

DISTRICT OF COLUMBIA CONTRACT APPEALS BOARD

PROTEST OF:

CNA CORPORATION)	
)	CAB No. P-0810
Under Solicitation No. DCKA-2009-B-0025)	

For the Protester CNA Corporation: John C. Cheeks, CEO, *pro se*. For the District of Columbia: Alton Woods, Esq., Assistant Attorney General.

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

OPINION

Filing ID 27455802

Protester CNA Corporation challenges the contracting officer's determination that CNA's bid was nonresponsive for failure to submit a bid bond with good and sufficient sureties as required by the bond requirements of the solicitation. The District filed a motion to dismiss the protest as untimely, alleging that CNA filed its protest more than 10 days after it knew, or should have known, of the basis for its protest. On the merits, the District asserts that the contracting officer properly rejected CNA's bid as nonresponsive since CNA submitted with its bid an unacceptable bid guaranty. We agree with the District that CNA's protest was untimely filed. Accordingly, we dismiss the protest.

BACKGROUND

The District's Office of Contracting and Procurement, on behalf of the District's Department of Transportation, issued Solicitation No. DCKA-2009-B-0025 in January 2009, for the pavement restoration of local streets in the District of Columbia. (Agency Report ("AR") Ex. 1). Four bids were received and opened on the extended bid opening date, March 18, 2009 (AR at 3; AR Ex. 3). CNA was the apparent low bidder. CNA's bid included as bid guaranty five uncertified company checks totaling \$2,712,640.25. (AR Ex. 2) CNA submitted no other evidence of any bid guaranty in its bid package. Section I.8 of the IFB ("Bid Guaranty"), taken from Section 102, Article 12, Bond Requirements, Bid Guaranty of the Standards and Specifications for Highways and Structures (2005), provides as follows:

On all bids of \$100,000.00 or more, security is required to insure the execution of the contract. No bid will be considered unless it is so guaranteed. Each bidder must furnish with his bid either a bid bond (Form 2640-5) with good and sufficient sureties, a certified check payable to the Treasurer of the District of Columbia (uncertified check will not be accepted), negotiable United States bond (at par value), or an irrevocable letter of credit in an amount not less than five percent (5) of the amount of his bid

(AR Ex. 1).

By Determination and Finding (“D&F”) dated March 24, 2009, the contracting officer rejected CNA’s bid as nonresponsive. On April 13, 2009, the Chief Procurement Officer approved an award to other than the low bidder. (AR Ex. 5) The D&F recommended award to the second low bidder. (AR Ex. 5). On May 18, 2009, at a meeting requested by CNA, the contracting officer informed Mr. John Cheeks of CNA that the CNA bid had been rejected as nonresponsive for failure to submit an acceptable bid guaranty. (AR Ex. 8). CNA does not dispute receiving oral notification. On May 27, 2009, the contracting officer sent CNA a letter again informing CNA that its bid had been rejected as nonresponsive. On June 17, 2009, CNA filed this protest. The District filed a motion to dismiss the protest as untimely on July 7, 2009.

DISCUSSION

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

We begin by addressing the issue of whether CNA timely filed its protest. The District asserts that CNA filed its protest more than 10 business days after May 18, 2009, the date the contracting officer notified CNA in a meeting that CNA’s bid had been rejected as non-responsive because of an inadequate bid guaranty. (AR Ex. 5). The District asserts that because CNA knew that the District had rejected CNA’s bid on May 18, 2009, CNA should have filed its protest within 10 business days of that date, that is, by June 1, 2009.

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. CNA does not challenge the District’s assertion that it informed CNA of the bid rejection on May 18, 2009. CNA claims that it did not receive official written notification of the bid rejection until June 4, 2009, and that it filed its protest within ten days of that date. In making that assertion, CNA asks the Board to ignore the affidavit of Jerry Carter, contracting officer, who personally informed CNA on May 18, 2009, that its bid had been rejected as nonresponsive. At that meeting, CNA knew that the District rejected its bid. “A protester’s receipt of oral information forming the basis of its protest is sufficient to start the 10-day time period running; written notification is not required. *See Swafford Indus.*, B-238055, Mar. 12, 1990, 90-1 CPD ¶ 268.” *Optical Energy Technologies*, B-401520, July 13, 2009, 2009 U.S. Comp. Gen. LEXIS 138. Because CNA failed to submit its protest within 10 business days after May 18, 2009, its protest is untimely. Accordingly, we dismiss the protest.

SO ORDERED.

DATED: October 7, 2009

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

CONCURRING:

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