

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

PROTEST OF:

NASH/BOYD

Under Contract No. 8218-AA-56-0-8-HS

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CAB No. P-127

For the Protestor: Thelma R. Boyd, Partner, Nash/Boyd. For the Government: Nancy Hapeman, Assistant Corporation Counsel.

Opinion by Administrative Judge Zoe Bush, with Administrative Judges Terry Hart Lee and Benjamin B. Turner concurring.

OPINION

This protest was filed by Nash/Boyd on September 13, 1988, challenging award of the above-captioned contract for sand, cement, crushed stone and miscellaneous construction supplies by the Department of Administrative Services (DAS). The stated basis of the protest as set forth in the one-page letter from Protestor is as follows:

"BASIS OF PROTEST: IMPROPER, UNTIMELY, IRREGULAR PROCEDURES USED BY DAS IN AWARDING THE ABOVE-REFERENCED CONTRACT

"QUESTIONABLE AWARD TO HIGH BIDDER

"AGENCY'S FIGURES OF BID TABULATIONS WERE NOT PROPERLY ACCESSIBLE TO LOW BIDDER UPON REQUEST - VISUAL REPRESENTATION, ACCESSED THROUGH A SUPERVISOR BY APPARENT LOW BIDDER SEEMED NOT TO SUPPORT AWARD FIGURE OF \$359,850. CONFLICTING INFORMATION WAS GIVEN ABOUT ITEMS AWARDED.

"LACK OF TIMELY, DAS (AGENCY), COMMUNICATION WITH APPARENT LOW BIDDER

"BID AWARD DELAYED BY APPARENTLY 'SHELTERED PROTEST' BY HIGH BIDDER (NOTICE OF WHICH WAS DATED JUNE 29, 1988 BY DAS.)

"REPEATED INQUIRIES BY LOW BIDDER (REGARDING EVALUATION OF BID) ELICITED THE FOLLOWING RESPONSES:

"BID CANNOT BE AWARDED WHILE UNDER PROTEST"
(ALTHOUGH APPEALS BOARD SPOKESPERSON SAID
THERE WAS 'NO CONNECTION')

-THE DIRECTOR

"THE CONTRACT PROBABLY ISN'T WORTH PURSUING;
THERE IS NO STANDING IN LINE TO BID THIS ONE.
AGENCIES [sic] ESTIMATES OF THEIR NEEDS ARE
PROBABLY INACCURATE".

AN AGENCY SUPERVISOR

Protestor requests relief of \$50,000.00.

On November 4, 1989, the District moved for partial dismissal of the protest, or in the alternative, for a more definite statement. The motion requests partial dismissal, asserting that Nash/Boyd failed to include in its protest a clear and concise statement of the legal and factual grounds of two of the allegations of the protest. In the first instance, the District challenges that Nash/Boyd merely states that, "conflicting information was given about items awarded." The District asserts that Nash/Boyd does not adequately describe the conflicting information so as to allow the District to respond to the allegations. According to the District, Nash/Boyd fails to state the specific conflicting information that was given about the items awarded and fails to state who provided the conflicting information.

In the second instance, the District asserts that Nash/Boyd alleges that an agency supervisor informed Nash/Boyd that "the contract probably isn't worth pursuing; there is no standing in line to bid this one. Agencies estimates of their needs are probably inaccurate." The District argues that Nash/Boyd has failed to provide sufficient information concerning the agency involved or the identity of the agency supervisor to allow the District to respond to the allegation.

Protestor has not responded to the motion for partial dismissal.

The agency report was subsequently filed on November 7, 1988. The report states that the Invitation for Bids (IFB) was issued on April 8, 1988, and that bids were opened on May 12, 1988. Two bidders responded to the IFB, Ideal and Nash/Boyd. The report further states that (1) the District properly made the bid tabulation sheets

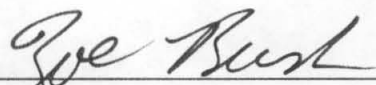
accessible to Nash/Boyd; (2) the bid tabulation sheets support an award in the amount of \$359,850 to Ideal; (3) the award of contract no. 8218-AA-56-0-8-HS was timely despite the delay from bid opening to the date of award; (4) the Director of DAS does not recall informing Nash/Boyd that the contract could not be awarded while there was a pending protest; (5) the District acted properly in requesting responsibility information from Nash/Boyd after the District awarded contract no. 8218-AA-56-0-8-HS to Ideal; and (6) the relief requested by Nash/Boyd is not appropriate.

Protestor also has not responded to the agency report.

Board Rule 307.1 allows protestors seven days within which to respond to the District's agency report or dispositive motion, 36 DCR 2713. Board Rule 307.3 provides that failure of the protestor to file comments or request an extension of time for filing will result in closing the record and may result in dismissal of the protest. Board Rule 307.4 provides that when a protestor fails to file comments on an agency report, the factual allegations that are not admitted in the agency report, or otherwise corroborated on the record may be disregarded.

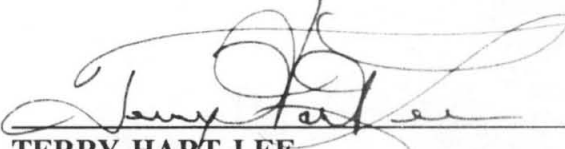
Based on the record before the Board, the protest is DENIED as lacking in merit in part, and DISMISSED in part for failing to set forth a clear and concise statement of the legal and factual grounds supporting the protest.

DATE: January 23, 1992

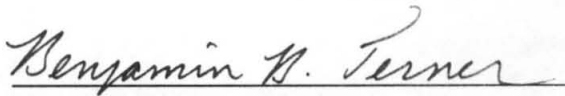


ZOE BUSH
Chief Administrative Judge

CONCUR:



TERRY HART LEE
Administrative Judge



BENJAMIN B. TURNER
Administrative Judge