

District of Columbia Register

JUN 2 1989

THE GOVERNMENT OF THE DISTRICT OF COLUMBIA
CONTRACT APPEALS BOARD

PROTEST OF:

SYSTEMS PRODUCTS, INC.)	
)	CAB No. P-96
Under IFB No. 8134-73-0-8-GL)	

For the protester: James Hudson, Esquire. For the Government: Howard Schwartz, Assistant Corporation Counsel, D.C.

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

OPINION

On January 25, 1988, the District of Columbia Department of Administrative Services (DAS) issued Invitation for Bids No. 8134-AA-73-0-8-GL (IFB) in the sheltered market for Automated Data Processing (ADP) supplies and printing paper. DAS had received seven bids on aggregate groups 1-9 and 10-18 at the time of bid opening on March 16, 1988. LaDorn Systems Corporation (LaDorn) was found to be the apparent low bidder on aggregate group 1-9 and AC*JAN Group Associates, Inc. (AC*JAN) was found to be the apparent low bidder for aggregate group 10-18.

On March 18, 1988, Systems Products, Inc. (Systems), one of the bidders on the IFB, filed this protest with the Board¹

¹This 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 Replacement), a new independent agency
(continued...)

- 2 -

alleging that LaDorn is unable to comply with the terms of the IFB and is, therefore, nonresponsible and ineligible for contract award. On March 22, 1988, Systems filed another protest with the Board alleging that AC*JAN is also unable to comply with the terms of the IFB and, therefore, is nonresponsible and ineligible for contract award. Systems requests that the eligibility of LaDorn and AC*JAN be thoroughly investigated, the contract award be delayed until their respective eligibility can be determined, and the contract be awarded to the lowest responsive and responsible bidder. Systems also requests that the Board award it bid preparation costs and attorney fees. Because both of Systems' protests deal with the same IFB, the same circumstances, and the same allegations, the Board had previously decided to consolidate these protests.

On May 27, 1988, the District filed its Agency Report and Motion to Dismiss with the Board. The District acknowledges that at the time of the filing of the Agency Report, the District was conducting a responsibility evaluation of the bidders and had not yet made a responsibility determination as to LaDorn or AC*JAN. In its Motion to Dismiss the District contends the Board is without jurisdiction to consider this

¹(...continued)
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.

District of Columbia Register

JUN 2 1989

- 3 -

protest on the merits because it is premature. The District argues,² citing the Board's ruling in the protest of A.A. Beiro Company, Inc., 1 P.D. 60 (D.C. CAB 1987), that since the District has not made a responsibility determination as to LaDorn and AC*JAN, Systems is not yet an aggrieved party and the protest is premature and, therefore, does not come within the Board's jurisdiction.

The position of the District is well taken, although the District has misconstrued the Board's holding in the protest of A.A. Beiro Company, Inc.

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 a solicitation or contract award. This holding is in conformity with section 1-1189.3(1) of the District of Columbia Procurement Practices Act of 1985, D.C. Code (1987) and section 300.1, 27 DCMR 300.1 (Sept. 12, 1986), of the Board's protest rules. 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 Protest of A.A. Beiro Company, Inc., Protest of Emergency One, Inc., CAB No. P-114 (D.C. CAB November 2, 1988).

While the District is correct in stating that a party must be aggrieved in order to maintain a protest before this

² The District also argues in its Agency Report that the Board lacks jurisdiction to consider protest regarding contract performance.

District of Columbia Register

JUN 2 1989

- 4 -

Board, the District's interpretation of the point in time when a bidder becomes aggrieved is misguided. The District cites A.A. Beiro and states in its Agency Report that ". . . SPI (Systems) cannot be aggrieved until the District finally determines whether or not the apparent low bidders are responsible." See the Agency Report, at 4. The Board disagrees with the District's interpretation. In the protest of Hood's Institutional Foods, D.C. CAB (January 25, 1989), the Board elaborated on the issue of "aggrieved party". In Hood, the Board stated that the protester was correct in not filing a protest at the time of the formal bid opening because no official action adverse to it had been taken by DAS, and, therefore, the protest would have been premature and speculative. The Board stated:

It was not until December 2, 1985, when the contract was awarded to Action, that Hood became aggrieved and its protest ripened.

The mere submission of bids by allegedly nonresponsible bidders did not have an injurious impact on Systems or any other bidder. At the time the protest was filed no official action adverse to Systems had been taken. Official action, sufficient to cause Systems to be aggrieved, occurs when DAS awards the contract to LaDorn and AC*JAN. Until the contract is awarded, there is still a possibility, no matter how remote, that LaDorn and AC*JAN may not enter into the contract. Prior to the actual contract award, Systems' protest would still be premature and speculative.

District of Columbia Register

JUN 2 1989

- 5 -

systems has failed to show that it is an aggrieved party.
Absent such action, this protest is premature and speculative.

Therefore, the Board lacks jurisdiction to hear and decide this protest on the merits.

Accordingly, this protest is dismissed for lack of jurisdiction.

ORDER

This protest is dismissed.

DATE: February 14, 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