

GOVERNMENT OF THE DISTRICT OF COLUMBIA
CONTRACT APPEALS BOARD

PROTEST OF:

FORNEY ENTERPRISES, INC.)	
MANHATTAN CONSTRUCTION CO.)	
JOINT VENTURE)	
)	CAB No. P-0689
Under Solicitation No. POAM-2003-B-0025-RS)	

OPINION AND ORDER

Lexis-Nexis Filing ID 4270909

The Board held a telephone conference call on September 8, 2004, regarding the District of Columbia Motion to Dismiss as Moot, filed August 20, 2004. Forney Enterprises, Inc./Manhattan Construction Co. Joint Venture ("Forney") filed its opposition to that motion on August 30, 2004. In its motion, the District asserts that the contracting officer is no longer considering awarding the contract to the proposed awardee, Capital Technology Services, Inc. ("CTSI"), and that the protest is therefore moot. Forney argues that the protest is not moot because the District has not awarded the contract to Forney, the only other offeror. Forney argues that the Board should not dismiss the protest until the District awards the contract to Forney.

In support of its argument, the protester cites *Washington Freightliner, Inc.*, CAB No. P-0122, Feb. 1, 1989 (36 D.C. Reg. 4038). In *Freightliner*, this Board declined to dismiss a protest in which the District had decided that the protester's bid was nonresponsive. In that opinion, the Board stated:

The protest of *Freightliner* is not moot because *Freightliner* is asserting that its bid entitled it to be awarded the contract and, further, that the District erred in determining that its bid was nonresponsive. *Roofers* [*Roofers Incorporated*, 1.P.D. 48 (D.C. CAB 1986)] is inapplicable here and in other cases in which a protester is seeking to have its rights established.

In the current protest, because the District has not yet determined that Forney submitted a nonresponsive or ineligible bid, Forney cannot assert that the District has caused Forney any harm.

In its protest dated June 29, 2004, Forney did not request the District to award the contract to the Forney joint venture. More importantly, Forney does not allege that the District determined Forney to be a nonresponsive or nonresponsible bidder. Forney did assert, and the contracting officer has subsequently determined, that CTSI was not eligible for award. Therefore, the protester has received all of the relief that it requested.

The Board conducted the telephone conference call of September 8, 2004, to determine the status of the award. During that conference call, the contracting officer stated that the

District had not yet determined whether it would award the contract to Forney, but that the District did not intend to award the contract to CTSI. This Board cannot order the District to award the contract to Forney if the District has not yet completed the post-bid, pre-award process set forth in the statute and regulations. Therefore, it is appropriate for this Board to dismiss this protest. If Forney discovers new protest grounds after this dismissal, Forney may file the appropriate protest within the statutory time limits.

SO ORDERED.

DATE: September 24, 2004

/s/ Warren J. Nash

WARREN J. NASH
Administrative Judge

CONCURRING:

/s/ Jonathan D. Zischkau

JONATHAN D. ZISCHKAU
Chief Administrative Judge

/s/ Matthew S. Watson

MATTHEW S. WATSON
Administrative Judge

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