been made. On that same day, Barbosa advised GSA that, under any circumstances, it would pay the required DOL labor rates for all counties, and by letter dated January 17, Barbosa verified its bid prices for the fourth time.

On January 29, the agency pre-award survey resulted in a recommendation of award to Barbosa. GSA requested Barbosa to submit, by February 7, a copy of the license which would allow it to operate in the State of New Jersey as a provider of security

guards. Barbosa requested an extension of time to provide the license stating that it had submitted its license application and was aggressively pursuing the licensing process with the State of New Jersey. GSA stated that it would begin preparing the award documents and that Barbosa should submit a copy of its license immediately upon receipt. On February 24, a copy of the license was provided to GSA and on March 13, award was made to Barbosa. This protest was filed with our Office on March 20.

LWA initially protested that the IFB required offerors to have all necessary permits and licenses from the State of New Jersey at the time of bid opening and that any offeror that did not have such licenses should have been determined nonresponsive by GSA. The agency report establishes, and LWA does not dispute, that the IFB required the bidder to obtain the licenses prior to award of the contract, not to possess them at the time of bid opening, and that Barbosa did in fact have its New Jersey guard license prior to being awarded the contract.

LWA argues that the agency unreasonably delayed award to allow Barbosa to apply for and obtain the guard license. LWA contends that the "real reason" that GSA delayed the award and did not find Barbosa nonresponsive was to circumvent the SBA certificate of competency (COC) procedures by allowing Barbosa to obtain the license. However, the record reflects no improper delay by GSA, which proceeded diligently to complete the award process under the circumstances at hand. Our Office will not attribute improper motives to government officials on the basis of inference or supposition. Harper & Harper, B-253167.2, Oct. 12, 1993, 93-2 CPD ¶ 216 at 5. Accordingly, this allegation is not for consideration.

LWA also argues that GSA was on notice that there were various mistakes in Barbosa's bid, but failed to verify the bid and failed to conduct its own analysis of the awardee's mistake before awarding the contract. Our Office has consistently held that only the contracting parties (here, the government and the firm in line for award) are in a position to assert rights and to bring forth all the necessary evidence to resolve mistakes in bid questions. Riverport Indus., Inc., 64 Comp. Gen. 265 (1985) 85-1 CPD ¶ 201; Haskell Corp.--Recon., B-218200.2, June 24, 1985, 85-1 CPD ¶ 713 at 5; Libby Corp., B-218367.2, Apr. 10, 1985, 85-1 CPD ¶ 412 at 1. Here, as explained above, Barbosa consistently verified its bid. If a contracting officer suspects there is a mistake in a bid, verification of the bid is to be requested of the bidder. If the bidder verifies the bid, the contracting officer is to consider the bid originally submitted. R.P. Sita, Inc., B-217027, Jan. 14, 1985, 85-1 CPD ¶ 39 at 2. LWA's objection to that process is not for consideration by our Office.

We also note that here the agency is awarding a fixed-price contract for services under which the successful contractor is bound by the contract terms to pay its employees the wages required by present and future wage determinations. In these circumstances, there would be no reason to disturb an award even if an offeror proposed line item labor rates or furnished cost data showing proposed labor rates

below those specified in a wage determination if the firm is otherwise deemed to be responsible. Carolina Stevedoring Co., B-260006, May 18, 1995, 95-2 CPD ¶ 3 at 8. Further, whether Barbosa performs the contract in accordance with the Service Contract Act (SCA) is a matter for the DOL, which is responsible for the enforcement of the SCA. Id. at 9.

The protests are dismissed.

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