

GOVERNMENT OF THE DISTRICT OF COLUMBIA
CONTRACT APPEALS BOARD

PROTEST OF:

M&G SERVICES, INC.)
) CAB No. P-0652
Under Solicitation No. POAM 2002-B-0006-AE)

For the Protester: Mr. Neil Goldsworthy, pro se. For the Government: Howard Schwartz, Esq., and Warren J. Nash, Esq., Assistants Corporation Counsel.

Opinion by Administrative Judge Jonathan D. Zischkau, with Chief Administrative Judge Lorilyn E. Simkins and Administrative Judge Matthew S. Watson, concurring.

OPINION

Courtlink Filing ID 683921

Protester, M&G Services, Inc., has protested against award to the apparent low bidder, Forney Enterprises, Inc., alleging that Forney does not have the equipment to perform the work. The District has moved to dismiss the protest on the ground that M&G is not a certified small business enterprise (“SBE”) and therefore lacks standing to protest the award of a contract set aside for small businesses. M&G has not responded to the motion. Because M&G is not a certified SBE, it was not eligible to bid on this set-aside procurement and therefore lacks standing to protest. Accordingly, we dismiss its protest.

BACKGROUND

On February 21, 2002, the Office of Contracting and Procurement (“OCP”) issued IFB No. POAM 2002-B-0006-AE for site work at 401 Farragut Street, N.E., Washington, D.C. (Ex. 1). OCP set aside the IFB for certified SBEs by checking block 6 on page 1 of the solicitation and including the SBE set-aside clauses in Section M of the solicitation. (Ex. 1). On March 8, 2002, five bidders, including M&G and Forney, submitted bids in response to the IFB. (Ex. 3). M&G is not certified as an SBE by the Local Business Opportunity Commission (“LBOC”). (Exs. 3, 5). On March 12, 2002, M&G filed its protest challenging the award to Forney. The District awarded a letter contract to Forney on March 26, 2002. (Ex. 4). On March 27, 2002, the Chief Procurement Officer signed a “Determination and Findings to Proceed with Award After Receipt of a Protest” which was filed with the Board on April 1, 2002.

DISCUSSION

An entity which is not certified by the LBOC as a small business is not eligible for award of a contract in the small business set-aside market and thus lacks standing to protest an award. *Maryland Construction, Inc.*, CAB No. P-0650, Jan. 17, 2002, 13 P.D. 8218; *J&K Distributors, Inc.*

of Washington, D.C., CAB No. P-0432, June 13, 1995, 42 D.C. Reg. 4986, 4988. Because there is no dispute that M&G is not a certified SBE, it lacks standing to protest an award. Accordingly, the protest is dismissed.

SO ORDERED.

DATED: May 10, 2002

/s/ Jonathan D. Zischkau
JONATHAN D. ZISCHKAU
Administrative Judge

CONCURRING:

/s/ Lorilyn E. Simkins
LORILYN E. SIMKINS
Chief Administrative Judge

/s/ Matthew S. Watson
MATTHEW S. WATSON
Administrative Judge