

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
CONTRACT APPEALS BOARD

PROTEST OF:

DIXON'S TERMITE & PEST CONTROL, INC.	)	
	)	
Under Contract No. 040-AA-67-0-5-ML	)	CAB No. P-429

For the Protester: Mr. Robert Dixon, *pro se*. For the District of Columbia Public Schools: Cecilia E. Wirtz, Esquire, Legal Counsel, and Christopher G. Lipscombe, Esquire, Attorney Advisor.

Opinion by Administrative Judge Jonathan D. Zischkau, with Administrative Judges Lorilyn E. Simkins and Cynthia G. Hawkins-León, concurring.

**OPINION**

Dixon's Termite & Pest Control, Inc., protests the District of Columbia Public School's ("DCPS") award of Contract No. 040-AA-67-0-5-ML (termite control services) to Federal Pest Control, Inc. DCPS has moved to dismiss the protest before the Board because Dixon failed to exhaust its administrative protest remedy at DCPS. We agree and dismiss Dixon's protest for failure to exhaust its DCPS administrative remedies.

**FACTS**

On October 28, 1994, DCPS issued IFB No. 040-AA-67-0-5-ML for termite control services for school facilities. The IFB was for a multiple award contract. On January 10, 1995, DCPS made awards to the only two bidders, Dixon Termite & Pest Control and Federal Pest Control. By letter dated January 20, 1995, Dixon filed a protest with the DCPS Procurement Officer challenging the award to Federal Pest based on certain alleged bid deficiencies. Dixon also filed a copy of this January 20 protest letter with the Board, which was received on January 23, 1995. The agency-level protest was resolved by a DCPS Procurement Officer who issued a decision on February 23, 1995, denying the protest. (Agency's Motion to Dismiss Protest, Attachment). The February 23 decision notified the protester that it had the right to "appeal this decision to the Superintendent of Schools within (10) working days from receipt of this letter." (*Id.*) The protester did not request Superintendent review of the February 23 decision. On March 16, 1995, DCPS filed with the Board its motion to dismiss the protest pending before the Board based on the protester's failure to exhaust its DCPS protest remedy. The protester did not respond to the motion. On April 28, 1995, the Board held a telephone conference with the parties. The protester stated that although it did not think that Federal Pest Control's bid was

in accordance with the solicitation requirements, it was not intending to pursue the protest.<sup>1</sup>

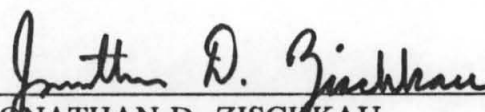
### DISCUSSION

DCPS is an independent District agency. Pursuant to statute, the Board of Education is authorized to enter into negotiations and binding contracts pursuant to rules and regulations adopted by the Board of Education. D.C. Code § 31-1535(b) (1981). This statutory provision requires that procurement rules or regulations be adopted by the Board of Education in accord with the public notice and participation requirements of D.C. Code § 1-1506 (1992) and be consistent with policies embodied in District-wide contracting and procurement rules and regulations. The Board of Education has issued procurement regulations which can be found in 5 DCMR Chapter 37 (1991). Under subpart 3714 of these regulations, entitled "Protests", an aggrieved party must file a written protest with the DCPS procurement officer within 10 days after the aggrieved party knew or should have known of the facts giving rise to the protest, *id.* § 3714.2, and the procurement officer must render a decision within 10 days of receipt of the protest. If the protester is not satisfied with the decision, it may seek review by the Superintendent of Schools. *Id.* §§ 3714.4, 3713.4. The decision of the Superintendent is final and conclusive unless, within 30 days of receipt of the Superintendent's decision, the protester "files a written appeal to the D.C. Contract Appeals Board." *Id.* § 3713.6. See *Shannon & Luchs*, CAB No. P-415, Sept. 21, 1994, 7 P.D. 5971, 5977 n.10.

In the present case, the protester did not seek Superintendent review of the procurement officer's decision and has indicated that it does not intend to pursue the matter. Because the DCPS regulations require a protester to seek review by the Superintendent of a procurement officer's decision prior to seeking review at this Board, and such a regulatory scheme does not contradict the policies of the District-wide procurement rules and regulations, we dismiss the protest for failure to exhaust DCPS administrative remedies. See *Bufford v. D.C. Public Schools*, 611 A.2d 519, 523-25 (D.C. 1992); *District of Columbia v. Group Insurance Administration*, 633 A.2d 2, 20-21 (D.C. 1993).

Accordingly, the protest is dismissed.

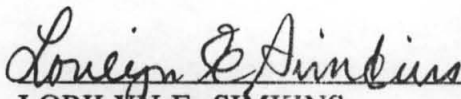
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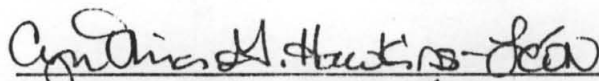
  
JONATHAN D. ZISCHKAU  
Administrative Judge

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<sup>1</sup> During the conference call, the Board briefly discussed the issues raised by the protest regarding minor deviations in Federal Pest Control's bid which were resolved or waived by DCPS prior to award to Federal Pest Control. Because we dismiss for failure to exhaust administrative remedies, we offer no opinion on one issue that appears to concern post-bid unit price negotiations. See 5 DCMR § 3704.2.

CONCURRING:

  
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LORILYN E. SIMKINS  
Chief Administrative Judge

  
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CYNTHIA G. HAWKINS-LEÓN  
Administrative Judge