

GOVERNMENT OF THE DISTRICT OF COLUMBIA
CONTRACT APPEALS BOARD

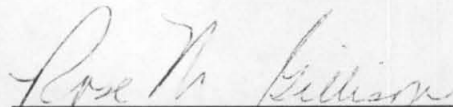
DATE: January 9, 1989

TO: Joel S. Rubinstein, Esquire
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Washington, D.C. 20036

Erie F. Sampson, Assistant
Corporation Counsel
Public Works Division
2000 14th Street, N.W., 6th Floor
Washington, D.C. 20009

RE: CAB No. P-131, Protest of Remco Business Systems, Inc.
of Washington

Enclosed is a copy of the Board's decision in the above-referenced case.



ROSE M. GILLISON
Clerk to the Board

Enc.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
CONTRACT APPEALS BOARD

PROTEST OF:

REMCO BUSINESS SYSTEMS, INC. OF)	
WASHINGTON)	CAB No. P-131
)	
Under IFB No. 88-0159-AA-4-0-CC)	

DECISION

On September 19, 1988, Remco Business Systems, Inc. of Washington (hereinafter Remco) filed a protest with this Board alleging that the solicitation referenced above, issued by the Department of Public Works, was violative of the D.C. Procurement Practices Act of 1985 (PPA) because, in effect, it was unduly restrictive of competition, thwarted competitive bidding and resulted in a sole source procurement.

The District of Columbia (District) in response has filed a motion to dismiss this protest on the ground that Remco lacks standing to protest since the company is not an "actual or prospective bidder or offeror" as required by the PPA, D.C. Code, sec. 1-1189.3 (1987 Replacement).

The District points out that the solicitation was expressly limited to sheltered market bidders who have been issued a registration certificate by the D.C. Minority Business Opportunity Commission, as authorized by the Minority Contracting Act, D.C. Code, sec. 1-1148(1987 Replacement), and that Remco was not a certified minority business enterprise.

The District's argument is well taken. The principle of law involved is that a bid on a sheltered market solicitation by an uncertified minority contractor is nonresponsive for failure to meet a material term of the solicitation, in accordance with sec. 1-1181.7(41). This principle has been adopted in this jurisdiction in Am. Combustion v. Minority Business Opportunity Commission, 441 A.2d 660, 671-72 (D.C.

1982). In accord, see Aceves Construction and Maintenance Co., 1 P.D. 50,53 (D.C. CAB 1987).

Inasmuch as the solicitation at issue was sheltered and Remco was not a certified minority firm at the time of bid opening, we conclude that it cannot be an actual or prospective bidder for this procurement. Remco, therefore, lacks standing to protest.

Remco's alternative argument that it acquired standing because it was a potential supplier of goods to an actual or potential bidder is rejected. Manufacturers and suppliers who are not actual or potential bidders lack standing to challenge bid solicitations. See In the Matter of: Pacific Allied Products, Ltd., B-220181, 220182, October 18, 1985 85-2 CPD para. 424); and In the Matter of: ADB-ALNACO, Inc., B-218541, June 3, 1985, 85-1 CPD para. 633.

ORDER

For the reasons set forth above, the Board grants the District of Columbia's motion to dismiss.

This protest is DISMISSED.

DATE: December 30, 1988

David H. Marlin
DAVID H. MARLIN
Administrative Judge

CONCUR:

Claudia D. Booker
CLAUDIA D. BOOKER
Administrative Judge

William L. Davis
WILLIAM L. DAVIS
Chief Administrative Judge