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Maryland Procurement Law Alert

MSBCA Upholds Evaluations and “Responsibility” Determination of Agency

In *Wexford Health Sources, Inc., Nos. 3066 & 3081* (Md. B.C.A. Aug. 31, 2018), the Department of Public Safety and Correctional Services (“DPSCS”) issued an RFP to provide inmate medical care and management services for approximately 22,000 inmates in facilities throughout the State. Wexford Health Sources, Inc. (“Wexford”) was the incumbent; Corizon Health, Inc. (“Corizon”) was the newcomer.

After Corizon was selected over Wexford for award of this \$659 million contract, Wexford filed a protest alleging among other things that: (i) the evaluations of the technical proposals of Wexford and Corizon were flawed; (ii) Corizon was not a responsible offeror; and (iii) DPSCS did not select the “most advantageous” offeror. Corizon filed several supplemental bid protests, all of which were denied by the procurement officer. Corizon appealed and this matter came before the Maryland State Board of Contract Appeals (“MSBCA”) for a hearing on the merits in August 2018.

The MSBCA first held that Wexford had standing to protest because it alleged it was prejudged based on past performance, and that but for DPSCS’s impropriety, Wexford would have been awarded the contract. However, as to Wexford’s allegations that the evaluation of its technical proposal was flawed, the MSBCA held that the procurement officer’s consideration of Wexford’s past

performance was not unreasonable. In fact, Wexford invited DPSCS to consider its past performance since Wexford touted its incumbency in the proposal. The MSBCA further found that the procurement officer's concerns about poor past performance were supported by the record.

Finally, the MSBCA held that Wexford failed to show that it was unreasonable for the procurement officer to find that Corizon was "responsible," since the procurement officer diligently evaluated the materials submitted by Corizon with its proposal.

The MSBCA denied Wexford's appeals on all grounds. Wexford promptly filed a petition for judicial review of the MSBCA's decision which is now pending in the Circuit Court for Baltimore City (Case No.: 24-C-18-005023).

*Don't let your competitors outsmart you when it comes to Maryland bid protests. **Scott Livingston, Esq.***

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