

DISTRICT OF COLUMBIA
CONTRACT APPEALS BOARD

PROTEST OF:

INTERNATIONAL BUILDERS, INC.)	
)	CAB No. P-0661
Under Solicitation No. POAM 2002-B-0019-DR)	

For the Protester: Fernando J. Villegas, President. For the Government: Howard Schwartz, Esq. and Warren J. Nash, Esq., Assistants Corporation Counsel.

Opinion by Administrative Judge Matthew S. Watson with Administrative Judge Jonathan D. Zischkau, concurring.

OPINION

(Courtlink Filing ID: 979154)

International Builders, Inc. (“International” or “Protester”) protests the award of any contract under the subject solicitation. Protester asserts that at a pre-bid conference two weeks before bid opening the contract administrator instructed bidders, contrary to the terms of the solicitation, to include the cost of engineering and architectural design in their bids and further indicated that a modification of the solicitation incorporating this instruction would be issued. Although no modification was issued, Protester asserts that it and other bidders which attended the pre-bid conference based their bids on the contract administrator’s verbal instructions, while other bidders who were not present at the pre-bid conference based their bids on the unmodified wording of the solicitation, giving unfair advantage to bidders who did not attend the pre-bid conference. We find that the protest is untimely. We therefore dismiss the protest.

BACKGROUND

The subject solicitation for construction services was issued July 25, 2002, scheduled for opening August 29, 2002. On August 15th, the District held a pre-bid conference at which time the contract administrator advised the potential bidders attending the conference that, although not included in the solicitation, “engineering and architectural design would be a part of [the] contract requirement.”¹ (Letter of Protest). No modification of the solicitation was issued to conform to the verbal instruction given at the pre-bid conference. (*Id.*)

Sixteen bids were opened on August 29, 2002. (Motion to Dismiss, Ex. 2). By letter dated August 30, 2002 and received by the Board September 6, 2002, International protested against any award pursuant to the solicitation. The protest alleges that bidders which did not attend the pre-bid conference were given an unfair advantage because their

¹ For purposes of determining timeliness, the Board has assumed that all of the allegations of the Protester are true.

bids were made in accordance with the terms of the written solicitation, while International and other bidders who attended the pre-bid conference computed their bids to include the additional requirements orally stated by the contract administrator. (*Id.*).

DECISION

Timeliness of protests is governed by D.C. Code §2-309.08 (2001 ed.) which states:

A protest based upon alleged improprieties in a solicitation prior to bid opening . . . shall be filed prior to bid opening

Protester became aware of the discrepancy between the written terms of the solicitation and the additional requirements orally stated by the contract administrator no later than August 15, 2002, the date of the pre-bid conference. Notwithstanding that Protester was lulled into inaction by the statements of the contract administrator that a modification of the solicitation would be issued, the time for filing protests concerning the terms of solicitations is set by statute to be *prior to bid opening*. (*Id.*).

Bids were opened on August 29, 2002. The instant protest was received by the Board on September 6, 2002. As this protest concerns specifications contained in the solicitation, the protest is untimely. The protest is therefore dismissed.

SO ORDERED.

DATED: October 11, 2002

/s/ Matthew S. Watson
MATTHEW S. WATSON
Administrative Judge

CONCURRING:

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