

GOVERNMENT OF THE DISTRICT OF COLUMBIA
CONTRACT APPEALS BOARD

PROTEST OF:

B&B EQUIPMENT COMPANY, INC.)
) CAB No. P-549
Under IFB No. 98-0043-AA-OMS-GH)

For the Protester: Mr. James Baikauskas, President. For the Government: Howard S. Schwartz, Warren J. Nash, and H. Christopher Malone, Assistants Corporation Counsel.

Opinion by Administrative Judge Claudia Booker, with Chief Administrative Judge Lorilyn E. Simkins and Administrative Judge Phyllis W. Jackson concurring.

OPINION

James Baikauskas, President , B&B Equipment Company Inc. ("B&B" or "protester"), challenges the specifications issued by the Department of Public Works ("DPW") under IFB No. 98-0043-AA-OMS-GH. The Protester contends that the specifications for refuse trucks were "100% Sole Source, for Crane Carrier Truck Manufacture, from the State of Oklahoma."

DPW held bid opening on June 22, 1998, for this solicitation and, on June 23, 1998, the protester filed this protest with the Board.

The protest is dismissed as untimely.

BACKGROUND

On February 10, 1998, DPW issued IFB No. 98-0043-AA-OMS-GH, for the purchase of various refuse trucks. The specifications were amended several times due, in part, to letters received by prospective bidders (including B&B), which raised questions about the specifications.

On March 1, 1998, the protester sent a letter to DPW alleging that the specifications for refuse truck cabs were unduly restrictive and in fact " 100% sole source for Crane Carrier". DPW issued an addendum which responded to the comments of B&B and other prospective bidders on June 17.

The original bid opening, which was scheduled for March 12, 1998, was postponed until June 22, 1998, due to the issuance of the numerous addenda.

On June 19, 1998, B&B sent its protest letter to the Board, via Federal Express overnight priority mail delivery. In this letter the protester contends that the specifications for refuse trucks were "100% Sole Source, for Crane Carrier Truck Manufacture, from the State of Oklahoma." The Board received the protest letter from B&B on June 23, 1998.

On July 20, 1998, Richard Fite, Chief Procurement Officer, D.C. Office of Contracting and Procurement, filed a "Determination and Finding to Proceed with Award and Performance of a Contract while a Protest is Pending before the CAB".

On August 6, 1998, the Government filed a Motion to Dismiss arguing that the protest should be dismissed because: 1.) B&B failed to file its protest with the Board within the time limitation established by the Procurement Practices Act, as amended; and 2.) the specifications were not unduly restrictive but met the minimum needs of the District.

DECISION

Board rule 302.2, 45 DCR 1415 (March 13, 1998) provides:

(a) A protest based upon alleged improprieties in a solicitation which are apparent prior to bid opening or the time set for receipt of initial proposals shall be filed with the Board prior to bid opening or the time set for receipt of initial proposals. In procurements where proposals are requested, alleged improprieties which do not exist in the initial solicitation, but which are subsequently incorporated into this solicitation, must be protested not later than the next closing time for receipt of proposals following the incorporation.

(b) Protests other than those covered in paragraph (a) shall be filed with the Board not later than ten (10) business days after the basis of the protest is known or should have been known, whichever is earlier.

Because the issues raised in the present protest concern alleged improprieties in the specifications (allegedly unduly restrictive specifications), under the Board rule cited above, B&B had until bid opening on June 22, in which to file a protest with the Board.

B&B sent its protest letter to the Board via Federal Express overnight priority mail delivery on June 19. However, the letter did not reach the Board until June 23, one day after the bid opening. Although the protester attempted, in good faith, to have the letter delivered to the Board before bid opening his attempt was unsuccessful.


The Board has steadfastly held that a protest concerning alleged improprieties in the specifications must be filed prior to bid opening. *See Good Food Services, Inc.*, CAB No. P-494,

July 8, 1997, 40 D.C. Reg. 6846. This holding remains the same even when the late filing may have been caused by the protester's agent, Federal Express.

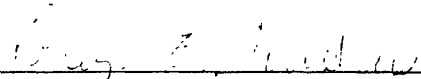
As a result of the late delivery, the Board concludes that this protest is untimely and, therefore, the Board is without jurisdiction to hear and decide the merits of this protest. Accordingly, this protest is dismissed with prejudice.

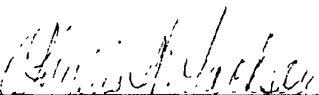
SO ORDERED.

Date: August 26, 1998.


CLAUDIA BOOKER
Administrative Judge

CONCURRING:


LORILYN E. SIMKINS
Chief Administrative Judge


PHYLLIS W. JACKSON
Administrative Judge