

DISTRICT OF COLUMBIA CONTRACT APPEALS BOARD

PROTEST OF:

OUR FUTURE, INC.,)	
)	CAB No. P-0860
Under IFB Solicitation CFSA -09-I-0004)	

For the Protester: Sharon D. Holley-Ward, President, Our Future, Inc. For the Government: Janice N. Skipper, Assistant Attorney General, D.C.

Opinion by Administrative Judge Warren J. Nash with Chief Administrative Judge Marc D. Loud, Sr., concurring.

OPINION

Filing ID 35481274

On July 13, 2010, Our Future, Inc., (“Our Future”) protested the District’s Child and Family Services Agency’s (“CFSA”) determination that Our Future was not a responsible bidder for the above solicitation. The protester alleged that CFSA did not follow the same rules and procedures to determine whether companies competing for the contract had materials needed and qualified staff to conduct the home-based and community based tutoring services set forth in the solicitation. Our Future alleges that CFSA did not revisit Our Future’s offices after the initial visit, and did not give Our Future a chance to re-schedule the appointment. The District responded in its Motion to Dismiss, or, in the alternative, Agency Report, that Our Future failed to file its protest within 10 business days after it knew or should have known of the grounds of its protest, as required by D.C. Code § 2-309.08, and, in any event, that the District had properly determined that Our Future was not a responsible bidder, and that the District had not acted in bad faith in finding Our Future nonresponsive.

BACKGROUND

On December 9, 2009, CFSA issued IFB CFSA-09-I-0004 for an indefinite delivery indefinite quantity (“IDIQ”) contract to provide home based and community based supplemental educational services, tutoring, and remediation services in individual sessions or group settings to wards (students) of the District of Columbia in the care, custody and control of CFSA. The IFB contemplated award of an IDIQ contract with fixed unit hourly prices. (AR Ex. 2). CFSA received 20 bids by December 29, 2009. (AR Ex. 1 and 3).

CFSA made several attempts to conduct site visits with Our Future. (AR Ex. 3) Once the District made contact with Our Future, District representatives went to Our Future’s facility at 1629 K Street, NE. The receptionists at that location stated that there was no one available from Our Future. The CFSA representative telephoned Our Future, but representatives from Our Future did not appear to conduct a site visit. Additionally, CFSA could not review staff records to verify educational requirements of Our Futures staff, as required by Section C.9 of the solicitation. The

inspection team could not recommend continuing a business relationship with Our Future. (AR Ex. 4).

CFSA determined that Our Future was not a responsible bidder. (AR Ex. 3). CFSA also determined that four other bidders were not responsible. By letter dated June 17, 2010, CFSA notified Our Future that CFSA would not award a contract to Our Future. (AR Ex. 5). Our Future filed this protest on July 13, 2010.

DISCUSSION

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

Our Future asserts that the District improperly determined that the protester was not a responsible bidder, and that the District did not give Our Future a second opportunity for a site visit. The District responds that it could not determine that Our Future was responsible, and that without an affirmative determination of responsibility, the District could not award a contract to Our Future. The District also asserts that Our Future filed its protest after the protest period set forth in the statute.

We begin by addressing the issue of whether Our Future timely filed its protest. The District asserts that Our Future filed its protest more than 10 business days after June 17, 2010, the date the contracting officer notified Our Future by letter that its bid had been rejected as non-responsible. (AR Ex. 5). The District asserts that because Our Future knew that the District had rejected Our Future's bid on June 17, 2010, Our Future should have filed its protest within 10 business days of that date, that is, by July 2, 2010. *See Sigal Construction Corp.*, CAB No. P-0690, *et al.*, Nov. 24, 2004, 52 D.C. Reg. 4243, 4253-54; *Professional Recruiters, Inc.*, CAB No. P-0700, Dec. 21, 2004, 52 D.C. Reg. 4258, 4259-60.

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. Our Future does not challenge the District's assertion that it informed Our Future of the bid rejection on June 17, 2010. Our Future asserts that it did not receive official notification of the details of the bid rejection until June 29, 2010, and that it filed its protest within ten days of that date. In making that assertion, Our Future asks the Board to ignore the letter dated June 17, 2010, signed by Tara Sigamoni, contracting officer, who personally informed Our Future that its bid had been rejected as nonresponsible. (AR. Ex. 5) Because Our Future failed to submit its protest within 10 business days after June 17, 2010, its protest is untimely. Accordingly, we dismiss the protest. Additionally, we see no need to address the responsibility issues raised by the District.

CONCLUSION

For the reasons discussed above, we dismiss Our Future's protest.

SO ORDERED.

DATED: January 20, 2011

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

CONCUR: /s/ Marc D. Loud, Sr.
MARC D. LOUD, SR.
Chief Administrative Judge

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