

## DISTRICT OF COLUMBIA CONTRACT APPEALS BOARD

PROTEST OF:

NETSYSTEMS CORPORATION	)	
	)	CAB No. P-0841
Solicitation No: DCKA-2010-B-0120	)	

For the Protester, NetSystems Corporation: Mr. Craig Xavier Jackson, Jr., *pro se*. For the District of Columbia Government: Alton E. Woods, Esq., Assistant Attorney General.

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

### OPINION

*Filing ID 0821477*

NetSystems Corporation challenges the terms of a solicitation, claiming that the provisions contradict requirements found in the District of Columbia Code. The District moves to dismiss the protest as untimely filed because NetSystems filed its protest ten days after bid opening. Pursuant to D.C. Code § 2-309.08(b)(1), protests based upon alleged improprieties in a solicitation which are apparent prior to bid opening must be filed prior to bid opening. Accordingly, we dismiss the protest.

### BACKGROUND

The District of Columbia's Department of Transportation's ("DDOT") Contracting and Procurement Division issued IFB No. DCKA-2010-B-0120 on January 7, 2010, for a utility marking contractor to investigate, locate, and mark DDOT utilities at the request of homeowners, excavators, and developers. (Motion to Dismiss, Ex. 1). Bid opening was on January 29, 2010. (*Id.*). Four bidders responded to the IFB with Insight, LLC, determined the apparent low bidder with a bid of \$5,880,075. (Motion to Dismiss, Ex. 4). NetSystems, the incumbent contractor, was the second low bidder with a bid of \$6,217,417.50. (Motion to Dismiss, Exs. 3, 4). Solicitation § L.11 Bid Protests states in part:

A protest based on alleged improprieties in a solicitation which are apparent prior to bid opening or the time set for receipt of initial bids shall be filed with the Board prior to bid opening or the time set for receipt of initial bids. . . .

(Motion to Dismiss, Ex. 1). NetSystems filed the instant protest with the Board on February 9, 2010. In its protest, NetSystems asserts that nine sections of the IFB respecting locating underground utilities are "gravely flawed ... contain[ing] several irregularities that are not applicable to Chapter 27 Underground Facilities Protection which is the applicable law", and that DDOT should modify the clauses and re-bid the contract. On March 4, 2010, the District filed a motion to dismiss, arguing that the protest is untimely. NetSystems responded on March 11,

2010, stating, in part, that it protested the solicitation provisions within ten days after bid opening as it did not read the solicitation provisions until after bid opening.

### DISCUSSION

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

NetSystems' protest relates specifically to the terms of the solicitation, and should have been filed prior to bid opening. D.C. Code § 2-309.08(b)(1) states:

A protest based upon alleged improprieties in a solicitation which are apparent prior to bid opening or the time set for receipt of initial proposals shall be filed prior to bid opening or the time set for receipt of initial proposals. . . .

Board Rule 302.2(a) restates D.C. Code § 2-309.08(b)(1) and emphasizes that protests challenging the terms of a solicitation must be filed "prior to bid opening or the time set for receipt of initial of initial proposals." NetSystems did not protest until 10 days after bid opening and thus its protest is untimely. NetSystems' allegation in its response to the District's motion to dismiss that the District's motion was untimely appears to be correct, but an untimely motion does not relieve NetSystems of the consequences for its untimely protest filing.

### CONCLUSION

For the reasons stated above, we dismiss NetSystems' protest as untimely.

DATED: April 28, 2010

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

CONCURRING:

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