

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

PROTEST OF:

C & E SERVICES, INC.)	
)	CAB No. P-360
Under Contract No. OMS-2044-AA-GH)	

For the Protestor: Carl Biggs, President. For the Government: Howard S. Schwartz and Anne Cauman, Assistants Corporation Counsel.

Opinion by Administrative Judge Terry Hart Lee, with Administrative Judge Zoe Bush concurring.^{1/}

DECISION AND ORDER ON MOTION TO DISMISS

On January 12, 1993, C & E Services, Inc. (hereinafter "protestor" or "C & E") filed a timely protest with the Board, which challenged IFB No. OMS-2044-AA-GH ("IFB"), issued for the procurement of muriatic inhibitive acid. The bases for the protest were several: (1) the IFB was restrictive in that it limited the material to two brand names, when the product required was generic and commercially produced by many manufacturers; (2) there are no established test procedures, specifications, performance specifications or other criteria under which a vendor can test the product; (3) there was a potential for price fixing because one of the brand names called out in the IFB was manufactured by a large business which was ineligible to bid on the procurement; (4) the specifications were faulty because they contained standards which could not be measured; (5) the IFB, as written, improperly sought a requirements contract; and (6) there was an internal conflict in the provisions of the IFB regarding the testing procedures, or lack thereof.

Protestor sought correction of the deficiencies prior to permitting the procurement to proceed.

On February 16, 1993, the government filed its agency report. Therein, the government asserted that with respect to protestor's allegations concerning defective specifications, including the testing requirements, the contracting agency was reviewing the specifications

^{1/}Administrative Judge Benjamin B. Turner did not take part in this decision because of an extended illness.

and had postponed bid opening in order to evaluate its position.^{2/} The government also contended that protestor's allegations concerning the potential for price fixing were unclear and too speculative to form the basis for a protest and that the procurement regulations clearly authorized use of a requirements contract for supplies and services of the type solicited.

Because the government stated in its agency report that it would notify the Board at a later time concerning its position on the allegations of deficient specifications, and because postponement of bid opening had occurred several weeks prior to submission of the agency report, the Board requested and held a telephone conference with the parties on February 22, 1993, to determine the status of the contracting agency's review of the specifications. During that telephone conference, the government advised that the contracting agency had determined that the specifications were defective and had issued a Determination and Findings (D&F) to that effect on February 19, 1993, recommending cancellation of the IFB. The government also advised that the D&F was scheduled for review by the Procurement Review Committee (PRC) and that such review would probably be completed by February 26, 1993.^{3/}

Thereafter, on February 26, 1993, the Board held a second telephone conference with the parties and was advised that the Director of the Department of Administrative Services (DAS) had approved the contracting agency's recommendation to cancel the solicitation. The government stated that all bidders would be notified of the contracting agency's action.

On March 5, 1993, the government filed a motion to dismiss the protest, on the ground that cancellation of the IFB rendered the protest moot. Protestor has not filed an opposition or other response to the motion to dismiss.^{4/}

On March 8, 1993, the Board received a letter from B & B Services, Inc., filed in response to C & E's protest.^{5/}

^{2/}Bid opening, scheduled for February 1, 1993, was postponed indefinitely by Addendum No. 1, dated January 29, 1993. (Agency Report, Exhibit 1).

^{3/}See Report of Telephone Conference and Order, dated February 22, 1993.

^{4/}During the February 26, 1993, telephone conference, the Board asked protestor to file a notice of dismissal of the protest upon receipt of notification of cancellation of the IFB, assuming that cancellation was a satisfactory resolution of the protest.

^{5/}The Board will not consider the letter of B & B Services, Inc., on the ground that the response was filed in an unreasonable time after the filing of the protest and notification thereof. The record shows that the protest was filed on January 12, 1993, and that the government notified all bidders of the protest on or about January 28, 1993. To entertain a submission, raising additional allegations and filed over 30 days after notification, does not lend itself to the prompt and efficient disposition of a bid protest.

The record shows that on February 19, 1993, the contracting agency issued a D&F to support cancellation of the IFB, on the ground that the specifications were ambiguous. The record also shows that the Director of DAS approved the agency's recommendation on February 24, 1993. (Motion to Dismiss, Exhibit A).^{6/} Finally, the record shows that by Addendum No. 2 issued on March 4, 1993, all bidders were notified of cancellation of the IFB. (MD, Ex. B).

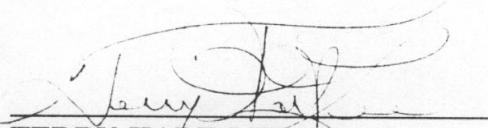
In view of the cancellation of the IFB and the bases therefor, it appears that the allegations raised in the protest are no longer viable. Where this is the case, a protest is rendered academic and is no longer at issue for our consideration. *First Federal Corp.*, CAB No. P-267, March 30, 1992, 39 DCR 4504 (June 1992).

Consequently, it is hereby

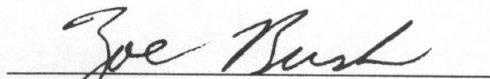
ORDERED, that the government's motion to dismiss be, and the same is, GRANTED; and it is

FURTHER ORDERED, that the instant protest be, and the same is, DISMISSED, with prejudice.

DATE: March 12, 1993


TERRY HART LEE
Administrative Judge

CONCUR:


ZOE BUSH
Chief Administrative Judge

^{6/}Hereinafter referred to as "MD, Ex(s). ____".