

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

PROTEST OF:

METROPOLITAN PEST CONTROL, INC.)	
)	CAB No. P-123
Under IFB No. 8323-AA-68-0-DM)	

For the Protester: Michael F. Bryant, Operations Manager. For the Government: Howard S. Schwartz, Assistant Corporation Counsel, D.C.

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

BACKGROUND

On August 12, 1988, the Department of Administrative Services (DAS) awarded a contract to provide pest control services at various locations for the Department of Public Works (DPW) to Hood's Pest Control (Hood), pursuant to the above-referenced invitation for bids (IFB). See Agency Report received by the Board on September 22, 1988 at 1, 2. A week later, on August 19, Metropolitan Pest Control, Inc. (MPC), the protester, filed a letter of protest with the Board.

Hood, one of four bidders, had been declared the lowest responsive bidder on July 13, 1988. Id. at 2 and exh. B. On August 12, 1988, DPW made a determination, Id. at 2, exh. C, that Hood was a "responsible" contractor that could fulfill the needs of the District with respect to this contract. Determinations of responsibility, which include a review of a bidder's financial, technical and organizational resources, as well as prior performance, are conducted in accordance with 27 DCMR § 2201 (July 1988).

In its protest letter, MPC stated three grounds for objecting to the contract award to Hood, as follows:

1. The offer is in violation of contract specifications numbers 1, 4, and 5 of page 17 of 33.¹

¹/These numbered paragraphs refer to the scope of the contract, the portions of each building to be serviced and the type of insecticide to be used, respectively.

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2. Offer does not comply with wage standards, as set forth by the Department of Labor.
3. Offer is deficient in ability to meet Federal and/or District of Columbia tax obligations.

The District, in its Agency Report, concluded that MPC was resting its case on the proposition that Hood's proposal costs to perform the contract were below actual performance costs, indicating that Hood would not meet its contractual obligations.²

The District's response is two fold: (1) allegedly low bid prices relate to a bidder's responsibility and the District has made a determination that Hood is a responsible bidder, and (2) the District's responsibility determination may not be reviewed by the Board absent proof of fraud or bad faith.

On October 4, 1988, MPC filed comments on the Agency Report in which it disagreed with the District's positions, and requested a fact-finding hearing.

OPINION

MPC's allegations of defects in Hood's proposal relate both to issues of responsiveness and responsibility.

A threshold issue, however, is whether MPC's protest meets the minimum standards of the Board.

In US Sprint Communications Company, 1 PD 33, 34 (D.C. CAB 1987), the Board dismissed a protest for failure to provide a "clear and concise statement of the legal and factual grounds of the protest."³ We pointed out that protests must not be based only on conjecture or speculation, or on a mere expression of disagreement with the contracting agency's decision. We stated, further, that protests may not be developed piecemeal, that

²/In the last sentence of the August 19, 1988 protest letter, MPC states, "We charge that the contractor cannot comply with contract specifications, wage and tax obligations without suffering a financial loss."

³/Our regulations contain a similar requirement. See the Board's proposed rule at the time this case was filed, 300.3(c), 33 D.C. Reg. 5670 (1986), and the current rule, 302.1(c), 36 D.C. Reg. 2711 (1989).

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is, the protester from the outset must be able to allege sufficient facts and legal grounds to justify the Board's consideration.

We believe that MPC has failed to meet this standard. With respect to its first issue, the violation of three specifications of the contract, MPC merely stated that Hood's proposal was unacceptable but provided no factual or legal basis for that charge. The other two issues raised in the protest letter are equally bare of substance. Nor did MPC's comments of October 4, 1988 supply the missing information.

A protest consisting only of conclusionary statements regarding a contractor's inability to perform, unsupported by factual information or legal argument, is insufficient to satisfy the Board's requirements as expressed in rule 300.3(c).

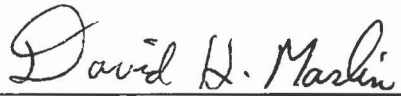
MPC's request for the Board to conduct a fact-finding hearing, which would amount to a fishing expedition, is rejected. Evidentiary hearings are predicated on unresolved genuine issues of material facts. See Rule 311.1, 36 D.C. Reg. 2715 (1989).

Even if MPC had alleged sufficient facts and legal arguments to justify a decision on the merits, the record does not support a claim that the District's affirmative responsibility determination should be overturned. No reasonable grounds for questioning DPW's decision have been presented.

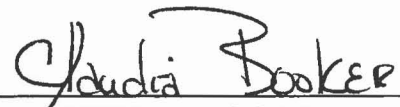
ORDER

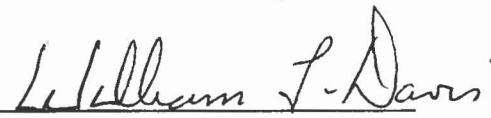
The protest is DENIED.

DATE: July 28, 1989


DAVID H. MARLIN
Administrative Judge

CONCUR:


CLAUDIA D. BOOKER
Administrative Judge


WILLIAM L. DAVIS
Chief Administrative Judge