

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
CONTRACT APPEALS BOARD**

PROTEST OF:

OMEGA SUPPLY SERVICES, INC.	)	
	)	CAB No. P-0944
	)	
Solicitation No. DOC 112652	)	

**ORDER DISMISSING PROTEST**

*Filing ID #53807532*

Omega Supply Services, Inc. (“Omega”) protests the District’s decision to limit competition under Request for Quotation No. DOC 112652 to D.C. Supply Schedule contractors, which Omega argues unreasonably prevented it from participating in the procurement. The District argues that D.C. CODE § 2-218.45 required the District to limit competition to D.C. Supply Schedule contractors, and that the protester did not meet this classification. We *sua sponte* dismiss the protest as untimely.

**FACTUAL BACKGROUND**

The District of Columbia Office of Contracting and Procurement, on behalf of the Department of Fire and Emergency Medical Services, issued Request for Quotation No. DOC 112652 (the “RFQ”) on June 19, 2013, through its eSourcing website. (Agency Report (“AR”) Ex. 2, at 1.) The RFQ sought bids for various medical supplies under nine contract line items. (*Id.* §§ 2.1-2.9.) Under section 5.1 of the RFQ, the District would make award based on lowest price. (*Id.* § 5.1.) The District, however, retained the right to make award by individual line item. (*Id.*) The District’s Independent Government Estimate anticipated that the required supplies would cost \$55,000.00. (AR Ex. 3 ¶ 4.) The District, therefore, restricted competition under the RFQ to “companies on the D.C. Supply Schedule *only*.” (AR Ex. 2 § 1.2 (emphasis in original); AR Ex. 3 ¶ 4.) According to the contracting officer, the District provided notice of the RFQ to nine D.C. Supply Schedule contractors. (AR Ex. 3 ¶ 5.)

Bids in response to the RFQ were due by 12:00 p.m. on June 26, 2013. (AR Ex. 2, at 1; Protest 1.) On June 25 and June 26, 2013, prior to the bid submission deadline, Omega sent two emails to the contracting officer requesting an invitation to submit a bid in response to the RFQ.<sup>1</sup> (Protest Attach. at 1.) The contracting officer did not send the requested invitation to Omega because Omega lacked a D.C. Supply Schedule contract. (AR Ex. 3 ¶ 6.) However, four other vendors timely submitted bids in response to the RFQ. (AR Ex. 3 ¶ 7.) Omega subsequently filed the present protest with the Board on July 9, 2013.

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<sup>1</sup> Omega also sent an email to another District official on June 25, 2013, requesting an invitation to bid. (Protest Attach. at 2.)

### ***Contentions of the Parties***

The protester argues that the District erred in restricting competition to only D.C. Supply Schedule contractors. (Protest 1.) The protester contends that excluding businesses from the procurement process is counter to the “intent and purpose” of the D.C. Supply Schedule. (*Id.*) Accordingly, the protester maintains that the District improperly refused to allow Omega, a certified business enterprise (“CBE”), to submit a bid in response to the RFQ. (*Id.*)

The District responds that because the government’s estimate of the contract award amount was less than \$100,000.00, it was required to limit competition to D.C. Supply Schedule contractors pursuant to D.C. Code § 2-218.45. (AR at 3.)

### **DISCUSSION**

We exercise jurisdiction over the instant protest pursuant to D.C. CODE § 2-360.03(a)(1) (2011).

As a threshold matter, although not raised by the parties, the Board must consider whether the protest was timely filed. The statutory timeliness rules governing protests provide, in pertinent part, that:

- (1) 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 prior to bid opening or the time set for receipt of initial proposals. [ . . . ]

D.C. CODE § 2-360.08(b)(1). The Board treats timeliness as a jurisdictional requirement that cannot be waived. *SAGA Adventures, Inc.*, CAB No. P-0704, 54 D.C. Reg. 1936, 1938 (June 17, 2005); *Warner-Boyd & Assocs., Inc.*, CAB No. P-559, 46 D.C. Reg. 8517, 8518 (Oct. 19, 1998); *Maximus*, CAB No. P-201, 38 D.C. Reg. 3025, 3026 (Dec. 14, 1989).

In this protest, Omega challenges the District’s decision to limit competition to only D.C. Supply Schedule contractors. (Protest 1.) This limitation, or alleged impropriety, was evident from the face of the RFQ. (AR Ex. 2 § 1.2.) As a result, Omega clearly knew, prior to the submission deadline for bids, that it was unable to submit a bid and contacted the contracting officer regarding this matter. (Protest Attach. at 1.) Moreover, with this advance knowledge of a restriction on its participation in this procurement, the protester was required to file this protest before 12:00 p.m. on June 26, 2013, the deadline for the submission of bids. D.C. CODE § 2-360.08(b)(1); *Warner-Boyd*, CAB No. P-559, 46 D.C. Reg. at 8518. The protester, however, did not file the present protest until July 9, 2013. Accordingly, the Board finds the present protest to be untimely.

Further, even if the present protest were timely, the Board finds the underlying protest allegations to be without merit. The Small, Local, and Disadvantaged Business Enterprise Development and Assistance Act of 2005 contains relevant provisions governing mandatory set-asides for CBEs. D.C. CODE § 2-218.44 generally requires contracting agencies to set aside procurements up to \$100,000.00 for CBEs, *except* as provided in D.C. CODE § 2-218.45. D.C. CODE § 2-218.44(a) (emphasis added). D.C. CODE § 2-218.45, in turn, requires contracting agencies to procure contracts up to \$100,000.00 from CBE’s on the D.C. Supply Schedule unless

the agency determines, in writing, that there are not at least two responsible CBEs on the schedule capable of providing the required goods or services. D.C. CODE § 2-218.45. In this procurement, the District estimated that the cost to procure the needed medical equipment would be substantially less than \$100,000.00. (See AR Ex. 3 ¶ 4.) The District also identified nine D.C. Supply Schedule vendors capable of providing the required medical supplies, and also received four timely quotes. (*Id.* ¶¶ 5, 7.) Accordingly, in soliciting the present requirement for medical supplies, the District properly limited competition to only D.C. Supply Schedule contractors consistent with procurement law.<sup>2</sup>

## CONCLUSION

For the foregoing reasons, the Board finds the present protest untimely and without merit. Accordingly we dismiss the protest with prejudice.

## SO ORDERED.

Date: August 20, 2013

/s/ Monica C. Parchment  
MONICA C. PARCHMENT  
Administrative Judge

## CONCURRING:

/s/ Maxine E. McBean  
MAXINE E. MCBEAN  
Administrative Judge

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<sup>2</sup> The Board also notes that the protester failed to timely submit Comments in response to the District's Agency Report defending its procurement actions, as required by Board Rule 307 (D.C. Mun. Regs. tit. 27 § 307 (2002)). The Board, therefore, treats the factual assertions in the District's Agency Report as conceded by the protester pursuant to Board Rule 307.4. *Seagrave Fire Apparatus, LLC*, CAB No. P-0928, 2012 WL 6929400 at \*2-3 (Dec. 20, 2012); *FEI Constr. Co. (A Div. of Forney Enters., Inc.)*, CAB No. P-0902, 2012 WL 6929394 at \*5-6 (Dec. 14, 2012).