

# Government of the District of Columbia

## CONTRACT APPEALS BOARD

1111 E STREET, N.W., SUITE 300

WASHINGTON, D.C. 20004

(202) 727-6597



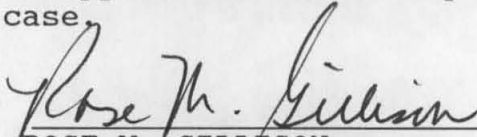
April 25, 1989

TO: Mr. Vincent J. Hodge  
5768 Oakland Blvd.  
Roanoke, VA 24019

Howard S. Schwartz, Assistant Corporation  
Counsel, D.C.  
Department of Administrative Services  
613 G Street, N.W. Room 916  
Washington, D.C. 20001

SUBJECT: CAB No. P-138, Protest of Simon Ladder Towers, Inc.

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

  
ROSE M. GILLISON  
Clerk to the Board

Enc.

Case File

PROTEST OF:

1 Simon-LTI's reference to the "pending award" to Grumman implies that there had been some indication from DAS that Grumman was to be awarded the contract; however, the protester has offered no information as to its basis for this belief. The record in this case reveals no evidence that Grumman, which was the highest bidder, was first in line for award; therefore, it is unclear why Simon-LTI frames its protest in terms of a challenge to a pending award to Grumman.

At the time the protest was filed the DAS had not completed its evaluation of the bids. However, once DAS completed its evaluation of the bids, on November 21, 1988, DAS rejected all the bids for nonresponsiveness and cancelled the IFB because all of the bids had failed to conform to the essential requirements of the IFB.

In its Motion to Dismiss the District argues that the Board is without jurisdiction to hear and decide this protest on its merits because the protest is premature. The District contends that because this protest was filed prior to the award of the contract, the protest is speculative as it is based on the possibility of a future award of a contract and, therefore, the protester was not aggrieved at the time the protest was filed. In addition, the District argues, the protest is moot because the IFB was cancelled.<sup>2</sup>

The position of the District is well taken.

The Board has stated in Systems Products, Inc., CAB No. P-88 at 2 (D.C. C.A.B. January 31, 1989):

"Systems has failed to show that it is an aggrieved party. The mere submission of a nonresponsive bid by Grey does not have an injurious action adverse to Systems or any other bidder. No official agency action adverse to Systems has been taken. Absent such action, this protest is speculative and premature."

In this present protest the District did not take any official action adverse to the protester until November 21, 1988, when the District rejected Simon-LTI's bid along with the other bids and cancelled

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<sup>2</sup> The District does not include a statement of facts section in its Motion to Dismiss and fails to provide the Board with sufficient factual information upon which the Board can determine all of the relevant facts to this protest. Pursuant to Board rule 107.3, the District is required to include in any dispositive motion a brief statement of facts on which the motion is based or the reasons for the relief sought.

the IFB. At that point in time Simon-LTI became aggrieved and if it had chosen to protest the agency's rejection of its bid as nonresponsive, or the decision to cancel the IFB, Simon-LTI should have done so at that time.

Simon-LTI has failed to show that it is an aggrieved party. Therefore, the Board lacks the requisite jurisdiction to hear and decide this protest.

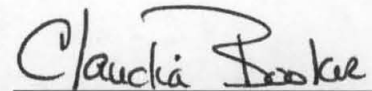
Because the Board is without jurisdiction to hear and decide the merits of this protest, it will not decide the issue of whether the District's cancellation of the IFB causes this protest to be moot.

Accordingly, the District's Motion to Dismiss is granted and this protest is dismissed for lack of jurisdiction.

ORDER

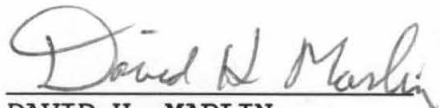
The protest is dismissed.

DATE: April 25, 1989

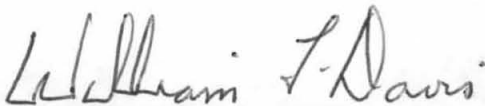


CLAUDIA D. BOOKER  
Administrative Judge

CONCUR:



DAVID H. MARLIN  
Administrative Judge



WILLIAM L. DAVIS  
Chief Administrative Judge