



part stock computer paper. (Agency Report, P-1).

2. The RFQ specified "all items are to be produced on at least 50% recovered paper material as defined by EPA guidelines." (Agency Report, P-1).

3. DGS received bids from five (5) vendors on June 4, 1990 and several award letters. Appellant received notice of the award letters on June 29, 1990 and filed a timely protest dated July 5, 1990.

4. Appellant's protest alleged other bidders who offered Georgia-Pacific Re-Run Bond failed to meet the required specifications for bond paper. The protest cited several alleged industry definitions of bond paper and asserted that under such definitions bond paper should be ground-wood free and that the Georgia-Pacific Re-Run Bond is not. (Agency Report, P 1&2).

5. Mr. William E. Culen, Procurement Officer, in his protest denial letter of August 6, 1990 (Agency Report, Exhibit 3) responded that the term bond paper does not necessarily preclude groundwood content; that the generally accepted definition of bond paper....does not define chemical or physical....makeup. Mr. Culen further responded that the overall specification, requiring that all the products in the RFQ be produced from 50% recovered paper, precluded most if not all groundwood-free products. In addition, Mr. Culen denied that Georgia-Pacific ever acknowledged that its Re-Run Bond contained a minimum of 25-30% groundwood.

6. From the denial of its protest Appellant filed an appeal with this Board dated August 16, 1990.

### Decision

Appellant and interested parties have agreed to waive a hearing before the Appeals Board and submit on the written record.

The Appellant in its appeal to the Board raised for the first time the issue of subcontracting. This issue is not raised in Appellant's protest letter nor the Procurement Officer's final decision. Under the circumstances, the Board agrees with DGS that the Board does not have jurisdiction to decide this issue which was not timely protested. COMAR 21.10.02.02 and 03A. The Appellant, in failing to raise this issue until filing its appeal to the Board, has waived its right to protest and to have the Board consider this additional issue. The Trane Company, MSBCA 1264, 2 MSBCA 118 (1985).

Turning to the merits of Appellant's appeal we agree the Procurement Officer acted reasonably in accepting Georegia-Pacific Re-Run Bond as meeting the RFQ's specifications. Appellant bears the burden of demonstrating that the technical judgment of DGS is clearly erroneous. General Electric Company, MSBCA 136, 2 MICPEL 143 (1987). The Appellant has not met that burden and the Appeals Board will not overturn the technical judgment of DGS to the effect that Georgia-Pacific Re-Run Bond is responsive to the RFQ's specifications.

Accordingly, we deny the appeal.

