

GOVERNMENT OF THE DISTRICT OF COLUMBIA
CONTRACT APPEALS BOARD

PROTEST OF:

DRM & ASSOCIATES, INC.)	
)	CAB No. P-101
Under IFB No. 87-0188-AA-2-0-KA)	

For the Protester: D. R. Madden, President. For the Government: Lynn S. Holloway, Assistant Corporation Counsel.

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

The Department of Public Works (DPW) issued the above-referenced Invitation for Bids (IFB) involving the removal of tree stumps.^{1/} Four bids were submitted, including bids from Lee and Son Tree Service (Lee) and DRM & Associates, Inc. (DRM). See Agency Report received by the Board on June 7, 1988 at 1.

The bids were opened on February 19, 1988. Lee was the apparent low bidder. Id. at 1. On February 24, 1988, DRM filed a written protest with the District's Department of Administrative Services (DAS) which alleged that Lee's bid was defective because Lee "neglected to provide an attested signature [with the bid bond] within the bid packet" and stated that DRM, as the second low bidder, should be awarded the contract. Id. at 1 and exh. No. 1.

On March 29, 1988, DPW by letter informed DRM that protest actions by law must be filed with this Board, not with DAS. Id. at 1 and exh. No. 3. On April 7, 1988, DRM's protest letter, containing the same allegations as its February 24 protest letter, was filed with the Board. Id. at 1 and exh. No. 2.

^{1/}This 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 (1978), 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.

On June 7, 1988, DPW filed an Agency Report in which the Board was requested to dismiss the protest as untimely filed. No response to the Agency Report has been filed by the protester.

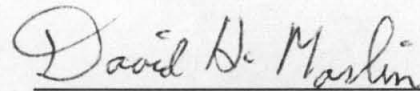
OPINION

The Board has ruled many times, in enforcing §1-1189.8(b) of the D.C. Procurement Practices Act of 1985, (PPA)^{2/} that the timely filing of a protest is a prerequisite to the Board having jurisdiction to decide a protest on its merits. See, for example, Ebone Inc., CAB No. P-153 (D.C. CAB April 14, 1989) and cases cited therein.

In this case, it is undisputed that DRM knew of the basis for the protest no later than February 24, 1988, the date a written protest was filed with DAS. As we have previously stated, the PPA requires the protest to be filed with this Board in a timely manner. Mistakenly filing the protest with the contracting agency, or DAS, cannot provide an exception to the statutory mandate. Ideal Electronic Security Co., CAB P-116 (D.C. CAB June 13, 1989); Continental Suppliers, Inc., CAB P-78 (D.C. CAB January 25, 1989). Not filing the protest with the Board until April 7, 1988, is well beyond the 10-day limit.

The protest, accordingly, is **DISMISSED** with prejudice.

DATE: November 7, 1989

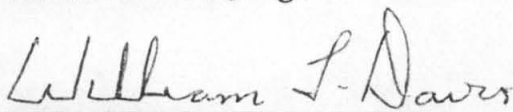


DAVID H. MARLIN
Administrative Judge

CONCUR:



CLAUDIA D. BOOKER
Administrative Judge



WILLIAM L. DAVIS
Chief Administrative Judge

^{2/}Section 1189.8(b) states that the protester must file ". . .with the Board within 10 working days after the aggrieved person knew or should have known of the facts and circumstances upon which the protest is based."