

DISTRICT OF COLUMBIA CONTRACT APPEALS BOARD

PROTEST OF:

CNA CORPORATION)	
)	CAB No. P-0794
Under Solicitation No. DCKA-2009-B-0022)	

For the Protester CNA Corporation: John C. Cheeks, CEO, For the District of Columbia: Alton Woods, Esq., Assistant Attorney-General, DC.

Opinion by Administrative Judge Warren J. Nash, with Chief Administrative Judge Jonathan D. Zischkau, concurring.

OPINION

Filing ID 25533320

Protester CNA Corporation challenges the contracting officer's determination that CNA's bid was nonresponsive for failure to submit a bid bond with good and sufficient sureties as required by the bond requirements of the solicitation. The District filed a motion to dismiss the protest as untimely, alleging that CNA filed its protest more than 10 days after it knew, or should have known, of the basis for its protest. On the merits, the District asserts that the contracting officer properly rejected CNA's bid as nonresponsive since CNA submitted with its bid an unacceptable bid guaranty. We agree with the District that CNA's protest was untimely. Accordingly, we dismiss the protest.

BACKGROUND

The District's Office of Contracting and Procurement, on behalf of the District's Department of Transportation, issued Solicitation No. DCKA-2009-B-0022 in September 2008 for the rehabilitation of three bridges over the C&O Canal in Georgetown. (AR Ex. 1). Seven bids were received and opened on October 22, 2008 (AR at 3; AR Ex. 3). CNA was the apparent low bidder. CNA's bid included as bid guaranty a non-certified company check drawn on Sun Trust Bank in the name of "Cheeks of North, Inc." CNA submitted no other evidence of any bid guaranty in its bid package. Section 102, Article 12, Bond Requirements, Bid Guaranty of the Standards and Specifications for Highways and Structures (2005), incorporated by reference into the IFB (page v of the IFB) provides as follows:

On all bids of \$100,000.00 or more, security is required to insure the execution of the contract. No bid will be considered unless it is so guaranteed. Each bidder must furnish with his bid either a bid bond (Form 2640-5) with good and sufficient sureties, a certified check payable to the Treasurer of the District of Columbia (uncertified check will not be accepted), negotiable United States bond (at par value), or an irrevocable letter of credit in an amount not less than five percent (5) of the amount of his bid

(AR Ex. 1).

By Determination and Finding dated November 26, 2008, the Chief Procurement Officer approved an award to other than the low bidder. The D&F recommended award to the second low bidder. (AR Ex. 4). On December 2, 2008, the contracting officer notified CNA that the CNA bid had been rejected as non-responsive. (AR Ex. 5). On December 31, 2008, CNA filed its protest. The District filed a motion to dismiss the protest as untimely on January 22, 2009. CNA has not responded to the motion.

DISCUSSION

We exercise jurisdiction pursuant to D.C. Code § 2-309.03(a)(1).

We begin by addressing the issue of whether CNA timely filed its protest. The District asserts that CNA filed its protest more than 10 business days after December 2, 2008, the date the contracting officer notified CNA that its bid had been rejected as non-responsive. (AR Ex. 5). The District asserts that because CNA knew that the District had rejected CNA's bid on December 2, 2008 (or December 5, 2008, after allowing three days for mail delivery), CNA should have filed its protest within 10 business days of that date, that is, by December 19, 2008.

D.C. Code § 2-309.08 (b)(2) requires the protester to file a protest not later than 10 business days after the basis of the protest is known or should have been known, whichever is earlier. CNA does not challenge the District's assertion that it informed CNA of the bid rejection on December 2, 2008. Because CNA failed to submit its protest within 10 business days after December 2, 2008, its protest is untimely. Accordingly, we dismiss the protest.

SO ORDERED.

DATED: June 8, 2009

/s/ Warren J. Nash
WARREN J. NASH
Administrative Judge

CONCURRING:

/s/ Jonathan D. Zischkau
JONATHAN D. ZISCHKAU
Chief Administrative Judge