

DISTRICT OF COLUMBIA CONTRACT APPEALS BOARD

PROTEST OF:

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| CHEEKS OF NORTH AMERICA, INC. |) | |
| |) | CAB No. P-0786 |
| Under Solicitation No. 080020 |) | |

For the Protester: John C. Cheeks, *pro se*. For the District of Columbia Water and Sewer Authority: John D. Bosley, Esq., Principal Counsel.

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

OPINION DISMISSING PROTEST

Filing ID 22338111

Cheeks of North America, Inc. ("CNA") protests the determination by the District of Columbia Water and Sewer Authority ("WASA") that its bid was nonresponsive based on a bid bond defect. WASA filed a motion to dismiss the protest on the grounds that the Board lacks jurisdiction to consider protests of WASA contract awards. Because WASA is exempt from our protest jurisdiction, we agree that the protest must be dismissed for lack of jurisdiction.

BACKGROUND

WASA issued Solicitation No. 080020 for replacement of small diameter priority water mains. At bid opening on August 20, 2008, CNA contends that it was the low bidder. However, by letter of September 9, 2008, the WASA contracting officer advised CNA that its bid was determined nonresponsive due to a bid bond defect. On September 30, 2008, CNA filed a protest of the award on the grounds of: "bid rigging, discrimination, failure to give adequate notice and time to cure compliance issues for invitation award." (Protest, at 1). On October 14, 2008, WASA moved to dismiss the protest on the ground that our Board lacks jurisdiction to consider the protest.

DISCUSSION

Section 2-309.03(b) of the D.C. Code provides that "[j]urisdiction of the Board shall be consistent with the coverage of this chapter [the Procurement Practices Act] as defined in §§ 2-301.04 and 2-303.20" D.C. Code § 2-301.04(a) ("Application of chapter") provides that:

Except as provided in § 2-303.20, this chapter shall apply to all departments, agencies, instrumentalities, and employees of the District government, including agencies which are subordinate to the Mayor, independent agencies, boards, and commissions"

D.C. Code § 2-303.20(j) provides a specific exemption for WASA:

Nothing in this chapter shall affect the District of Columbia Water and Sewer Authority's powers to establish and operate its procurement system and to execute contracts pursuant to Chapter 22 of Title 34.

Consistent with this provision, WASA published its procurement regulations which are found at 21 DCMR Chapter 53. Its regulation relating to protests of WASA solicitations and awards is set forth at 21 DCMR § 5330, which provides in part:

5330.3 A person protesting an award decision is required to file the protest with the Contracting Officer within five (5) working days of when the protester knew or should have known of the facts and circumstances upon which the protest is based. . . .

Because WASA is exempt from the Procurement Practices Act, we have no jurisdiction over protests of WASA awards. *Dixon's Termite and Pest Management*, CAB No. P-0706, May 4, 2005, 54 D.C. Reg. 1917, 1918; *Dixon's Termite and Pest Control, Inc.*, CAB No. P-0659, Aug. 7, 2002, 50 D.C. Reg. 7453, 7454. Accordingly, we dismiss CNA's protest for lack of jurisdiction.

SO ORDERED.

DATE: November 5, 2008

/s/ Jonathan D. Zischkau

Jonathan D. Zischkau

Chief Administrative Judge

CONCURRING:

/s/ Warren J. Nash

Warren J. Nash

Administrative Judge