

## DISTRICT OF COLUMBIA CONTRACT APPEALS BOARD

PROTEST OF:

Kennedy Development, LLC	)	
	)	CAB No. P-0850
Under RFP No: DCKT-2009-R-0120	)	

For the Protester, Sandra Pone, CEO, Kennedy Development, LLC. For the District of Columbia Government: Robert Schildkraut, Esq., Assistant Attorney General.

Opinion by Administrative Judge Warren J. Nash, with Administrative Judge Jonathan D. Zischkau, concurring

### OPINION

*Filing ID 32946228*

Kennedy Development, LLC, has protested the award of a contract issued for grounds keeping and landscaping services to Lorenz, Inc., or any offeror other than Kennedy. Kennedy's *pro se* protest is not a model of clarity but appears to allege that the solicitation was improperly drafted to restrict competition, that awarding the contract to a firm from outside of the District would not provide economic benefits to the city, and that the method of making awards unfairly harmed small businesses. On May 3, 2010, the District filed a motion to dismiss the protest, alleging that Kennedy lacks standing to protest because it had the lowest technical score of the four offerors and its price proposal was incomplete and therefore rejected by the contracting officer. In addition, the District argues that to the extent that Kennedy is alleging improprieties in the solicitation, such protest grounds are untimely because the protest was filed after award. We conclude that Kennedy has not raised valid grounds for protest, that its challenges to the solicitation are untimely, and that Kennedy has not shown prejudice in the awards that were made. Accordingly, we dismiss Kennedy's protest.

### BACKGROUND

The Office of Contracting and Procurement ("OCP") of the District Government issued solicitation DCKT-2009-R-0120 in the open market for grounds keeping and landscaping services on September 3, 2009. (Motion to Dismiss, Ex. 2). The solicitation required prospective contractors to provide grounds maintenance, landscaping services, and other related services to several District agencies. (*Id.*). The solicitation contemplated award of multiple contracts, and stated that the District would award all of its requirements for each geographical ward of the city to a single contractor. (*Id.*). Kennedy submitted a proposal to provide services in Ward 8. (Motion, Exs. 4 and 5). The Technical Evaluation Panel ("TEP") reviewed Kennedy's proposal and gave Kennedy a consensus score of 0 for all four technical factors included in the solicitation. (Motion, Ex. 6). The contracting officer, after conducting his own independent review, concurred with the TEP's findings. (*Id.*). Kennedy also failed to provide pricing for each contract line item number in its pricing proposal as required by the solicitation and thus the contracting officer rejected Kennedy's price proposal. (*Id.*). The District could not calculate a total evaluation score for Kennedy due to Kennedy's failure to provide a complete

pricing proposal. (*Id.*). There were three vendors in line for award before Kennedy not including Lorenz. The District could not award to Kennedy under any circumstance since its price proposal was incomplete and its technical proposal was unacceptable. (*Id.*). The District awarded a contract to Lorenz, Inc., on April 13, 2010. Kennedy filed this protest on April 15, 2010. In its protest, Kennedy alleges: the “contract [solicitation] did not include minimum and maximum costs quotes” for the contract, the offeror’s experience in Washington, DC, was not factored into the solicitation, the price per acre quoted by the awardee is not possible under Davis Bacon Act wage scales, the awarded company is from out of state and economic benefit to the city would be minimal, contracts were awarded in groups too large for small companies to be competitive, awards should have been made to at least 4 companies and up to 8 companies, contracts for Wards 3-8 were awarded to one company, and that contracts were awarded for up to five years which “locks out” many small companies from competing.

### DISCUSSION

In the motion to dismiss, the District argues that Kennedy lacks standing to protest because Kennedy would not be the next offeror in line for award, even if successful on the merits. Kennedy did not file a response to the District’s motion. A protester lacks standing where it would not be in line for award, even if its protest was sustained. Kennedy received a technical score of 0 for all four technical evaluation factors set forth in the solicitation, and Kennedy failed to provide a complete price proposal. Kennedy has not raised any valid protest challenge to the award made to Lorenz and had not shown that its offer could have been considered for award in any event due to its unsatisfactory technical proposal and incomplete price proposal. Thus, we dismiss Kennedy’s protest as not raising valid protest grounds, raising untimely challenges to the terms of the solicitation, and failing to show how it was prejudiced by the awards.

### SO ORDERED:

DATED: August 27, 2010

/s/ Warren J. Nash  
WARREN J. NASH  
Administrative Judge

### CONCURRING:

/s/ Jonathan D. Zischkau  
JONATHAN D. ZISCHKAU  
Chief Administrative Judge