

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
CONTRACT APPEALS BOARD**

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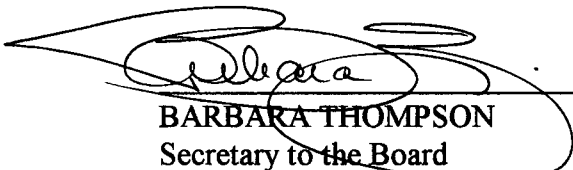
October 19, 1998

**TO: Mr. Ernest C. Moreno, President
A.B. CHELINI, COMPANY, LLC
4751 Lydell Road
Cheverly, MD 20781**

**H. Christopher Malone, Esquire
Warren J. Nash, Esquire
Howard S. Schwartz, Esquire
Assistants Corporation Counsel
Office of the Corporation Counsel
441 4th Street, N.W., 10th Floor
Washington, DC 20001**

SUBJECT: CAB No. P-556, Protest Of: A.B. Chelini, Company, LLC

Attached is a copy of the Board's Opinion dismissing protest with prejudice


BARBARA THOMPSON
Secretary to the Board

GOVERNMENT OF THE DISTRICT OF COLUMBIA
CONTRACT APPEALS BOARD

PROTEST OF:

A.B. CHELINI COMPANY, L.L.C.)	
)	CAB No. P-556
Under IFB No. 98-0081-AA-4-0-CC)	

For the Protester: Mr. Ernest Moreno, President. For the District: Howard S. Schwartz, Warren J. Nash, and H. Christopher Malone, Assistants Corporation Counsel.

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

OPINION

Ernest Moreno, President of A.B. Chelini Company, L.L.C. ("Chelini" or "Protester"), protests the Department of Public Works ("DPW") award of a contract to Prince Construction Company ("Prince") in response to the solicitation, IFB No. 98-0081-AA-4-0-CC. The Protester contends that Prince is not qualified to perform the type of work required by the solicitation and does not qualify for the 12 bid preference points it was given under the Equal Opportunity for Local, Small, Disadvantaged Business Enterprise Temporary Act of 1998 ("EOLSD Act"), D.C. Act 12-278, Jan. 27, 1998, which enabled Prince to be determined the apparent low bidder.

The protest was untimely filed and is dismissed with prejudice.

BACKGROUND

On March 17, 1998, DPW issued in the open market IFB No. 98-0081-AA-4-0-CC for the replacement of mechanical equipment at the Fourth Precinct Police Headquarters. Bid opening was held on April 23, 1998, and four bids were received. At the time of bid opening the bids were ranked as follows:

1. Precision Mechanical	\$172,000
2. RSC Electrical and Mechanical	\$190,000
3. Rite Way Furnace/A.B. Chelini Company, Inc.	\$199,000
4. Prince Construction Company Inc.	\$220,000

On June 11, 1998, DPW determined that RCS Mechanical's and Precision Mechanical's bids were nonresponsive for failure to submit their respective bid bonds and their bids were disqualified. In addition, DPW applied 12 bid preference points to Prince's bid for its status as a

local small business located in an enterprise zone under the EOLSD Act, thereby reducing the bid price by 12% (for bid evaluation purposes only).

According to the protester, on May 26, 1998, it learned that DPW was in the process of granting Prince 12 bid preference points for its status as a local small business located in an enterprise zone under the EOLSD Act, thereby reducing its evaluated bid price by 12%. If it were granted this reduction, Prince, the current second lowest bidder, would become the apparent low bidder. On May 26, the Protester sent a letter to Jack Rasson, Acting Director, Facilities Operation Management Administration, DPW, questioning DPW's alleged contemplation of granting Prince 12 bid preference points, and Prince's capability to perform a contract which is comprised of 90% mechanical work. Chelini contended that Prince qualifies for 7 bid preference points, not 12, and questioned whether Prince, a general contractor, had the capability to perform as the prime contractor when the services to be performed are 90% mechanical. Lastly, the Protester requested a meeting with DPW "... prior to your recommendation for the award of this contract ... [and] for clarification."

On June 10, 1998, Chelini's lawyer, Joel S. Rubenstein, Esquire, sent a letter to Jack Rasson. In this letter, Mr. Rubenstein reiterated the statements made in the May 26 letter. In addition, Mr. Rubenstein stated that the letter "... is not intended to be a bid protest at this time. The joint venture reserves its right to file a protest should it not receive the award to which it is respectfully entitled."

On August 5, 1998, DPW awarded the contract to Prince and on August 19, informed Chelini and the other unsuccessful bidders, via facsimile, of the contract award. The Protester acknowledges receiving notice of the contract award on August 20, 1998. On September 4, 1998, Chelini filed this protest with the Board.

On October 9, 1998, the District filed a motion to dismiss the protest which asserted that the protest was untimely and therefore the Board lacks jurisdiction to hear and decide it. The District cited D.C. Code §1-1189.8(b)(2) of the Procurement Practices Act ("PPA") (D.C. Code §1-1181.1 *et seq.* (1997)) which requires that an aggrieved party file its protest with the Board within 10 working days after it knew or should have known the grounds of the protest. The District argues that the Protester admits it learned that the contract was awarded to Prince and knew of the grounds of the protest on August 20, 1998. From that date, Chelini had 10 working days, until September 3, 1998, in which to file a timely protest with the Board.

DECISION

D.C. Code §1-1189.8(b)(2) provides:

In cases other than those covered in paragraph (1) of this subsection, protest shall be filed *not later than ten (10) business days* after the basis of the protest is known or should have been known, whichever is earlier. [Emphasis added.]


Although the Protester wrote DPW officials twice, first on May 26, 1998, and again on June 10, 1998, requesting clarification Chelini did not consider either letter to be a protest. Both letters questioned whether: 1) Prince was entitled to the 12 bid preference points; 2) Prince was capable of performing at least 50% of the work with its own forces; and 3) Prince, a general contractor, had the expertise to perform a contract that was comprised of 90% mechanical work. In the May 26 letter, the Protester requested a meeting with DPW. The June 10 letter reiterated the statements contained in the May 26 letter and stated that this letter was not intended to be a bid protest at this time. Therefore, the first and only letter sent by Chelini which qualifies as a protest is the September 4, 1998, filing with the Board.

The Board calculates that the 10 business-day period would have run from August 21, the day after Chelini claims to have been informed that the contract was awarded to Prince, until September 3, 1998. However, the Protester did not file its protest with the Board until September 4, 1998, one day after the time for filing had elapsed. Therefore, the Board is without jurisdiction to hear and decide the merits of this protest.

Accordingly, the protest is dismissed with prejudice.

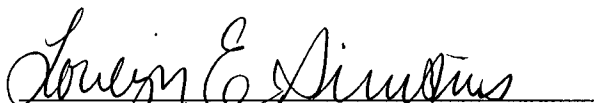
SO ORDERED.

Date: October 19, 1998



CLAUDIA BOOKER
Administrative Judge

CONCURRING:



LORILYN E. SIMKINS
Chief Administrative Judge



PHYLLIS W. JACKSON
Administrative Judge