

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

PROTEST OF:

DMR ASSOCIATES, INC.)	
)	CAB No. P-100
Under IFB No. 87-0186-AA-2-0-KA)	

For the Protester: D. R. Madden, President, DRM Associates, Inc. For the Government: John D. Turner, Jr., Assistant Corporation Counsel, D.C.

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

ISSUE PRESENTED

The issue presented in this protest is whether the bidder on a tree and stump removal project presented an adequate surety on the bid bond accompanying the bid.¹

BACKGROUND

The above-referenced Invitation for Bids (IFB), issued by the Department of Public Works (DPW) on January 4, 1988, with bid opening on February 8, 1988, required the submission of a bid bond.

Bid bonds, as defined in the District of Columbia Procurement Practices Act of 1985, D.C. Code, § 1-1181.7(5) (1987) (PPA), provide "a form of security

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 (1987), as amended by Mayor's Order 86-65, 33 DCR 3006 (May 16, 1986). Pursuant to the D.C. Procurement Practices Act of 1985 (PPA), D.C. Code, § 1-1189.1 (1987), a new independent agency denominated as the Contract Appeals Board was created. This new Board became operational on August 1, 1988, and succeeded to the jurisdiction of all cases pending before the previously established Board.

assuring that the bidder will not withdraw a bid within the period specified for acceptance and will execute a written contract within the time specified in the bid."

Three bids were submitted in response to the IFB: Rock Hard Excavation, Inc. (Rock Hard), for \$808,100.00, Impex International Industries, Inc. (Impex), for \$510,030.00, and DRM Associates, Inc. (DRM), the protester, for \$563,475.00. All bids were rejected and the IFB was cancelled on March 15, 1988 "in the best interest of the District." Impex and DRM's bids were rejected because of a failure to comply with the bid bond requirement, thereby rendering their bids nonresponsive; Rock Hard's bid was rejected as exceeding the District's cost estimate by 52.9 percent. Agency Report received by the Board on June 6, 1988 at 1, 2; exhs. 2, 3 and 4.

OPINION

DRM's letter of protest, received by the Board on April 7, 1988, raises two issues: (1) that Impex, a competitor, neglected to provide a bid bond within its bid packet, and (2) that the bid bond submitted by DRM was fully adequate except for an attested signature, which was an administrative as opposed to a substantive matter. DRM stated that it should be awarded the contract.

With respect to the first issue, since the District rejected the bid of Impex, the protest of DRM concerning Impex's bid is moot. Roofers Incorporated, 1 P.D. 48 (D.C. CAB 1986).

With respect to the second issue, the District's rejection of DRM's bid bond, DRM's argument is unrelated to the basis for the District's action. DRM's bid bond was judged legally insufficient because the sureties were individuals (officers of the corporation) rather than a corporate surety as required by 27 DCMR § 2708.2 (July, 1988), which states:

A bond security must be obtained from a corporate or individual surety; Provided, that an individual surety shall not be used for any construction contract in excess of one hundred thousand dollars (\$100,000).

The failure of DRM to provide a legally sufficient surety for this construction contract resulted in the finding by the District that DRM's bid was nonresponsive.² The protest, therefore, is DENIED.

DATE: June 15, 1989

David H. Marlin
DAVID H. MARLIN
Administrative Judge

CONCUR:

Claudia Booker
CLAUDIA D. BOOKER
Administration Judge

William L. Davis
WILLIAM L. DAVIS
Chief Administrative Judge

²The motion to dismiss based on DRM's bid being untimely filed is denied. The record does not corroborate the allegation that DRM knew of the basis for the rejection of its bid earlier than the receipt of DPW's letter dated March 28, 1988.