

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
CONTRACT APPEALS BOARD

PROTEST OF:	)	
	)	
Harold L. Sanders Associates	)	CAB No. P-543
	)	
Under DHCD RFP No. 1280-14-NI-98	)	
East of the River Study	)	

For the Protester: Mr. Harold L. Sanders, Principal. For the Government: Howard S. Schwartz, and Warren J. Nash, Assistants Corporation Counsel.

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

### OPINION

Harold L. Sanders, principal of the architectural, planning and urban design firm of Harold L. Sanders Associates ("Sanders" or "Protester"), protests the Department of Housing and Community Development's ("DHCD") delivery of a twenty-five page amendment to the above-referenced RFP on April 29, 1998, just one day before the proposal was due. Protester contends that DHCD failed to provide him with the amendment by mail or courier service, and did not allow him adequate time to respond. He alleges that he picked up a copy of Amendment No. 2 only after he heard a rumor that DHCD had issued it. Protester asserts:

[t]he denial to me of the information contained in that document, while being made available to all of the other potential respondents placed me at a serious competitive disadvantage and . . . denied [me] the opportunity to submit [my] proposal. Furthermore, DHCD's failure in this regard has denied the District of Columbia the benefit of receiving the broadest range of competitive proposals.

The protest is dismissed as untimely.

### BACKGROUND

On March 13, 1998, DHCD issued RFP No. 1280-14-N1-98 for the services of a consultant to "undertake technical studies, prepare an urban design plan, a marketing plan and an implementation development strategy plan for East of the River, which is of great importance to the District's overall redevelopment effort." (Agency Report ("AR"), Exhibit 2). On April 20, DHCD issued Amendment No. 1 to extend the closing date from April 24, 1998, to April 30, 1998. (AR, Exhibit No. 3). On April 24, 1998, DHCD issued Amendment No. 2, which clarified certain sections of the RFP, and added several substantial requirements. (AR, Exhibit No. 4). The Agency Report indicates that DHCD sent copies of both Amendments to all forty-three persons who picked up copies of the RFP. (Exhibit No. 5). DHCD sent copies of Amendment

No. 2 by mail, if the prospective offeror was located outside the District, and by Corporate Express Courier Service, if the prospective offeror was located within the District.

On April 30, 1998, Sanders faxed a letter to Cassandra F. Lee, Contracting Officer of DHCD, stating that he had received a copy of Amendment No. 2 when he picked it up at DHCD's offices on April 29, 1998. Sanders requested a five-day extension of time to submit his offer. On April 30, Ms. Lee telephoned the delivery service, Corporate Express, and was told that Amendment No. 2 had been delivered to Sanders on April 24, 1998. Thereafter, Ms. Lee denied Sanders request for an extension of the closing date.<sup>1</sup>

On April 30, 1998, DHCD received only two proposals in response to the RFP.<sup>2</sup> On June 2, 1998, Sanders filed a protest with the Board.

### 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.

Section A.9 of the RFP also advises all offerors that protests must be filed with the Board within 10 working days after the basis of a protest is known or should have been known. The Board calculates that the 10 business day period would have run from May 1, the day after the

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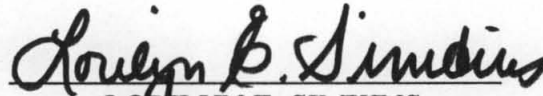
<sup>1</sup>The Agency Report discloses that after the filing of the protest DHCD asked Courier Express to furnish a signed statement that it had delivered a copy of Amendment No. 2 to Sanders. Courier Express failed to furnish any document to DHCD containing a signature showing delivery to Sanders.

<sup>2</sup>Despite the untimeliness of the protest and therefore the Board's inability to order DHCD to act, DHCD has the authority to reopen the solicitation and extend the closing date for receipt of proposals based on insufficient time for prospective offerors to consider Amendment No. 2. (See 27 DCMR § 1607.4). DHCD may wish to extend the closing date to encourage greater competition for this important redevelopment effort.

denial of the extension of time, until May 14, 1998. Sanders, however, waited until June 2, 1998, well after the statutory time limit to file a protest. The Board is therefore without jurisdiction to hear and decide the merits of the protest. Accordingly, the protest is dismissed with prejudice.

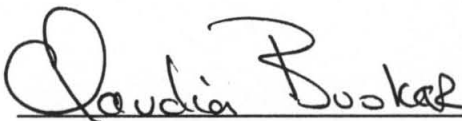
SO ORDERED.

DATE: July 7, 1998

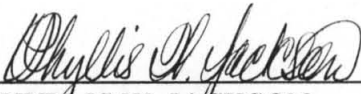


LORILYN E. SIMKINS  
Chief Administrative Judge

CONCURRING:



CLAUDIA D. BOOKER  
Administrative Judge



PHYLLIS W. JACKSON  
Administrative Judge