

GOVERNMENT OF THE DISTRICT OF COLUMBIA
CONTRACT APPEALS BOARD

PROTEST OF:

WARNER-BOYD & ASSOCIATES, INC.)	
)	CAB No. P-559
Under RFQ DCPS-Q-98033-FF)	

For the Protester: Mr. Matthew M. Groves, Systems Sales Representative. For the District: Howard S. Schwartz, and Warren J. Nash, Assistants Corporation Counsel.

Opinion by Administrative Judge Claudia Booker, with Chief Administrative Judge Lorilyn E. Simkins and Administrative Judge Phyllis W. Jackson, concurring.

OPINION

Matthew M. Groves, Systems Sales Representative of Warner-Boyd & Associates, Inc. ("Warner" or "Protester"), protests the specifications issued as part of the District of Columbia Public Schools' ("DCPS") solicitation, No. RFQ DCPS-Q-98033-FF, for the purchase of a mobile filing system. The Protester contends that the specifications were vague and therefore defective. The District challenges the protest on the issue of timeliness. The Board finds that the protest was untimely filed and it is therefore dismissed with prejudice.

BACKGROUND

On June 24, 1998, DCPS issued a solicitation, No. RFQ DCPS-Q-98033-FF, for the purchase of a mobile filing system. On July 15, 1998, the date for submission of quotations, DCPS received six responses, including one from the Protester. On August 28, 1998, the Protester filed a protest with the DCPS Office of Acquisitions and Contracts. Three weeks later, on September 18, 1998, DCPS Contracting Officer forwarded, via facsimile, the protest to the Board.¹

On October 8, 1998, the District filed a motion to dismiss this protest and asserted that the protest was untimely and therefore the Board lacked jurisdiction to hear and decide it. The District cited D.C. Code §1-1189.8 of the Procurement Practices Act ("PPA") (D.C. Code §1-1181.1 *et seq.* (1997)) which requires that an aggrieved party file its protest, based upon alleged apparent improprieties in the solicitation prior to bid opening or at the time set for receipt of initial proposals.

¹In keeping with our decision in *Fort Myers Construction Corp.*, CAB No. P-452, July 23, 1996, 44 D. C. Reg. 6476, the DCPS should have immediately forwarded Warner's protest to the Board, and not waited three weeks.

It is the District's position that because the Protester is challenging the vagueness of the specifications which was apparent on the face of the solicitation, the Protester had until the date for submission of quotes, July 15, 1998, to file a protest, *Protest of Koba Associate, Inc.*, CAB No. P-325 (Dec. 1, 1992) 39 D. C. Reg. 3072. However, the protest was not filed until over one month later, on August 28, 1998. Therefore, the protest is untimely and the Board is without jurisdiction.

DECISION

D.C. Code §1-1189.8(b)(2) provides:


(1) A protest based upon alleged improprieties in a solicitation which are apparent prior to bid opening or the time set for receipt of initial proposals shall be filed with the Board *prior to bid opening or the time set for receipt of initial proposals*. In procurements where proposals are requested, alleged improprieties which do not exist in the initial solicitation, but which are subsequently incorporated into this solicitation, must be protested *not later than the next closing time for receipt of proposals* following the incorporation. [Emphasis added.]

In order for the Board to hear and decide a protest on its merits, the protest must first meet the jurisdictional requirements imposed by the PPA. This protest challenges the alleged apparent improprieties in the solicitation but fails to meet the jurisdictional requirement for timeliness. The Protester had until July 15, 1998, the date set for submission of quotes to file this protest. However, the Protester did not file its protest until over one month later, on August 28, 1998. Therefore, the Board is without jurisdiction to hear and decide the merits of this protest.

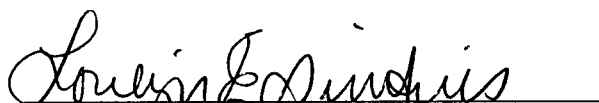
Accordingly, the protest is dismissed with prejudice.


SO ORDERED.

Date: October 19, 1998


CLAUDIA BOOKER
Administrative Judge

CONCURRING:


LORILYN E. SIMKINS
Chief Administrative Judge


PHYLLIS W. JACKSON
Administrative Judge