

BEFORE THE
MARYLAND STATE BOARD OF CONTRACT APPEALS

Appeal of CHIMNEY
RESTORATIONS, INC.

Under DNR Project
No. 90-1769-95

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Docket No. MSBCA 1476

November 28, 1989

Bid Protest - Timeliness - A bid protest based upon alleged improprieties in a solicitation that are apparent before bid opening is required to be filed before bid opening. Appellant's protest based upon alleged improprieties that were apparent prior to bid opening was not filed until (three) 3 days after bid opening. Accordingly, the protest was untimely and should not have been considered.

APPEARANCE FOR APPELLANT

None

APPEARANCE FOR RESPONDENT

Lee R. Epstein
Assistant Attorney General
Annapolis, MD

MEMORANDUM DECISION BY CHAIRMAN HARRISON

Appellant timely appeals the final decision of the Department of Natural Resources (DNR) procurement officer denying its bid protest concerning the award of a contract to rehabilitate a chimney at a house known as "the former Baxter property", in the Monocacy Natural Resources Management Area, Dickerson, Maryland.

Findings of Fact

1. DNR initially solicited bids for the work in late December, 1988. Three bids were received and opened on January 31, 1989, but shortly thereafter DNR decided to cancel the solicitation as the specifications were deemed deficient.

2. The specifications were amended, and a new solicitation was issued. Notice of the new solicitation was posted on DNR's "bid board", advertised in the local newspaper, and mailed by DNR on August 28, 1989 to the previous list of potential bidders, including Appellant.

3. Appellant received its copy of the solicitation on September 5, 1989.

4. The recommended pre-bid site visit was set for September 6, 1989 at 9:00 A.M., and the bid opening for September 15, 1989 at 1:00 P.M.

5. The sole bidder on this solicitation was Magic Mountain Chimney Sweeps (Magic Mountain) of Thurmont, Maryland. DNR determined Magic Mountain to be a responsive and responsible bidder and prepared to make the contract award.

6. On September 18, 1989, Appellant filed a protest with the DNR procurement officer asserting the following grounds:

(a) the August 25 solicitation mailed to Appellant had been sent to the wrong address, thus causing a delay in reaching Appellant;

(b) the unwillingness or inability to accommodate Appellant for an alternate site visit, other than early on the morning bids were due (September 15, 1989), unfairly disadvantaged Appellant; and

(c) the amendment to the specifications appeared to favor certain bidders other than Appellant.

7. On October 3, 1989, the DNR procurement officer responded to the bid protest on its merits and denied it.

8. Appellant responded to the Agency Report and a Motion to Dismiss filed by DNR. Neither party requested a hearing.

Decision

Although the DNR procurement officer addressed the merits of Appellant's bid protest, the Board finds that the protest, filed three days after bid opening was clearly untimely.¹ A protest based upon alleged improprieties in a solicitation that are apparent before bid opening are required to be filed before bid opening. COMAR 21.10.02.03A. All three grounds of Appellant's protest were apparent before bid opening. Nevertheless, Appellant did not file its bid opening with the DNR procurement officer until three days after bid opening. It thus waived its right to have its protest considered. See M/A-COM, Inc., MSBCA 1258, 2 MSBCA 112 (1985) and cases cited therein at p.4. Accordingly, the appeal is denied.

¹ While we will not address the merits of the protest, the record does not reflect that the procurement violated the General Procurement Law for the reasons asserted by Appellant in its protest or otherwise.