

GOVERNMENT OF THE DISTRICT OF COLUMBIA
CONTRACT APPEALS BOARD


DATE: May 5, 1989

TO: Gerald Iverson, Jr., President
GNIJ Enterprises, Inc.
1730 K Street, N.W., Suite 304
Washington, D.C. 20006

Nancy G. Dunn
Assistant Corporation Counsel
Housing and Community Development Division
1133 North Capitol Street, N.E., Rm. 238
Washington, D.C. 20002

RE: CAB No. P-73, Protest of GNIJ Enterprises, Inc.

Enclosed is a copy of the Board's decision in the above-referenced case.



ROSE M. GILLISON
Clerk to the Board

Enc.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
CONTRACT APPEALS BOARD

PROTEST OF:

GNIJ ENTERPRISE, INC.)	
)	CAB No. P-73
Under IFB Nos. 4854-72-A1-87)	
4904-73-A1-87)	

For the Protester: Gerald Iverson, Jr., President. For the Government: Nancy G. Dunn, Acting Assistant Corporation Counsel.

Opinion by Administrative Judge David D. Marlin and Booker and Davis concurring.

OPINION

In 1987, the Department of Public and Assisted Housing (DPAH), formerly a part of the Department of Housing and Community Development, issued two solicitations, one for a courier service to provide a daily collection of rental receipts and deposits,¹ and the second to produce and install external signs to be mounted at various public housing projects.²

GNIJ Enterprises, Inc. (GNIJ) submitted sealed bids for both procurements. The bid for the courier service was rejected by DPAH as nonresponsive sometime in October, 1987;³ the bid for the installation of signs was rejected by a letter dated October 8, 1987, according to the supplement to the agency report filed on June 24, 1988.⁴

¹IFB 4904-73-A1-87, issued on July 28, 1987.

²IFB 4854-72-A1-87, issued on May 11, 1987.

³The record does not contain the rejection notification, but the basis for the rejection is undisputed.

⁴This rejection letter also is not in the record. The date of its receipt by GNIJ is unknown.

GNIJ filed its protest with the Board covering both bids rejections on October 27, 1987.⁵

PROCEDURE

Before turning to the merits of the protest, there is a pending motion by GNIJ, filed on March 29, 1988, to impose sanctions against the District, and another motion by GNIJ for summary disposition of the case, filed on June 13, 1988. Both motions are based on the failure of the District to file its agency report within the required time frame.

The District's responses to the protest were well beyond the time limit suggested in the proposed Board rules published on September 12, 1986 in 33 D.C. Reg. 5671, which required, in subsection 302.1, a response no later than 20 working days of the time DPAH received notification that GNIJ's protest had been filed with the Board.

A telephone conference call on March 14, 1988, and in written pleadings filed on March 18 and June 24, 1988, the District argued against sanctions or a summary disposition in GNIJ's favor, respectively. In essence, the District has conceded that staff errors, neglect and inadvertence were

⁵This case originated during the period when the District of Columbia Contract Appeals Board was functioning pursuant to Commissioner's Order No. 9, D.C. Code, Supplement V (1987), as amended by Mayor's Order 86-65, 33 DCR 3006 (May 16, 1986). Pursuant to the D.C. Procurement Practices Act of 1985 (PPA), D.C. Code, sec. 1-1189.1 (1987), a new independent agency denominated as the Contract Appeals Board was created. This new Board became operational on August 1, 1988, and succeeded to the jurisdiction of all cases pending before the previously established Board.

responsible but argues that the remedies sought by GNIJ are inappropriate because GNIJ's case has not been prejudiced, the District acted in good faith once its neglect was discovered and the period of untimeliness was not prolonged.

Imposition of sanctions, or disposing of a case by summary judgement without regard to the merits of the controversy, are extraordinary actions that rest fully within the discretion of the Board. Although we do not condone the government's failure to respond promptly to the protest, we decline to enforce the penalties requested by GNIJ.

We are principally influenced by the candidness of the government, the lack of prejudice to the protester with respect to its substantive positions and the ancient tradition that favors disposition of litigation on its merits. Different facts and circumstances, of course, could lead to an opposite conclusion if similar egregious responsiveness was present.

Accordingly, the motion for sanction and the motion for summary disposition are DENIED.

COURIER SERVICE

DPAH solicited bids on July 28, 1987 for a courier service, which included a vehicle containing a safe and communications equipment, to pick up rental collections at 41 public housing projects between 8:30 a.m. and 4:15 p.m., Monday through Friday.

When the bids were opened on August 31, 1987, GNIJ had submitted a bid of \$49,200, the third lowest. See Agency Report filed on March 18, 1988, pages 1-2. On October 9, 1987, DPAH

requested the opportunity to inspect the service vehicle offered by GNIJ, and the parties conferred on October 13 to set a time and place for the inspection. See affidavit of Gregory Sims, attached to the agency report.

According to the Sims affidavit, which is undisputed, GNIJ agreed to an October 15 inspection but subsequently declined to present the vehicle. Through its president, Gerald Iverson, Jr., GNIJ, in a letter dated October 14, 1987, stated it would not agree to an inspection of its vehicle unless it was regarded as the "lowest responsible bidder", exh. C, Agency Report.

The refusal to permit DPAH to examine the vehicle to determine whether the safe and communications system were adequate resulted in the determination that the GNIJ's bid was nonresponsive. Subsections 2620.13, 2620.13B2 and 2620.13B2H of the Materiel Management Manual (July 1, 1974) provide authority for rejection of bids that modify requirements of an IFB and fail to conform to material requirements of the procurement.

The finding of nonresponsiveness is justified under the facts and circumstances. The protest relating to the courier service procurement is DENIED.

SIGN INSTALLATION

No facts are in dispute.

DPAH solicited bids on May 11, 1987 for the fabrication and installation of exterior surface mounted signs at various public housing properties. When bids were opened on July 10, 1987, GNIJ had submitted the third lowest bid. The three lowest bidders

were requested to submit documentation to show the cost breakdown of their bids and did so. The GNIJ submission raised its bid from \$78,350 to \$150,000, which was approximately four times the amount of the successful bidder who received the contract following a responsibility determination. See Agency Report dated June 24, 1988 at pages 1-2 and Recommendation Memorandum attached.

GNIJ's protest, in relevant part, is as follows:

With reference to Sign Project I was contacted to submit Cost Break Down for the proposal. I submitted by certified mail then to find out that I was not the recipient of the award. The question that arose in my mind was why did DHCD contact my Company and what procedures were they following in awarding this contract. Did they just pull my company and name at random or were they starting from the lowest bid then working up the ladder of quoted bids. The process seemed improper with no guidelines.

The protest of GNIJ only questions the procedures followed by DPAH. The agency report supplement, submitted on June 24, 1988, responds to these procedural inquiries and does so satisfactorily. We also note that GNIJ did not file comments contesting DPAH's explanation. Accordingly, the protest is DENIED.

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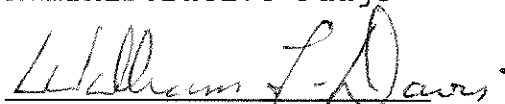


DAVID H. MARLIN
Administrative Judge

CONCUR:



CLAUDIA D. BOOKER
Administrative Judge



WILLIAM L. DAVIS
Administrative Judge