

Government of the District of Columbia

CONTRACT APPEALS BOARD

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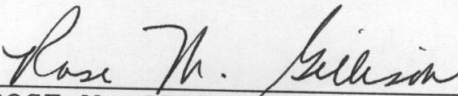
April 25, 1989

TO: Gerald L. Marshall, President
The Eagle Corporation
915 5th Street, N.W.
Washington, D.C. 20001

James B. McDaniel, Deputy Corporation
Counsel
Department of Public Works
2000 14th Street, N.W.
Washington, D.C. 20009

SUBJECT: CAB No. P-135, Protest of The Eagle Corporation/
Smallwood & Sons, Inc., A Joint Venture

Enclosed is a copy of the Board's opinion in the
above-referenced case.



ROSE M. GILLISON
Clerk to the Board

Enc.

Case File

GOVERNMENT OF THE DISTRICT OF COLUMBIA
CONTRACT APPEALS BOARD

PROTEST OF:

THE EAGLE CORPORATION/SMALLWOOD &)	
SONS, INC., A Joint Venture)	CAB No. P-135
Under IFB No. 88-0132-AA-2-0-CC)	
)	

For the protester: Gerald L. Marshall, President. For the Government: Frank E. Barber, Assistant Corporation Counsel.

Opinion by Administrative Judge Claudia D. Booker with Administrative Judges Davis and Marlin concurring.

OPINION

The Department of Public Works (DPW) issued Invitation for Bids No. 88-0132-AA-2-0-CC (IFB) for the conversion of rooms at Spingarn Senior High School. See the District of Columbia's Motion to Dismiss filed with the Board on November 23, 1988. At the formal bid opening on September 1, 1988, DPW opened the three bids it had received and found Jones & Wood, Inc., to be the apparent low bidder.

On September 2, 1988, Eagle Corporation/Smallwood & Sons, Inc. (Eagle), sent a letter to the Director of DPW challenging the pending award of the contract to Jones & Wood and requesting that DPW reject Jones & Woods' bid for nonresponsiveness. Eagle stated as its reasons for the request, Jones & Wood's failure to attach a copy of its MBOC certification letter to the outside of the bid envelope as required by District regulations, 27 DCMR 604.7. By letter dated September 20, 1988, DPW informed Eagle that under District procurement regulations the protest must be filed directly with this Board. Eagle then filed its protest with this Board on October 18, 1988, alleging the same grounds as those set out in its letter to DPW.

At the time this protest was filed with the Board DPW was evaluating the bids it had received and had not awarded the contract.

In its Motion to Dismiss the District contends the Board should dismiss this protest for untimeliness. The District argues that the protester learned of the grounds for the protest at the bid opening on September 1, 1988, and the protester had ten working days from that date in which to file the protest. However, Eagle did not file its protest directly with the Board until October 18, 1988, approximately forty-six days after bid opening. Therefore, because Eagle failed to file this protest directly with the Board within the ten working day period for filing protests, as set out in section 1-1189.8(b) of the D.C. Procurement Practices Act of 1986 (PPA), the protest is untimely and should be dismissed. See the District's Memorandum of Points and Authorities in Support of the Motion to Dismiss at 2.

The District has correctly determined the point at which Eagle learned of the basis for the protest. However, the District has failed to examine the issue of when Eagle became an aggrieved party under the PPA.

In analyzing a protest it is necessary to begin with an examination of whether the protest meets the jurisdictional prerequisites established by section 1-1189.3(1) of the PPA.¹ That section sets out the following prerequisites a protester must meet in

¹ Section 1-1189.3(1) states:

(1) Any protest of a solicitation or award of a contract addressed to the Board by any actual or prospective bidder or offeror, or contractor who is aggrieved in connection with the solicitation or award of the contract. . . .

order for the Board to have jurisdiction: the protester must first prove it is an actual or prospective bidder, offeror, or contractor, and as such, it is aggrieved in connection with the solicitation or contract award. Eagle has clearly established that it was an actual bidder for this IFB.

With regard to the issue of aggrieved party, the Board has held in past decisions that in order for a bidder to have a cognizable and viable protest such that the Board will have jurisdiction, the bidder must be aggrieved in connection with the solicitation or award of a contract. A bidder is aggrieved when it suffers a loss or injury or when a legal right it has is violated by the act complained of. See the protests of A.A. Beiro Construction Co., Inc., 1 P.D. 60 (D.C. CAB 1987), and Emergency One, Inc., CAB No. P-114 (D.C. CAB November 2, 1988). This Board has also stated that a party is not aggrieved until official action, adverse to it, has been taken. See the protests of Hood's Institutional Foods (D.C. CAB January 25, 1989), Systems Products, Inc., CAB No. P-88 (D.C. CAB February 14, 1989), and Systems Products, Inc., CAB No. P-96 (D.C. CAB February 14, 1989).

In a protest such as this one, where a protester challenges the responsiveness of another's bid, official action sufficient to cause the protester to be aggrieved occurs when a contract is awarded. Absent such an action, this protest is premature and speculative. Id. Here, the mere submission of an allegedly nonresponsive bid by Jones & Wood, absent official agency action, does not have an injurious impact on Eagle or any other bidder. No agency action adverse to Eagle has been taken.

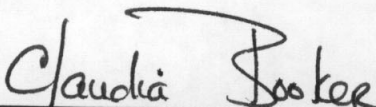
Eagle has failed to show that it is an aggrieved party within the meaning of section 1-1189.3(1) of the PPA and, therefore, the protest fails to comply with all of the jurisdictional prerequisites of the PPA. Once it has been determined that the protester does not comply with these requirements, an examination of the issue of timeliness is immaterial. Therefore, the Board lacks jurisdiction to hear and decide the merits of the protest.

Accordingly, for the reasons set forth above, the Board lacks jurisdiction to hear and decide the merits of this protest and, therefore, the protest is dismissed for lack of jurisdiction.

ORDER

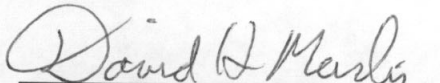
The District's Motion to Dismiss is denied, but the protest is dismissed nonetheless.

DATE: April 25, 1989

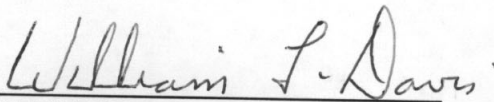


CLAUDIA D. BOOKER
Administrative Judge

CONCUR:



DAVID H. MARLIN
Administrative Judge



WILLIAM L. DAVIS
Chief Administrative Judge