

GOVERNMENT OF THE DISTRICT OF COLUMBIA
CONTRACT APPEALS BOARD

PROTEST OF

ENHANCEMENT GROUP, INC.)	CAB No. P-613
)	
Under Request for Applications No. 0218-00)	

For the Protester: Armand Silon, President. For the Government: Howard S. Schwartz and H. Christopher Malone, Assistants Corporation Counsel.

Opinion by Administrative Judge Matthew S. Watson, with Administrative Judge Jonathan D. Zischkau, concurring.

ORDER

Enhancement Group, Inc. ("Protester" or "EGI") protests against subgrant awards pursuant to the subject Request for Applications ("RFA") on the basis that the District is improperly soliciting applications for grant awards to perform services for which contracts are required.¹ The protest requests that the District be ordered to withdraw the RFA and reissue a contract solicitation for the services in compliance with District law and regulations. The District moved to dismiss the protest on the basis that it was untimely. We agree and dismiss the protest as untimely.

FACTS

The RFA was issued by the Office of Grants Management and Development of the Office of Chief Financial Officer pursuant to an interagency agreement. The RFA provided that applications must be submitted no later than 6:00 p.m. on Monday, March 20, 2000. (Motion, Ex. 1, 35). The Board's offices were not open at that time. The Board's regular closing time was an hour before the deadline for submission of applications. The offices did not reopen until the next morning at 9 a.m. EGI filed this protest with the Board at 5:00 p.m., Tuesday, March 21, 2000, the day following the deadline for applications.

¹ Although, as a general rule, this Board does not have jurisdiction to entertain protests or appeals of grant awards, we have previously held that the Board's jurisdiction includes, as presented in this matter, determinations as to whether a grant or other nonprocurement instrument is being used to improperly avoid the requirements of the Procurement Practices Act. *Enhancement Group, Inc.*, CAB No. P-606, March 6, 2000, 11 P.D. 7856.

DISCUSSION

The Board's jurisdiction to hear bid protests is established by the Procurement Practices Act, D.C. Code §1-1189.3 (1999). The time period for filing stated in the Act is a prerequisite to Board jurisdiction and cannot be waived. *Consolidated Maintenance Supply, Inc.*, CAB No. P-308, Oct. 2, 1992, 40 D.C. Reg. 4568, 4569.

The Act further provides in D.C. Code § 1-1189.8:

(b)(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. In procurements where proposals are requested, alleged improprieties which do not exist in the initial solicitation, but which are subsequently incorporated into this solicitation, must be protested not later than the next closing time for receipt of proposals following the incorporation.

(2) In cases other than those covered in paragraph (1) of this subsection, protests shall be filed not later than 10 business days after the basis of protest is known or should have been known, whichever is earlier.

See also Board Rule 302.2, 45 D.C. Reg. 1415 (Mar. 13, 1998).

It is instructive to note that subparagraph (1) refers to a specific time, not merely a day, while subparagraph (2) refers only to days. A protest covered by subparagraph (1) received by the Board on the *day* proposals are due, but after the *precise time* set for receipt, is untimely. The United States General Accounting Office has interpreted similar language in its rules.

A protest of an alleged impropriety in a solicitation must be filed prior to the closing time for receipt of initial proposals. 4 C.F.R. § 21.2(b)(1) (1982); *International Business Investments, Incorporated*, B-204429, January 6, 1982, 82-1 CPD 16. The closing time for receipt of initial proposals was 4:00 p.m. Central Standard Time on March 24, 1983. FCC's protest was filed with our Office at 5:25 p.m. Eastern Standard Time [4:25 p.m. Central Standard Time]. Thus, FCC's protest is untimely and will not be considered.

Federal Computer Corp., B-211241, Apr. 1, 1983, 83-1 CPD 346

The protester has correctly stated that the Board's offices were closed at 6 p.m., Monday, March 20, 2000, the time set in the RFA for receipt of applications.² (Protest, 3). The District asserts that, in order to meet the statutory requirement that a protest be filed "prior to . . . the time set for receipt of [applications]," Protester must have filed its protest with the Board by 5 p.m.,

² "The Board's office shall be open for the transaction of business from 9:00 a.m. until 5:00 p.m., daily, except Saturdays, Sundays and legal holidays." Rule 103.1

March 20, 2000, the latest time which the Board was open *prior* to the 6 p.m. deadline for submitting applications. (Motion, 3).

The Protester asserts that, since the Board office was closed at the deadline for filing applications, the protest may be filed up to the close of business on the day following the deadline, that is, Tuesday, March 21, 2000. The Protester asserts that the time is extended pursuant to the Board's general rule as to computation of time.

122 COMPUTATION OF TIME

- 122.1 In computing any period of time prescribed or allowed by these rules, the day of the act, event, or default from which the designated period of time begins to run shall not be included.
- 122.2 The last day of each period computed pursuant to Rule 122.1 shall be included unless it is a Saturday, Sunday, or legal holiday, or when the act to be done is the filing of a paper with the Board, a day or any part of a day in which the Board's office is closed, in which the event the period shall run until the end of the next day which is not one of the aforementioned days.
- 122.3 Whenever a party has the right or is required to do some act within a prescribed period after the service of a notice or other paper upon the party and the notice or paper is served upon the party by mail, three (3) days shall be added to the prescribed period.

Relying on the alternative in subparagraph 122.2 that "when the act to be done is the filing of a paper . . . on a part of a day in which the Board's office is closed, . . . the period shall run until the end of the next day," EGI filed its protest at 5:00 p.m., Tuesday, March 21, 2000.

The interpretation of the regulations by protester would cause inconsistencies with other provisions of the statutes and regulations. As with statutes, regulations should be interpreted as a whole, giving effect to each word and making every effort not to interpret a provision in a manner that renders other provisions of the same statute inconsistent, meaningless, or superfluous. *See Boise Cascade Corp. v. United States Environmental Protection Agency*, 942 F.2d 1427 (9th Cir. 1991).

The Board rules regarding computation of time were written to apply to deadlines specifying the last day for filing, and were not intended to literally apply when an action is required to be taken at a specific time expressed in hours and minutes. Applying the rule in that manner suggested by protester would cause a clearly erroneous result. As noted above, protests challenging solicitation provisions must be filed prior to the specific time set for receipt of proposals and no later. A protest filed after the exact time for receipt of proposals is untimely. Thus, had the protest been due prior to 5 p.m., when the Board was open, it would have been untimely if filed after the latest time set for receipt of applications, *even if filed later on the same day*. However, the protester reasons that, in accordance with Rule 122.2, if a protest is due after 5 p.m. when the Board closes for the day, the protest is timely if filed by the close of business of the next day. That interpretation would result in the deadline for filing a protest on a solicitation due after 5 p.m. being later than the deadline for

filing a protest on a solicitation with proposals due between 9 a.m. and 5 p.m. *the following day*. Such a result could not possibly be intended and the rule will not be interpreted to give such an anomalous effect.

The rule is clearly intended only to extend a deadline expressed in days on a day to day basis. As intended, a filing deadline falling on a day when the Board office is closed is extended by the rule so that it 'catches up' with filing deadlines falling on the next day, but the rule never extends an earlier deadline past a later deadline.


The District's interpretation would similarly create inconsistent policies, since it would cause a shortening of the time allowed to file a protest due solely to the fact that the Board's offices were closed. While the Board rules provide for automatic extensions of time, (*See, e.g., Rule 122.3 (service by mail)*), the rules never automatically shorten time periods. The Board rule is silent as to extension of a deadline expressed as a specific *time*, as opposed to specific *day*. A consistent interpretation of the rule in this circumstance, however, is that, if the Board's offices are closed at the specific time a filing is due, a protest is timely filed with the Board if filed immediately upon reopening of the Board offices, or a reasonable time thereafter.³

CONCLUSION

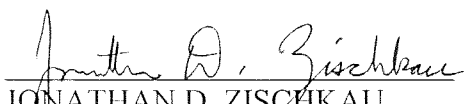
The protest was not filed immediately upon reopening of the Board offices on the next day. We need not determine in this matter how much time after reopening of the Board's offices is reasonable. The subject protest was not filed until 5 p.m. the next day, 8 hours after the Board offices reopened, which is clearly unreasonable. The protest of Enhancement Group, Inc. is **DISMISSED** for lack of jurisdiction.

SO ORDERED

DATED: May 2, 2000


MATTHEW S. WATSON
Administrative Judge

CONCURRING:


JONATHAN D. ZISCHKAU
Administrative Judge

³ To insure timely filing, the protest could have been filed with the soliciting agency prior to the deadline for receipt of proposals. *Fort Myer Construction Corp.*, CAB No. P-452, Jul. 23, 1996, 44 D.C. Reg. 6476, 6479.