

GOVERNMENT OF THE DISTRICT OF COLUMBIA
CONTRACT APPEALS BOARD

PROTEST OF:

FRANK QUINN COMPANY)	
)	CAB No. P-508
Under IFB No. OMS-7044-AA-KH)	

For the Protester: Mr. Francis X. Quinn, *pro se*. For the District of Columbia: Edward Rich, Esq., and Anne Cauman, Esq., Assistants Corporation Counsel.

Opinion by Administrative Judge Jonathan D. Zischkau, with Administrative Judge Phyllis W. Jackson, concurring.

OPINION

Frank Quinn Company has filed a protest on the ground that the Department of Public Works improperly refused to consider its bid which was submitted two minutes after the time for bid opening. We dismiss the protest as untimely.

BACKGROUND

On April 18, 1997, the Department of Public Works ("DPW") issued IFB No. OMS-7044-AA-KH for maintenance and repair of automotive, construction, and maintenance support equipment. The amended bid opening date was June 5, 1997, at 2:00 p.m.. According to the protest, the protester's president, Mr. Francis Quinn, and an associate attempted to hand deliver the bid. Unfortunately, they were involved in a minor automobile accident at approximately 1:15 p.m. near the intersection of 18th Street and Rhode Island Avenue, N.E., while they were on their way to deliver the firm's bid. Eventually, Mr. Quinn delivered his firm's bid but it was logged in at 2:02 p.m., *i.e.* two minutes late, and therefore the bid was not considered by the contracting officer. Bids were received in a timely manner from 16 other bidders and were opened at the time set for bid opening. It is not clear whether award has been made. By letter of June 11, 1997, directed to DPW's Ms. Kathy Hatcher, a contract specialist, Mr. Quinn requested help in having his firm's bid considered even though it was late. It is not clear what Ms. Hatcher did thereafter.

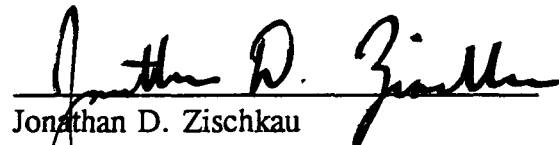
In a letter addressed to the Board dated July 17, 1997, but not filed with the Board until July 29, 1997, Mr. Quinn requests our help in having his firm's late bid considered by the contracting agency. We held a telephone conference with the parties on August 25, 1997, because the protest on its face appears to be untimely. Mr. Quinn states that he understood from Ms. Hatcher that his June 11 request would be forwarded to the "proper authorities."

DISCUSSION

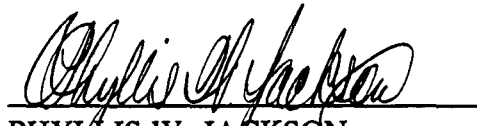
We conclude that the protest must be dismissed as untimely. The first document that reasonably can be construed as a protest is protester's July 17, 1997 letter addressed to the Board which was filed on July 29, 1997. The June 11, 1997 letter to Ms. Hatcher does not constitute a protest misfiled with the contracting officer over which we might exercise jurisdiction pursuant to our holding in *Fort Myer Construction Corp.*, CAB No. P-452, July 23, 1996, 8 P.D. 7130 (protest misfiled with contracting officer functionally equivalent to filing with the Board). Ms. Hatcher is not a contracting officer. The June 11 letter asks Ms. Hatcher to exercise discretion in accepting the late bid. We find that Mr. Quinn's reliance on Ms. Hatcher to resolve the late bid issue was not reasonable. Both the law and the solicitation make clear the procedures for a bidder to challenge actions of the contracting officer. Under the Procurement Practices Act, a protest of the type involved here had to be filed with the Board within 10 days of the date that the protester knew or should have known of the basis of its protest. See D.C. Code § 1-1189.8(b)(2) (Supp. 1997). Quinn learned the basis of its protest on June 5. Quinn's protest was not filed until July 29. Therefore, the protest is untimely. Even if we were to reach the merits, we would be compelled to deny the protest. Quinn has not identified proper grounds for the contracting officer to accept Quinn's late bid under 27 DCMR § 1523. Finally, there is no basis in the record to find that the agency failed to achieve effective competition when it received 16 timely-submitted bids.

Accordingly, the protest is dismissed.

DATE: August 26, 1996


Jonathan D. Zischkau
Administrative Judge

CONCURRING:


PHYLLIS W. JACKSON
Administrative Judge