

GOVERNMENT OF THE DISTRICT OF COLUMBIA
CONTRACT APPEALS BOARD

PROTEST OF:

CLOTHES BARN

Under IFB No. 8294-AA-84-0-8-MW

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CAB No. P-121

For the Protester: Harvey Shanes, President. For the Government: Nancy Hapeman, Assistant Corporation Counsel, D.C.

Opinion by Administrative Judge Sharpe¹ with Administrative Judges Booker and Davis concurring.

OPINION

The Clothes Barn filed this protest on July 26, 1988.² On August 25, 1988, the District moved the Board to dismiss the protest for lack of timely filing. Clothes Barn did not respond to the District's motion.

Clothes Barn's protest letter includes the following statement:

Enclosed please find a copy of (sic) letter to Mr. Bruce Gordon dated June 30, 1988. As per Mr. Gordon's advice, this letter [the June 30, 1988 letter] is being forwarded to your department [the Board] so that this protest may formally be put on record.

(Emphasis added.) In the June 30 letter addressed to Mr. Gordon (at the time, Mr. Gordon was serving as the Acting Associate Director, Materiel Management Administration, Department of Administrative Services), Clothes Barn challenges two of the bids responding to IFB No. 8294-AA-84-0-8-MW ("Clothing-Male and Female/ Shoes").

¹/Judge Sharpe's participation in this case is pursuant to the authority contained in the D.C. Procurement Practices Act of 1985, D.C. Code, § 1-1189.2(c)(2) (1987 Replacement).

²/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, Supplement V (1987), as amended by Mayor's Order 86-65, 33 DCR 3006 (May 16, 1986). Pursuant to the D.C. 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 pending before the previously established Board.

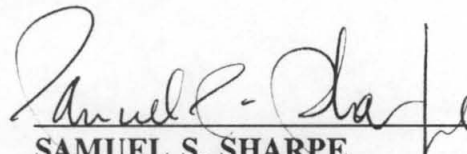
The District correctly notes that under the D.C. Procurement Practices Act of 1985 (PPA), D.C. Code, § 1-1189.8(b)(1987), in order for a protest before this Board to be timely, it must have been filed within ten working days after the party knew or should have known of its protest grounds. The District initially argues that Clothes Barn knew or should have known of its grounds of protest on the bid opening date (June 23, 1988). In the alternative, the District argues that Clothes Barn knew or should have known of its protest grounds no later than June 30, 1988 (the date of the previously mentioned letter from Clothes Barn to Mr. Gordon).

We need only address the District's alternative argument. Clothes Barn's use of the June 30, 1988 letter to Mr. Gordon to state its protest grounds provides clear evidence that Clothes Barn actually knew of its grounds of protest no later than June 30, 1988. Thus, the ten-working day period prescribed in § 1-1189.8(b) of the PPA for filing a protest began to run here as of June 30, 1988. Since we did not receive Clothes Barn's protest until July 26, 1988 (more than ten working days after June 30, 1988), the protest is untimely. While it is unfortunate that Clothes Barn was apparently unaware of the statutory, ten-working day requirement for filing a protest with this Board, this circumstance cannot excuse Clothes Barn's failure to comply with the filing requirement. See MTI Construction Company, Inc., 1 P.D. 66 (D.C. CAB 1987).


ORDER

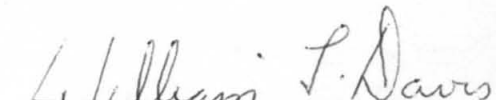
The protest is dismissed, with prejudice, as untimely.

DATE: October 3, 1989


SAMUEL S. SHARPE
Administrative Judge

CONCUR:


CLAUDIA D. BOOKER
Administrative Judge


WILLIAM L. DAVIS
Chief Administrative Judge