

DISTRICT OF COLUMBIA CONTRACT APPEALS BOARD

PROTEST OF:

EXCEL TREE EXPERTS CO., INC.)	
)	CAB No. P-0787
Under DCKA-2008-B-0050)	

For Excel Tree Experts Co., Inc.: Donald J. Walsh, Esq., Offit Kurman, Attorneys at Law. For the District of Columbia Government: Howard Schwartz, Esq., Alton E. Woods, Esq., Office of the Attorney General. For the Intervenor, C&D Tree Services, Inc.: Richard L. Moorhouse, Esq., and Sean M. Connolly, Esq.

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

OPINION

Filing ID 23355037

By letter dated October 9, 2008, and received by the Board on the same date, protester Excel Tree Experts Co., Inc., (“Excel”) protests the rejection of its bid for the above procurement by the Office of Contracts and Procurement (“OCP”). Excel also protests OCP’s failure to issue a contract in accordance with the solicitation. The District filed a motion to dismiss on October 28, 2008, asserting that the protest is untimely because the protester should have filed the protest no more than 10 business days after August 25, 2008, the date its bid was rejected as late. We dismiss the protest as untimely.

BACKGROUND

The District’s Department of Transportation (“DDOT”) Urban Forestry Administration (“UFA”) issued the Invitation for Bids (“IFB”) for pruning services. On June 25, 2008, the contracting officer, by a determination and findings, shortened the IFB’s advertising period from 30 days to 21 days. The IFB, issued to thirty-nine companies, was an indefinite delivery indefinite quantity (“IDIQ”) firm fixed unit price procurement. Amendment number 6 to the IFB, dated August 12, 2008, extended the bid opening date to August 14, 2008. Amendment number 7 revised the price schedule and required bidders to submit two sets of unit prices, one set based on a minimum quantity and one set based on a maximum quantity. Amendment number 8 extended the bid opening to August 18, 2008.

The District asserts that the fax cover sheet for amendment number 8 that was sent to all bidders on August 14, 2008, set forth an erroneous bid opening date of August 25, 2008. Later On August 14, 2008, the District sent a corrected fax cover sheet to all bidders, except Excel, whose courier happened to be in OCP’s bid room at the time. The District gave a copy of the corrected cover sheet to the courier. The District further

asserts that later on that day, Ms. Bernetha Armwood, an OCP employee, sent by fax a second copy of the fax cover sheet to all bidders, including Excel.

On August 25, 2008, Excel delivered its bid to the bid room. Ms. Ingram, the bid room supervisor, returned the bid to Excel's deliveryman and told him that bids were due on August 14, 2008. Ms. Ingram also consulted with Jerry Carter, DDOT Contracting Officer. According to the District's motion, Ms. Ingram rejected the bid at Mr. Carter's direction. Excel filed this protest on October 9, 2008.

DISCUSSION

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

In the motion to dismiss, the District asserts that Excel filed its protest more than 10 business days after August 18, 2008, the bid opening date, and August 25, 2008, the date that DDOT rejected Excel's bid. The District asserts that Excel should have known the correct bid opening date. The District also asserts that Excel should have filed this protest within 10 business days of August 25, 2008, the date that the District rejected Excel's bid.

Excel's protest is untimely. D.C. Code § 2-309.08 (b)(1) requires a protester to file, prior to bid opening or the time set for receipt of initial proposals, its protest based upon alleged improprieties in a solicitation. D.C. Code § 2-309.08 (b)(2) allows the protester to file a protest, in cases other than those covered in paragraph (b)(1), not later than 10 business days after the basis of the protest is known or should have been known, whichever is earlier. When Excel submitted its bid on August 25, 2008, the District rejected the bid because it was late. Even if we ignore all of the assertions about the incorrect fax cover sheets and the possible confusion over the bid opening date of August 14, 2008, we cannot ignore the fact that the District rejected Excel's bid on August 25, 2008. Therefore, Excel was required to file this protest within 10 business days of August 25, 2008. Accordingly, we agree with the District that the protest is untimely.

CONCLUSION

For the reasons discussed above, we dismiss the protest.

DATED: January 16, 2009

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

CONCURRING:

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