

## DISTRICT OF COLUMBIA CONTRACT APPEALS BOARD

PROTEST OF:

COLUMBIA ENTERPRISES	)	
	)	CAB No. P-0840
Solicitation No: DCAM-2010-B-0076	)	

For the Protester, Columbia Enterprises: Mr. Virgil J. Hood, Jr., *pro se*. For the District of Columbia Government: Alton E. Woods, Esq., Assistant Attorney General, Office of the Attorney General.

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

### OPINION

*Filing ID 30728346*

On February 2, 2010, Columbia Enterprises protested the captioned solicitation, contending that original solicitation erroneously called for bid opening at 2 a.m. on Monday, February 1, 2010, and asserting that any bids received after close of business on Friday, January 29, 2010, should be rejected as untimely. However, the contracting officer in fact had issued Amendment 3 to the solicitation on Friday, January 29, 2010, at about 9 a.m., correcting the bid opening from 2 a.m. to 2 p.m. on February 1, 2010. Columbia Enterprises did not submit a bid. As Columbia Enterprises' protest is based upon the mistaken assumption that the bid opening date was never amended, when in fact it was, we deny the protest.

### BACKGROUND

The District of Columbia's Department of Real Estate Services ("DRES"), Contracting and Procurement Division ("CPD"), issued IFB No. DCAM-2010-B-0076 as a CBE set-aside on December 31, 2009, for a contractor to provide all labor, materials, equipment, and supervision for the build-out of office space for the District's Office of Administrative Hearings. (Agency Report ("AR") Ex. 1).

On January 15, 2010, a pre-bid conference was held that was attended by Columbia Enterprises. (AR Ex. 3). During the pre-bid conference potential bidders were informed that any upcoming amendments to the solicitation could be acquired from the CPD website. (AR Ex. 3). The contracting officer also informed the bidders that all questions should be submitted to the contracting officer no later than January 22, 2010. (AR Ex. 3). On January 20, 2010, Amendment No. 1 was issued by CPD providing for a second site visit on January 22, 2010, at 3:30 p.m., and extending the date for submission of questions to January 25, 2010. (AR Ex. 3).

On January 26, 2010, Columbia Enterprises submitted a list of questions by email to the contracting officer. (AR Ex. 4). In the email, Columbia Enterprises explained that it "happened upon" Amendment No. 1 on the CPD website. (AR Ex. 4). The contracting officer responded to the email and informed Columbia Enterprises that section L.22.3 of the solicitation informed all

bidders that amendments to the solicitation are available on the CPD website. (AR Ex. 4). Section L.22.3 further advised that it is the responsibility of the bidders to check the website periodically for updates to the solicitation. (AR Ex. 1).

On January 27, 2010, Amendment No. 2 was issued and also posted on the CPD website. (AR Ex. 2). Due to the short turnaround time for submission of bids on February 1, 2010, the contracting officer emailed a copy of Amendment No. 2 to all bidders that had attended the pre-bid conference. (Exs. 3, 6). The email from the contracting officer dated January 27, 2010, at 3:48 p.m., identified Virgil Hood, Jr., Project Manager from Columbia Enterprises, as one of the recipients. (AR Exs. 3, 6).

On January 29, 2010, the contracting officer discovered an error in Block 10 of Standard Form A of the solicitation. Block 10 erroneously identified the bid submission time as 2:00 a.m. on February 1, 2010. (AR Exs.1-2). The contracting officer issued Amendment No. 3 on January 29, 2010, that corrected the time for submission of bids from 2:00 a.m. to 2:00 p.m. on February 1, 2010. (AR Exs. 2, 3). Again, due to the short turnaround time for submission of bids, the contracting officer posted the amendment on the CPD website and emailed a copy of Amendment No. 3 to all bidders that had attended the pre-bid conference, including Virgil Hood from Columbia Enterprises. (AR Exs. 3, 7). The email is dated January 29, 2010, at 8:58 a.m. (AR Ex. 7).

On February 1, 2010, nine bidders responded to the solicitation. (AR Ex. 3). Columbia Enterprises did not submit a bid in response to the solicitation. (AR Exs. 3, 8). On February 2, 2010, Columbia Enterprises filed its protest alleging:

Columbia Enterprises formally protest the timely submission of bids for the above referenced project [DCAM-2010-B-0076]. Page two, item #10 of the bid document invitation states that sealed offers will be received at the bid counter for the DC Department of Real Estate Services until 2:00 AM on February 1, 2010. There were three amendments issued for this solicitation and none changed the deadline for submission of bids. If bids were not received at the bid counter by Close of Business on Friday January 29, 2010 then they should be considered late and nonresponsive. All bids should be rejected and a new bid date set.

## **DISCUSSION**

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

Columbia asserts that bids were due by close of business January 29, 2010, and any bids received after that time are late and nonresponsive. Although Columbia seems to be aware of Amendment 3, it contends (erroneously) that that the amendment did not change the bid opening time. It is clear from the record that Amendment 3 corrected bid opening from 2 a.m. to 2 p.m. on February 1, 2010. Columbia did not respond to the agency report and thus we deem it to concede the point. Accordingly, all bids received on or before 2 p.m., February 1, 2010, were timely.

For the reasons discussed above, we deny Columbia Enterprises' protest.

**SO ORDERED.**

DATED: April 22, 2010

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

CONCURRING:

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