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September 17, 2015

084072.0101

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BY HAND DELIVERY & E-MAIL

Ms. Donna Edmundson
City of Houston Legal Department
900 Bagby, 4th Floor
Houston, Texas 77002
donna.edmundson@houstontx.gov

Mr. Roy Korthals
City of Houston
Strategic Purchasing Division
901 Bagby, Room B-500
Houston, Texas 77002
roy.korthals@houstontx.gov

Re: Letter in Support of Protest of Award of Bid Invitation No. S19-L25385

Dear Ms. Edmundson and Mr. Korthals:

Yesterday, by email, I submitted on behalf of our client, G4S Secure Solutions (USA), Inc. ("G4S"), a protest of any contract award or proposed award to Norred and Associates, Inc. and or any affiliate of that company (collectively, "Norred") for Security Guard Services pursuant to Bid Invitation No.: S19-L25385 (NIGP Code: 905-68). A copy of our email protest of yesterday is attached. This letter is intended to supplement, not replace, yesterday's protest.

As outlined in yesterday's protest, G4S received a report from Onvia, Inc., a company that provides public procurement information, that the City of Houston has awarded the above-referenced contract to Norred. We do not, however, know whether this is true, as no such award or proposed award is reflected on the City's strategic purchasing site (http://purchasing.houstontx.gov/Bid_Display.aspx?id=L25385). Also, G4S, a bidder for the contract, has not received official word of the City's decision. Therefore, notwithstanding its lack of notice but out of a desire to assure it meets any protest deadline, G4S submits this protest.

The grounds for G4S's protest are as follows:

1. On information and belief, Norred does not meet the minimum qualifications set out in the Invitation to Bid.

Norred does not appear to meet the explicit requirements of the Invitation to Bid (“ITB”). The ITB states that “[c]ontractor shall have been awarded and performed a contract similar in size and scope to this contract within the last ten (10) years.” ITB, p. 5. The City clearly sought only bidders who had won and managed similarly complex and difficult city or government contracts to be considered for this important contract. No bidder should have been considered that did not meet this explicit requirement.

G4S believes Norred fails this requirement. At a minimum, the City Attorney should require staff to investigate and confirm all Norred contracts of similar size and scope that meet this requirement prior to final award determination by the City Council.

2. On information and belief, the contract should not be awarded to Norred because it is not a responsible bidder.

In addition to not meeting the explicit requirements of the ITB, Norred also does not appear to satisfy the dictates of the City of Houston Procurement Manual. Price is not the only factor City personnel are to consider in evaluating bids. Rather, the City is required to “review bids to determine the lowest responsive *and responsible* bidder.” Procurement Manual, p. 34. A low bid must be rejected if the bidder is not “responsible.” *Id.* at 33. A contractor who cannot successfully perform the contract is not responsible.

G4S believes that Norred is not a responsible bidder for this procurement as provided for in the City of Houston Procurement Manual. As discussed above, upon information and belief, Norred has never been awarded nor performed a contract of similar size and scope. Moreover, the price it bid was based on wage rates that are too low to permit recruitment of qualified personnel in sufficient numbers to perform the contract. G4S is the incumbent contractor, and for its personnel to become employees of Norred, they would have to be willing to accept pay cuts. That they would do so is highly unlikely, thus leading to less qualified and experienced employees performing the contract to the detriment of the City.

Accordingly, it is highly unlikely that Norred will have the necessary personnel in place in time to effect an orderly transition and undertake its full contractual responsibilities by the required start date.

Norred’s ability to perform the contract as required should be re-evaluated.

3. On information and belief, the proposed contract award contains terms—including price terms—that substantively differ from those in Norred’s bid.

A low bidder is not allowed to substantively change its bid post-opening. The City of Houston Procurement Manual makes this clear:

A low bidder may be requested to delete objectionable conditions from a bid provided the conditions do not concern the substance—as distinguished from the form—of the bid, or work an injustice on other bidders. A condition concerns the substance of a bid where it affects price, quantity, quality, or delivery of the items offered.

Id. at 33.

This is consistent with applicable State law. Section 252.042(g) of the Texas Local Government Code specifies that “[a] bid that has been opened may not be changed for the purposes of correcting an error in the bid price.” It necessarily follows that if a bid price may not be changed post-opening to correct an error, it cannot be changed for other, less-meritorious purposes.

On information and belief, Norred’s bid price and the contract terms contained in the City’s Invitation to Bid have been substantively changed in ways that are unjust to other bidders. At bid opening, Norred’s bid totaled \$63.0 million. The Onvia report, however, indicates that the amount of the Norred contract now totals over \$79 million, more than \$16 million greater than its original bid. This is substantially greater than could be expected from adjustments based on a reasonable City specification of additional work hours. A difference of this magnitude indicates that either Norred was allowed to increase its bid price or the City has substantively changed the contract terms contained in its ITB, or both.

The law recited above does not permit the award of a contract based on such substantive post-opening changes. All bidders must be afforded the same opportunity as Norred to bid on the amended proposal.

4. This procurement is flawed and should be set aside because City personnel have violated the “quiet period” rule imposed by the City’s Procurement Manual and the ITB itself.

The City’s Procurement Manual specifies that, following bid opening, there is to be no contact between City personnel and any bidder. Procurement Manual, p. 13. This “quiet period” requirement is carried over into the ITB itself: “[N]either bidders nor persons acting on their behalf shall communicate with any ... employee of the City of Houston ... to persuade or influence the outcome of the award or to obtain or deliver information intended to or which could reasonably result in an advantage to any bidder.” ITB, p. 5.

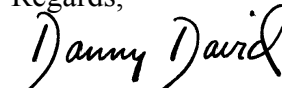
Here, at least one City employee violated the “quiet period” requirement. On August 5, 2015, Fred Lee of the City informed G4S personnel that the contract had been split in two and that Norred was awarded the contract for services at the airports and Andy Frain was awarded the contract for services elsewhere. See Attached Affidavit of Jason M. Brown. Mr. Lee also expressed puzzlement as to why the awards had not already been posted. *Id.*

This communication, almost six weeks ago, suggests that City personnel may also have communicated with Norred and/or Frain. Such violations of the letter and spirit of the no-contact requirement so taints this procurement that it should be set aside in total and re-bid. At a minimum, these violations require the City Attorney to investigate these “quiet period” communications prior to final approval by the City Council to determine if such communications violated the procurement requirements and require a re-bid.

Conclusion

Based on Grounds 1, 2 and 3 above, the City should reconsider the proposed award to Norred (assuming a proposal for such an award has been made) prior to action by the City Council. Alternatively, based on Ground 4, the City should either scrap the current procurement and require another procurement for these services, or it should defer action on this matter until the City Attorney’s Office investigates communications between City personnel and bidders on this procurement and reports back its findings.

Regards,


Danny David

David, Danny

From: Korthals, Roy - FIN <Roy.Korthals@houstontx.gov>
Sent: Thursday, September 17, 2015 8:16 AM
To: David, Danny
Subject: RE: S19-L25385 Protest

Mr. David, the City of Houston has received your protest on the behalf of G4S Security Solutions (USA), Inc. and will advise.



Roy Korthals, Procurement Specialist

Finance Department
Strategic Procurement Division
Phone: 832.393.8734 Fax: 832.393.8758
Email: roy.korthals@houstontx.gov

Partnering to better serve Houston

From: danny.david@bakerbotts.com [<mailto:danny.david@bakerbotts.com>]

Sent: Wednesday, September 16, 2015 9:43 PM
To: Edmundson, Donna - LGL; Korthals, Roy - FIN
Cc: robert.howell@bakerbotts.com; stan.soya@bakerbotts.com; evan.werbel@bakerbotts.com
Subject: S19-L25385 Protest

To Ms. Edmundson and Mr. Korthals:

We represent G4S Secure Solutions (USA), Inc. ("G4S").

G4S submitted a proposed bid in response to Bid Invitation No.: S19-L25385 (NIGP Code: 905-68) for Security Guard Services. G4S learned today (through the Onvia System) that the City of Houston may have awarded this bid to Norred Solutions, though such award is not reflected on the City of Houston's strategic purchasing site (http://purchasing.houstontx.gov/Bid_Display.aspx?id=L25385), and G4S has not received official word of the City's decision. G4S hereby officially protests the City's award pursuant to the "Protest" section of the Invitation to Bid at page 5 and the City of Houston Procurement Manual at "Protest Process and Procedures" at pages 78-81. G4S has authorized Baker Botts L.L.P. to submit this protest on its behalf.

G4S believes there are sufficient grounds to halt this procurement and for the City Attorney to review the circumstances surrounding this procurement prior to any action by the City Council. The grounds for this protest include: changes to the bid procedures and pricing after bid opening, award of the contract on different terms than established in the Invitation to Bid, potential violations of the mandated "quiet period," and the inability of the awardee to meet the requirements of the Invitation to Bid (including the qualifications, scope of services and other requirements set forth therein).

G4S will submit a more detailed analysis of the grounds for its protest tomorrow but hereby preserves any rights to protest as mandated by the Invitation to Bid and the City of Houston Procurement Manual.

Regards,

Danny David
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AFFIDAVIT OF JASON M. BROWN

My name is Jason M. Brown. I am over 18 years of age and am fully competent to give this affidavit.

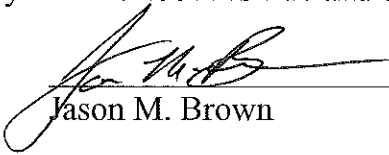
I am employed by G4S Secure Solutions (USA), Inc. ("G4S") as its General Manager in Houston. My duties include overseeing G4S's work on its contract to provide security services for the City of Houston, including the City's airports.

On August 5, 2015, I was at the City of Houston General Services Security Management office on Walker Street for a weekly security meeting. This is a standing meeting held every Wednesday. Steven Ayala, G4S's Houston Operations Manager, and I attended on G4S's behalf. Fred Lee, interim Chief of Security for the General Services Department of the City's Security Management Division, was present for the City. Fred Lee of the City of Houston told Steven Ayala (G4S's Houston operations manager) that the new security service contract had been awarded to two companies. Specifically, he said that the award had been split and that Norred & Associates would receive the contract for the airports and Andy Frain would receive the contract for everything else. He said that he, Lee, was open to the idea of Steven and myself "onboarding with" (going to work for) Frain or Norred to act as Project Manager or Operations Manager. I told him it was unlikely we would do so.

Mr. Lee also said that he was concerned that the posting of the contract award had not been done yet and he could not figure out what the hold-up was.


I affirm under penalty of perjury that the above is true and correct.

Date: September 17, 2015



Jason M. Brown

Subscribed to and sworn before me, the undersigned notary public for the State of Texas,
on this 17th day of September, 2015.



[Notary block]

