

District of Columbia Register

JUN 2 1989

GOVERNMENT OF THE DISTRICT OF COLUMBIA
CONTRACT APPEALS BOARD

PROTEST OF:

BATTERY PLACE)	
)	CAB No. P-90
Under IFB No. 8149-AA-51-0-8-GM)	

For the Protester: William Glover. For the Government: Gloria J. Cawthon, Assistant Corporation Counsel.

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

OPINION

On January 6, 1988, the Department of Administrative Services (DAS) issued Invitation for Bids No. 8149-AA-51-0-8-GM (IFB) in the sheltered market to obtain hand tool sets and other equipment. See the District of Columbia's Agency Report, filed with the Board on April 15, 1988, at 2 and exh. A thereto. At the time of the formal bid opening on February 10, 1988, DAS found Washington Cable Supply, Inc. (WCSI), to be the apparent low bidder and Battery Place to be the second low bidder. Id.

Battery Place filed this protest with the Board¹ on February 17, 1988, alleging that the bid submitted by WCSI was nonresponsive. Battery Place argues that WCSI's bid was nonresponsive for two reasons: WCSI had made initialed changes to the paragraphs relating to business interests

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 (1978), as amended by Mayor's Order 82-224, 30 DCMR 497 (January 28, 1983) and Mayor's Order 86-65, 33 DCMR 3006 (May 16, 1986). Pursuant to the D.C. Procurement Practices Act of 1985 (PPA), D.C. Code, sec. 1-1189.1 (1987), a new independent agency denominated as the Contract Appeals Board was created. This new Board came into existence on August 1, 1988, and succeeded to the jurisdiction of all cases before the previously established Board.

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in South Africa and Namibia which are set out in Special Condition 9 of the IFB; and WCSI had failed to use the appropriate bid form in responding to an addendum to the IFB. See the Protest Letter.

The District argues in its Agency Report that the paragraphs submitted by WSCI pursuant to Special Condition 9 do not contain material deviations from the requirements of the IFB. As to the second allegation, the District argues that the IFB did not require that WSCI's submission of its response to Addendum No. 1 be on the schedule sheet provided in the IFB.

When this protest was filed DAS was still in the process of evaluating bids, and no contract had been awarded. See Agency Report at 3.

Before this Board can consider the merits of any protest, the Board must first determine that the protest is properly before it and that it has jurisdiction to hear and decide the protest. In past decisions this Board has held that in order for a bidder to have a cognizable and viable protest such that the Board will have jurisdiction, the bidder must be aggrieved in connection with the solicitation or award of a contract. A bidder is aggrieved when it suffers a loss or injury or when a legal right it has is violated by the act complained of. See the protests of A.A. Beiro Construction, Co., Inc., 1 P.D. 60 (D.C. CAB 1987) and Emergency One, Inc., CAB No. P-114 (D.C. CAB November 2, 1988). The Board has also stated that a party is not aggrieved until official action, adverse to it, has been taken. See the protests of Hood's Institutional Foods (D.C. CAB January 25, 1989) and Systems Products, Inc., CAB No. P-96 (D.C. CAB February 14, 1989).

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In a protest such as this one, where a protester challenges the responsiveness of another's bid, official action sufficient to cause the protester to be aggrieved occurs when a contract is awarded. Absent such an action, this protest is premature and speculative. Id. Here, the mere submission of an allegedly nonresponsive bid by WCSI, absent official agency action, does not have an injurious impact on Battery Place or any other bidder. No agency action adverse to Battery Place has been taken.

Battery Place has failed to show that it is an aggrieved party. Therefore, the Board lacks jurisdiction to hear and decide the merits of the protest.

Accordingly, for the reasons set forth above, the protest is dismissed for lack of jurisdiction.

ORDER

The protest is dismissed.

DATE: April 25, 1989

Claudia Booker
CLAUDIA D. BOOKER
Administrative Judge

CONCUR:

David H. Marlin
DAVID H. MARLIN
Administrative Judge

William L. Davis
WILLIAM L. DAVIS
Chief Administrative Judge