

**United States Small Business Administration  
Office of Hearings and Appeals**

IN THE MATTER OF:

NEIE Medical Waste Services, LLC

Appellant

Solicitation No. VA-244-080IB-0335

SBA No. VET-141

Decided: October 16, 2008

**REMAND ORDER**

This appeal arises from the decision of the Small Business Administration (SBA) Director of Government Contracting (D/GC) to dismiss an eligibility protest submitted by NEIE Medical Waste Services, LLC (Appellant).

On September 19, 2008, Appellant protested the eligibility of Advant-Edge Solutions (Advant) as a Service-Disabled Veteran-Owned Small Business Concern (SDVO SBC) for Department of Veterans Affairs (VA) Solicitation Number VA-224-08-IB-0335. The solicitation was issued on August 25, 2008, as a sealed bid procurement, 100% set-aside for SDVO SBCs. The D/GC dismissed Appellant's protest as untimely because the protest was submitted eighteen business days after the bid opening and 13 C.F.R. § 125.25(d)(2) requires an interested party to submit a protest within five business days after bid opening in sealed bid acquisitions.

On October 3, 2008, Appellant appealed the D/GC's decision to the Office of Hearings and Appeals. Appellant asserts, although the solicitation was presented as a sealed bid acquisition, the Contracting Officer (CO) did not follow sealed bidding procedures. Appellant states the award was not publicized until it was listed on FedBizOpps.gov on September 13, 2008, two weeks after bid opening. Appellant asserts the CO never notified Appellant of award to Advant and Appellant only became aware of award to Advant because Appellant saw the award on FedBizOpps.gov on September 18, 2008. To support its appeal, Appellant includes an August 25, 2008 email to Appellant from the CO; the CO indicated that it may take a couple days to determine the low bidder.

On October 9, 2008, the SBA responded to Appellant's appeal. SBA argues 13 C.F.R. § 125.25(d)(2) explicitly states in sealed bid procurements protests of a firm's SDVO SBC status must be filed by the close of business on the fifth business day after bid opening. SBA states the VA solicitation was a sealed bid acquisition, bid opening occurred on August 25, 2008, and Appellant submitted its bid eighteen business days after the bid opening. Accordingly, SBA asserts Appellant's protest was untimely.

The text of 13 C.F.R. § 125.25(d)(2) is clear; an interested party must submit its protest within five business days after bid opening in sealed bid procurements. Moreover, the parties do not dispute that the VA solicitation was issued as a sealed bid procurement. Appellant, however, argues that sealed bid procedures were not followed and, accordingly, the five business day deadline prescribed by 13 C.F.R. § 125.25(d)(2) should not apply. The record in this matter does not provide sufficient information to determine if the CO followed the procedures required by sealed bid acquisitions.

For the above reasons, I VACATE the D/GC's dismissal of Appellant's eligibility protest and REMAND the case to the D/GC. The D/GC is ORDERED to determine if sealed bid procedures were followed for VA Solicitation Number VA-224-08-IB-0335. Specifically, the D/GC should review if the CO adhered to the requirements in FAR 14.402-1 Unclassified Bids and FAR 14.403 Recording of Bids. If the procurement did not follow sealed bid procedures, even though the procurement was issued as a sealed bid acquisition, the deadline for submitting a protest in 13 C.F.R. § 125.25(d)(2) would be inapplicable since it would have been impossible for Appellant to meaningfully take advantage of its provisions.

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THOMAS B. PENDER  
Administrative Judge