

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

PROTEST OF:

XEROX CORPORATION

Under IFB No. 8375-AA-36-0-8-AC

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CAB No. P-125

For the Protester: Mr. John Cuciti. For the District of Columbia: Howard S. Schwartz, Assistant Corporation Counsel, D.C.

Opinion by Administrative Judge William L. Davis with Administrative Judges Booker and Marlin concurring.^{1/}

OPINION

In April 1988, the Department of Administrative Services (DAS) issued Invitation for Bids (IFB) No. 8375-AA-36-0-8-AC in the open market for the rental of copiers for use in the Department of Consumer and Regulatory Affairs. On June 16, 1988, DAS opened the three bids it had received in response to the IFB and Eastman Kodak Company (Eastman) was found to be the apparent low bidder.^{2/} (Agency Report.) The record reflects that Xerox met with the District on August 1, 1988, at which time the District informed Xerox, who was currently leasing copiers to it, of its intention to terminate that arrangement and requested that they remove their machines from the District's premise by August 31, 1988. This meeting was memorialized by a letter dated August 3, 1988 from the contracting officer of the Department of Consumer and Regulatory Affairs to Xerox. (See, letter dated August 3, 1988 attached to Xerox's protest letter.) This letter also informed Xerox that, after an evaluation, its bid was determined not to be the lowest and thanked Xerox for its past services and indicated that the District hoped it could work together with Xerox some time in the future.

By letter dated August 5, 1988, Xerox wrote to the attorney advisor at DAS protesting the bid solicitation and the District's conduct in managing the solicitation.

^{1/}This 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, Supplemental V (1987), as amended by Mayor's Order 86-65, 33 DCMR 3006 (May 16, 1986). Pursuant to the District of Columbia Procurement Practices Act of 1985 (PPA), D.C. Code § 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 before the previously established Board.

^{2/}The three bidders were Xerox Corporation, AC*Jan Group Associates and Eastman Kodak Co.

(Ex. B to Agency Report.) A similar protest letter was sent to the Director of DAS on August 16, 1988. (Ex. C to Agency Report.) By letter dated August 15, 1988, Xerox's letter to the attorney advisor at DAS was returned to it with the admonition that the protest must first be filed with the Contract Appeals Board. (See, letter dated August 15, 1988, attached to Xerox's protest letter to this Board.)

On August 26, 1988, there was filed with this Board a protest letter by Xerox. The protest letter's content was similar to those sent to the Director of DAS and the attorney advisor at DAS. The allegations contained in the protest appear disoriented, lacks consistency, and do violence to the letter and spirit of our rule concerning the form and content of a protest. (See, Rule 302.1(c)(d)(e).) As best as we can discern, the protester appears to be saying that its bid was evaluated on the basis of requirements that the IFB did not include and that the specifications were drawn to favor a specific vendor.

The District of Columbia has filed a motion to dismiss the protest as untimely alleging that Xerox filed its protest with this Board more than ten working days after it knew or should have known of the basis for its protest. Xerox did not file a response to the District's motion to dismiss.

The Board has addressed the issue of timeliness in numerous decisions and has held that the timely filing of a protest with the Board is a prerequisite to the Board having jurisdiction to hear and decide a protest on its merits. Section 1-1189.8(b) of the District of Columbia Procurement Practices Act of 1985 (PPA) determines the time limit in which a protester may file a protest with the Board. It states as follows:

For a protest pursuant to subsection (a) of this section, the aggrieved person shall file a protest with the Board within ten working days after the aggrieved person knew or should have known of the facts or circumstances upon which the protest is based.

This timeliness requirement is also embodied in the Board's protest rules. (See, Rule 300.4.)

The record demonstrates that Xerox became aware of the grounds for its protest as early as August 1, 1988, the date of its meeting with the contracting officer; and at the latest on August 5, 1988, the date that it sent the letter to the attorney advisor at DAS. Xerox had until no later than August 19, 1988 to file its protest with this Board.

It appears that Xerox was not sufficiently knowledgeable of when and where it should have filed its protest and erroneously filed its protest with DAS. However, this does not effect the statutory timeframe for filing a protest with the Board. See, Ideal Electronic Security Co., D.C. CAB No. P-116 (June 13, 1989); Clothes Barn, D.C. CAB

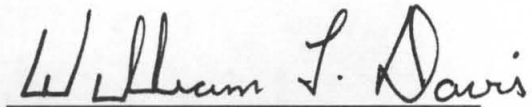
No. P-121 (October 3, 1989); and Southern International Corporation, D.C. CAB (February 27, 1987). The ten working day period prescribed in §1-1189.8(b) of the PPA for filing a protest began to run not later than August 5, 1988.

Since the ten working day filing rule is statutorily mandated, the Board is bound to strictly observe its provisions. Accordingly, the motion of the District to dismiss for untimeliness is granted.

ORDER

The protest is DISMISSED.

DATE: February 15, 1991

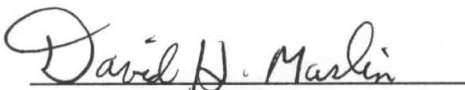


WILLIAM L. DAVIS
Chief Administrative Judge

CONCUR:



CLAUDIA D. BOOKER
Administrative Judge



DAVID H. MARLIN
Administrative Judge