

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
CONTRACT APPEALS BOARD  
717 14<sup>TH</sup> STREET, N.W., SUITE 430  
WASHINGTON, D.C. 20005**

(202) 727-6597 (Ofc #)

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★★★



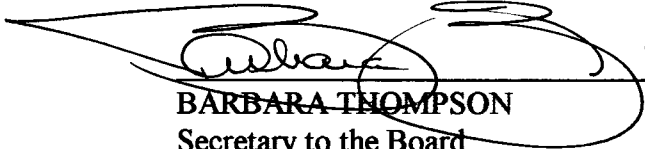
January 25, 1999

TO: Ernest C. Moreno, President  
A.B. Chelini LLC  
4751 Lydell Road  
Cheverly, MD 20781

H. Christopher Malone, Esquire  
Warren J. Nash, Esquire  
Howard S. Schwartz, Esquire  
Assistants Corporation Counsel  
Office of the Corporation Counsel  
441 4<sup>th</sup> Street, N.W., 10<sup>th</sup> Floor  
Washington, DC 20001

SUBJECT: CAB No. **P-556**, (Protest Of: **A.B. Chelini Company, L.L.C.**)

Attached is a copy of the Board's Opinion denying protest.



**BARBARA THOMPSON**  
Secretary to the Board

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
CONTRACT APPEALS BOARD

PROTEST OF:

A.B. CHELINI COMPANY, L.L.C.	)	
	)	CAB No. P-556
Under IFB No. 98-0081-AA-4-0-CC	)	

For the Protester: Mr. Ernest Moreno, President. For the District: Howard S. Schwartz, Warren J. Nash, and H. Christopher Malone, Assistants Corporation Counsel.

Opinion by Administrative Judge Claudia Booker, with Administrative Judge Phyllis W. Jackson and Administrative Judge Jonathan Zischkau, concurring.

**OPINION**

A.B. Chelini Company, L.L.C., ("Chelini" or "Protester") protests the Department of Public Works ("DPW") award of a contract to Prince Construction Company ("Prince") in response to the solicitation, IFB No. 98-0081-AA-4-0-CC. The Protester contends that Prince is not qualified to perform the type of work required by the solicitation and does not qualify for the 12 percent bid preference it was awarded for being certified as a local, disadvantaged business located in an enterprise zone under the Equal Opportunity for Local, Small, Disadvantaged Business Enterprise Temporary Act of 1998, ("LSDBE Act"), D.C. Act 9-223, as amended by D.C. Act 12-278, Jan. 27, 1998. This 12 percent bid preference enabled Prince to be determined the apparent low bidder. We find no error was made in DPW's award and therefore deny this protest.

**BACKGROUND**

On March 17, 1998, DPW issued in the open market IFB No. 98-0081-AA-4-0-CC for the replacement of mechanical equipment at the Fourth Precinct Police Headquarters. Under solicitation section 1.8, Technical Specifications, Special Conditions, the contract work includes "furnishing all labor, material, tools, and equipment for the replacement of the 175-ton chiller, condenser water pumps, chilled water pumps and cooling tower . . . ." (See Agency Report ("AR"), Ex. 1, §1.8-1). There is no indication in the specifications or in the Protester's documents denoting the percentage of mechanical or plumbing work to be performed under this contract.

At bid opening on May 15, 1998, four bids were received. The bidders and their bids were ranked as follows:

1.	Precision Mechanical	\$172,000
2.	RSC Electrical and Mechanical	\$190,000
3.	Rite Way Furnace/A.B. Chelini Company, Inc.	\$199,000
4.	Prince Construction Company Inc.	\$220,000

On June 11, 1998, DPW determined that the bids of RCS Mechanical and Precision Mechanical were nonresponsive for failure to submit bid bonds and that their bids were disqualified. In addition, DPW awarded a 12 percent bid preference to Prince based on its certifications under the LSDBE Act, thereby reducing its bid price by 12 percent for bid evaluation purposes, and making it the lowest evaluated bid.

On August 5, 1998, DPW awarded the contract to Prince and on August 19 informed Chelini and the other unsuccessful bidders, via facsimile, of the contract award. The Protester acknowledges receiving notice of the contract award on August 20, 1998. On September 4, 1998, Chelini filed this protest with the Board.

On October 9, 1998, the District filed a motion to dismiss the protest which asserted that the protest was untimely on the grounds that it was not filed within the statutory 10 working-day period. D.C. Code §1-1189.8(b)(2) (Supp. 1997).

On October 19, 1998, the Board issued a decision dismissing, with prejudice, this protest for untimeliness. On October 28, 1998, Chelini filed a motion for reconsideration, identifying for the first time that, by letter on August 21, 1998, it protested any award and that the protest letter was received by DPW on August 31. In addition, Chelini contends that on September 4, via facsimile, it received an acknowledgment letter from DPW notifying it to file its protest with the Board. Chelini filed this protest with the Board on that same day.

On November 3, 1998, the Board held a telephone conference on the motion for reconsideration. Determining that DPW had failed to promptly transmit the misdirected protest to the Board, as required by *Fort Myer Construction Corp.*, CAB No. P-452, July 23, 1997, 44 D.C. Reg. 6476, the Board granted Chelini's request for reconsideration and agreed to consider this protest on the merits.

Chelini contends that Prince qualifies only for a 7 percent preference. Chelini does not specify whether it is challenging Prince's certification as an LBE or DBE. Chelini apparently bases this contention on the further allegation that Prince, a general contractor, does not have the capability to perform at least 50 percent of the contract work (as required by the LSDBE Act) when the services to be performed are 90 percent mechanical. Chelini claims that Prince does not have its own work forces certified and licensed in mechanical and plumbing. As a result, Chelini argues that 5 of the 12 percent bid preference should be rescinded.

In addition, Chelini stresses that Prince may not legitimately subcontract more than 50 percent of the contract work and that Prince did not disclose any subcontractor information in its bid. Lastly, Chelini contends that the solicitation did not contain provisions regarding the appropriate procedure for filing a protest.

Chelini's arguments are based on the following three assumptions: 1) 50 percent or more (Chelini calculates 90 percent) of the work to be performed under this contract is mechanical and plumbing; 2) Prince does not have licensed staff of its own to perform these types of work; and 3) in order for Prince to perform this contract it must subcontract the mechanical and plumbing components. However, the Protester has offered no evidence to substantiate these assumptions.

In its Agency Report filed with the Board on October 1, 1998, the District responded to Chelini's allegations regarding the actions of the DPW Contracting Officer. First, the District asserts, the DPW Contracting Officer properly assigned the 12 percent bid preference to Prince based on a valid LSDBE certification provided by Prince at bid opening. Next, the DPW Contracting Officer determined Prince to be responsible after reviewing Prince's past performance with DPW and the responsibility certification provided by Prince with the bid documents. Lastly, the District argues that the issue concerning Prince's performance of the mechanical and plumbing components of the contract work is a matter of contract administration and is therefore beyond the Board's jurisdiction.

### DECISION

The Board exercises its jurisdiction over this protest pursuant to D.C. Code §1-1189.3 (Supp. 1997).

Chelini's primary argument is that Prince cannot be determined to be responsible because it is not capable of performing mechanical and plumbing work using its own work forces since it lacks the licensed staff to perform this type of work. Chelini offers as proof of this assertion a copy of Prince's LBE/DBE certification form which lists the following SBE procurement categories:

Construction Heavy  
Building Construction  
Specialty Trade Contractor  
Goods & Equipment  
Transportation & Hauling Services

Chelini asserts that Prince's certification does not indicate that Prince is certified under the LBE/DBE procurement category classification for mechanical and plumbing work. As a result, in order for it to perform the contract Prince will have to subcontract those work components, thereby violating a provision of the LBE/DBE certification (see Amended Protest, Attachment 1, paragraph 3(c)).

Secondly, according to the Protester, Prince cannot comply with paragraph N, Mandatory Performance by Prime Contractor, Special Conditions, which requires that the prime contractor perform at least 50 percent of the on-site work with its own work forces. (See AR, Ex. 1, §1.4-4). It is Chelini's position that this paragraph is a definitive eligibility criteria for contract award and Prince's noncompliance makes it ineligible for consideration for contract award. Prince cannot meet the condition precedent to contract award imposed by paragraph N of the solicitation's Special Conditions and, therefore, cannot be determined responsible under this solicitation.

Lastly, the Protester alleges that Prince did not disclose its subcontracting plan with its bid nor ask permission to subcontract 50 percent or more of the contract work with its bid package.

LSDBE Act Certification

The LSDBE Act and its implementing regulations were designed to increase LBE, DBE, and SBE participation in District contracting. The LSDBE Act certifications are certifications as to a contractor's eligibility to compete for a set-aside procurement or to be the recipient of the bid preferences provided by it.

Thus, Chelini's argument that Prince is not responsible because it is not certified in mechanical or plumbing categories misses the mark. The LSDBE certifications are not in any way the same as the responsibility determination that must be conducted by the Contracting Officer prior to contract award.

We also find no merit in Chelini's challenge to Prince's corporate eligibility as a local or disadvantaged business enterprise. Chelini has failed to present any evidence that Prince is improperly certified as a LBE or DBE.

Capability and Performance Requirements

Chelini has failed to present any evidence that Prince is incapable of performing the contract work using its own forces or those of a subcontractor. By signing the bid, Prince has agreed to all of the terms and conditions, including the requirement that it perform 50 percent or more of the work with its own forces, unless it obtains a waiver, as prescribed by the LSDBE Act.

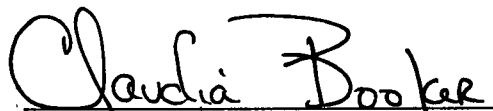
Failure to Disclose Subcontractor Information

We also reject Chelini's argument that Prince failed to disclose any subcontractor information in its bid. The solicitation did not require bidders to disclose their subcontracting plans in their bids. By signing its bid, Prince obligated itself to complete the specified work.


**CONCLUSION**

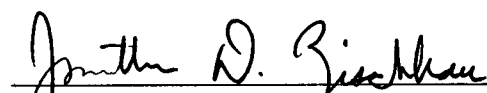
Chelini has failed to present any evidence that the District erred in granting Prince a 12 percent bid preference and in determining it to be a responsible bidder. Therefore, we deny this protest.

Date: January 25, 1999

  
CLAUDIA BOOKER  
Administrative Judge

CONCURRING:

  
PHYLLIS W. JACKSON  
Administrative Judge

  
JONATHAN D. ZISCHKAU  
Administrative Judge

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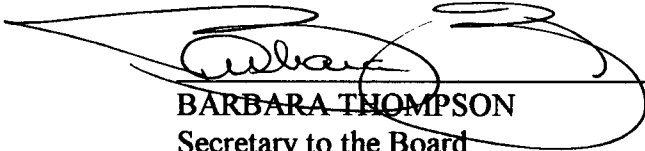
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