

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

PROTEST OF:

BATTERY PLACE)	
)	CAB No. P-98
Under IFB No. 8226-AA-25-0-8-AC)	

For the Protester: William Glover. For the Government: Howard S. Schwartz,
Assistant Corporation Counsel.

Opinion by Administrative Judge Marlin with Administrative Judges Booker and
Davis concurring.^{1/}

ISSUE PRESENTED

The central issue in this protest is whether the District properly cancelled a solicitation.

BACKGROUND

On February 4, 1988, the Department of Administrative Services (DAS) issued IFB No. 8226-AA-25-0-8-AC (IFB) in the sheltered market to invite competitive bids for the supply of tire chains in snow emergencies for vehicles of the Metropolitan Police Department (MPD). See Agency Report filed on June 8, 1988 at 2 and exh. A thereto.

DAS issued the IFB to eight potential bidders; the bids were scheduled to be opened on March 10, 1988. Id. at 2 and exh. B.

However, by written memorandum from MPD to DAS, dated March 4, 1988, MPD requested the solicitation be cancelled as "no longer a requirement." Id. at 2 and exh. C.

^{1/}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.

On March 9, 1988, one day before bids were to be opened, DAS received the MPD memorandum and immediately telephoned all eight firms on the bid list to inform them that the solicitation was cancelled. All the potential bidders were contacted, except for Battery Place, the protester, which did not "answer the telephone" despite several attempts. Id. at 2, 3 and exh. D. Battery Place submitted a bid to DAS on March 10, the only bid received in response to the IFB. DAS retained the bid unopened. Id. at 3.

On March 9, following the telephone calls to potential bidders, DAS forwarded MPD's cancellation request to the Director of DAS through the Procurement Review Committee (PRC). On March 14, 1988, the PRC advised DAS that additional detailed justification for the cancellation was needed. Id. at 3 and exh. E.

By memorandum dated March 25, 1988, MPD advised DAS that cancellation of the IFB was required because MPD recently had located sufficient tire chains for its vehicles. Id. at 3 and exh. F. The PRC found this justification to be adequate and, accordingly, the DAS director on April 4, 1988 approved the cancellation of the IFB pursuant to legal requirements and "in the best interest of the District" Id. at 3 and exh. G.

On April 25, 1988, DAS notified Battery Place and all of the potential bidders that the IFB had been cancelled on April 4, 1988 and returned Battery Place's bid unopened. Id. at 3 and exh. H. Battery Place filed this protest with the Board on March 29, 1988.

Battery Place's protest, in essence, alleges that DAS' cancellation of the IFB was defective because originally it was not in writing but by telephone, and the necessary internal paperwork was not formally completed in advance of the bid opening date. See protest letter received by the Board on March 29, 1988.

Although not specifically expressed in the protest letter, Battery Place undoubtedly believes that the District government had a legal obligation to cancel the IFB sufficiently early so that Battery Place would have had notice not to prepare and submit a bid.

The District's response asserts that its actions in cancelling the IFB were proper and in accordance with District law and regulations.

OPINION

The District of Columbia Procurement Practices Act of 1985, D.C. Code, § 1-1183.7 (1987) (hereinafter PPA) authorizes the cancellation of invitations for bids "only if it is determined in writing by the Director [of DAS] that the action is taken in the best interest of the District government."

Corresponding District regulations also authorize cancellation of an IFB. If the cancellation occurs before bid opening, which was intended here, the action must be "in writing" and after the DAS Director determines that the action "is in the best interest of the District." 27 DCMR § 1518.1 (July 1988). After cancellation, bids must be returned to bidders unopened, Id. § 1518.3, and all prospective bidders must be notified. Id. § 1518.4.

If the cancellation occurs after bid opening, or the time for bid opening, which formally occurred here, the standard remains that there must be a determination by the Director of DAS that "the action taken is in the best interest of the District." 27 DCMR § 1530.1.^{2/} Among the justifications provided for such a cancellation is if the "supplies . . . being contracted for are no longer required." Id. § 1530.4(c).

An additional regulation relevant to this case states "Every effort shall be made to anticipate changes in a requirement before the date of opening and to notify all prospective bidders of any resulting modification or cancellation." Id. § 1530.2.

There can be no doubt that the District's actions were in compliance with the legal obligations outlined above.

The April 4, 1988 memorandum, and attached Determination and Findings (exh. G) openly disclosed that the acquisition of tire chains sought to equip police vehicles for snow conditions became unnecessary when an adequate supply was discovered in storage.

A prospective bidder might well complain justifiedly that better inventory control would have aborted the entire solicitation but a mistake or inefficiency does not amount to legal culpability. Neither the District government nor any large entity operates flawlessly. Furthermore, DAS must be credited with good faith efforts to prevent the submission of unwanted bids, as indicated by the telephone calls to each prospective bidder on March 9, as well as ensuring that legally sufficient cancellation documents were ultimately developed.

As we have stated, under District law and regulations bid solicitations may be cancelled whenever the District determines it is in the best interest of the government. This is a judgment call, a decision within the discretion of the District, but a decision that may be challenged, as Battery Place has.

^{2/}Best interest of the District government is defined as . . . "courses of action that result in the most favorable position within the market for goods and services. . . ." PPA, § 1-1181.7(4).

To overturn the District's decision, a protester must prove, by a preponderance of the evidence, that there has been an abuse of discretion. Generally speaking, the protester must be able to show fraud or bad faith, neither of which is in evidence in this case.

This protest is DENIED.

DATE: June 14, 1989

David H. Marlin
DAVID H. MARLIN
Administrative Judge

CONCUR:

Claudia Booker
CLAUDIA D. BOOKER
Administrative Judge

William L. Davis
WILLIAM L. DAVIS
Chief Administrative Judge