

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

PEAVY & SON CONSTRUCTION CO., INC.

Final Order No. DMS – 16-0038

Petitioner,  
v.

DMS Case No.: 16-33792  
DOAH CASE NO.: 16-2054BID

STATE OF FLORIDA, DEPARTMENT  
OF MANAGEMENT SERVICES,

Respondent.

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**FINAL ORDER**

On May 2, 2016, Judge Linzie F. Bogan, an administrative law judge (“ALJ”), with the Division of Administrative Hearings entered an *Order Closing File and Relinquishing Jurisdiction* (“Order”) back to the Department of Management Services (“Department”), a copy of which is attached as **Exhibit A**. The Order relinquished jurisdiction of the proceeding back to the Department with the recommendation that the Petitioner’s protest be dismissed due to untimeliness.

On February 24, 2016, the Department posted its *Advertisement to Bid Construction* (Advertisement), and related bid documents, for a project in Tallahassee and stated in capital letters that it was requesting proposals from qualified general contractors. The Petitioner, Peavy & Son Construction, Co., Inc., is not a qualified general contractor. Any challenge to the specification provisions in the Advertisement was due on or by the close of business on Monday, February 29, 2016. The Petitioner filed its Notice of Intent to Protest on March 22, 2016, and its Formal Written Protest on April 1, 2016. The Department referred the Petitioner’s protest to the Division of Administrative Hearings.

Pursuant to Section 120.57(3)(b), Florida Statutes, a protest to the terms, conditions, and specifications contained in a solicitation, including the provisions governing the methods for ranking bids, proposals or replies, awarding contracts, reserving rights of further negotiation, or modifying or amending any contract must be filed within 72 hours after the posting of the solicitation.

The Department subsequently filed a Motion to Dismiss the Petitioner's Formal Written Protest stating that the protest challenges the terms, conditions, and specifications contained in the Advertisement and bid documents for the project and is thus an untimely specifications challenge.

The purpose of a solicitation or specifications challenge is to allow an agency to correct or clarify plans and specifications prior to accepting bids or replies to save expense and to assure fair competition. Optiplan, Inc. v. Sch. Bd. of Broward County, 710 So. 2d 569, 572 (Fla. 4th DCA 1998); Capeci Bros., Inc. v. Dept. of Transportation, 499 So. 2d 855 (Fla. 1st DCA 1986).

Even where a vendor presents its protest as challenging an intended award, if the substance of the challenge is to a solicitation's terms, conditions, or specifications, the protest must be brought within 72 hours of the solicitation's posting or the right to protest is waived. *See, e.g.,* Consultech of Jacksonville, Inc. v. Dep't of Health, 876 So. 2d 731, 734 (Fla. 1st DCA 2004) (holding vendor waived right to challenge agency's weighting of cost proposals as vendor failed to timely file specifications protest); Optiplan, Inc. v. Sch. Bd. of Broward County, 710 So. 2d 569, 572 (Fla. 4th DCA 1998) (holding vendor waived right to challenge evaluation criteria as being biased and unreliable as vendor failed to timely file specifications protest).

As stated in the ALJ's Order, the Petitioner's Protest is "untimely because it failed to comply with the requirements of section 120.57(3)(b). Here, the Petitioner has waived its right to challenge the terms, conditions, and specifications set forth in the Advertisement by its failure to timely challenge the same pursuant to Section 120.57(3)(b), Florida Statutes.

Having considered the ALJ's Order, and the applicable law, it is concluded that the recommendation of the ALJ is correct.

**ORDERED AND ADJUDGED:**

A. The *Order Closing File and Relinquishing Jurisdiction* is adopted in its entirety and is incorporated herein by reference.

B. The Formal Written Protest filed by the Petitioner is dismissed with prejudice for untimeliness.

**DONE and ORDERED** this 12<sup>th</sup> day of May 2016.



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**CHAD POPPELE**, Agency Secretary  
Department of Management Services  
4050 Esplanade Way  
Tallahassee, FL 32399-0950

**NOTICE OF RIGHT TO APPEAL**

Unless expressly waived by a party such as in a stipulation or in other similar forms of settlement, any party substantially affected by this final order may seek judicial review by filing an original notice of appeal with the agency clerk of the department of management services, and a copy, accompanied by filing fees prescribed by law, with the clerk of the appropriate district court of appeal. The notice of appeal must be filed within thirty (30) days of rendition of this order, in accordance with Rule 9.110, Florida Rules of Appellate Procedure, and Section 120.68, Florida Statutes.

Certificate of Clerk:

Filed in the Office of the Agency  
Clerk of the Department of Management  
Services on this 13<sup>th</sup> day of May, 2016.

  
Celyna Southall, Deputy Agency Clerk

Copies Furnished To:

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