

DISTRICT OF COLUMBIA  
CONTRACT APPEALS BOARD

PROTEST OF:	)	
	)	
TRICOM TRAINING INSTITUTE	)	CAB No. P-503
	)	
Under Contract No. LKGC05	)	

**OPINION AND ORDER**

Tricom Training Institute ("Tricom"), a non-profit organization providing foster care services to District youth between the ages of 9 and 21 years, protests the Child and Family Services Agency's ("Agency" or "CFSA") failure to provide adequate notice of a solicitation for the same type of foster care services. The CFSA published a notice of the solicitation in the Washington Post only twenty-one days before the closing date of the solicitation in violation of the statutory and regulatory requirements that the publication of notice occur at least thirty days before the receipt of proposals. Further, the Agency failed to ensure that a copy of the solicitation was mailed to Tricom, an incumbent provider. Accordingly, we sustain the protest.

**BACKGROUND**

In September 1991, the Department of Human Services ("DHS") awarded a cost reimbursement contract to Tricom to provide foster case services to up to ten (10) wards of the District between the ages of 9 and 21 years "in a nurturing group home setting including, board and care; clothing; education; vocational training and guidance to help the wards reach their maximum potential." (Protest, Exhibit 2, Contract No. JA/92009). The base contract period ran from October 1, 1991 until September 30, 1992 with four option years. The District renewed its contract with Tricom for each of the four option years until September 30, 1996, the end of the last option term.

On August 24, 1995, United States District Judge Thomas F. Hogan entered a General Receivership Order placing the Child and Family Services Division of the DHS under the control and line supervision of a General Receiver. *LaShawn v. Barry*, Civil No. 89-1754 (TFH), 1995 WL 520763 (D.D.C.). (Not reported in F.Supp.). The order gave the Receiver clear authority over the supervision of private vendors under contract to serve members of the LaShawn class. (Protest, Exhibit 1).

For Fiscal Year 1996, the Receiver, not DHS, exercised the contract option. On September 30, 1996, at the expiration of the last option term, the Receiver awarded a 120-day sole source emergency contract to Tricom for the ten continuing care group home slots. The sole source contract expired on January 28, 1997. The Receiver awarded Tricom a second 120-day emergency sole source contract which expired on April 30, 1997. A third short term emergency contract was awarded in April and expired on June 30, 1997. (Memorandum in

Opposition to Tricom's Request For Stay of Contract Award).

On February 23, 1997, the Agency advertised in the Washington Post that it was seeking vendors to provide various types of foster care services, including continuing care and emergency group homes for District youth ages 9 to 21 years. (Agency Report ("AR"), Attachment 1). The Request for Proposals for Group Homes, RFP GH01-97 ("RFP"), stated that the Receiver was seeking residential foster care and therapeutic social services for two hundred (200) children in need of the continuing care services (more than 30 days), and residential foster care and social services to one hundred (100) children in need of short term (30 days or less) emergency residential foster care and social services. The closing date for the RFP was March 14, 1997. (AR, Attachment 3).

On May 28, 1997, the Receiver issued notices of contract award to vendors for group home foster care services. The Receiver established 138 slots for continuing care group homes divided among six awardees at a cost of \$7,341,450.00, and 48 slots for emergency care group homes divided among three awardees at a cost of \$2,604,567. (Addendum to Agency Report ("Addendum") Attachment 9).

On June 25, 1997, Tricom received a letter from John M. Oppedisano, Director, Contracts, Grants & Procurement at CFSA informing Tricom that its contract for group home foster care services would end on June 30, 1997. (Protest, Attachment 3). The letter stated: "It is anticipated that the period of transition during which the children currently under your organization's care are transferred to another contractor will take place over the remainder of the Summer months." (*Id.*) On June 26, 1997, Tricom's President wrote to CFSA procurement staff to request a hearing on what it characterized as a "termination" of its contract. The letter stated that Tricom had never received notice of the solicitation. (Protest, Exhibit 4). On July 3, 1997, Tricom wrote directly to the Interim Receiver complaining that Tricom was never notified about the new solicitation. Further, Tricom complained about the lack of any contract to cover the transition period from June 30, 1997 until the children were removed and about the lack of direction from the Agency on the transition of the foster children from Tricom to a new contractor. Despite these letters and numerous follow-up telephone calls, Tricom received no response from the Agency. (Protest).

On July 10, 1997, Tricom filed its protest with the Board requesting that the recently awarded contracts be terminated; that the contract be readvertised to allow Tricom, an incumbent contractor, an opportunity to compete; and that the Agency be directed to stop performance under an improperly awarded contract. Tricom also requested that the Agency execute a written amendment to its current contract to ensure that Tricom be paid for its continuing performance. (Protest).

On July 23, 1997, Tricom filed a Memorandum in Support of Request for Stay to prevent the transfer of the youth until the protest was decided. Tricom argued that the Agency had awarded only 186 slots, although it had advertised for 300 and that it was not clear that

there was a contract covering the youth in Tricom's care. The July 23 Memorandum indicated that Tricom received a bilateral modification effective, July 1, 1997, to extend the contract through September 30, 1997. (Addendum, Attachment 11). On July 30, 1997, the Agency filed a Memorandum in Opposition to Tricom's Request for Stay of Contract Award. The stay provisions of the recently enacted Procurement Reform Amendment Act of 1996 were not in effect at the time the protest was filed.<sup>1</sup> The Board, however, agreed to decide the protest by the end of the contract extension period of September 30, 1997 to ensure that the children would not be moved during the pendency of the protest.

On August 5, 1997, the Agency filed its Agency Report. Attached to the Agency Report was a copy of the Washington Post advertisement announcing the solicitation, a copy of a vendors' list of current provider's to which the Agency stated it sent notices of the RFP and a form letter about the RFP dated February 14, 1997. (AR, Attachment 2). Tricom's name and address appeared on the list.

On August 7, 1997, the Board cited to both parties four pertinent cases to narrow the issues and focus the legal arguments. On August 11, 1997, the Agency filed an Addendum to Agency Report, but did not address the four cases.

On August 20, 1997, Tricom filed its comments on the Agency Report. The August 20 filing included affidavits from the President of Tricom, Wilbert J. Lewis and Tricom's Vice-President of Financing, Mr. Gopal Khatri. Mr. Lewis' affidavit described Tricom's internal mail handling procedures and stated that he had never seen the February 14 notice of solicitation letter from the Agency until after the commencement of the protest. (Comments, Exhibit 1). Mr. Khatri also stated that he had never seen the February 14 notice of solicitation from the Agency until after the commencement of the protest. (Comments, Exhibit 2). The protester also attached affidavits from two other vendors from the Agency's vendor mailing list who stated that they had never seen the February 14 notice of solicitation letter until Tricom showed it to them. (Comments, Exhibits 3 and 4).

On September 19, 1997, the Agency filed a Memorandum of Law addressing the cases the Board had cited and requesting our review of additional cases. Additionally, the agency attached affidavits of James Osbornes and John Oppedisano describing the agency's procedures

---

<sup>1</sup>The Procurement Reform Amendment Act of 1996, effective Apr. 12, 1997 (D.C. Law 11-259, 44 DCR 1423) for the first time established stay provisions in protests filed with the Board. Under D.C. Code § 1-1189.8(c)(1) if the contracting officer receives notice of the protest from the Board within 11 business days after the date of award, the contracting officer must immediately direct the awardee to cease performance under the contract and suspend any related activities. However, the stay provision did not take effect until 90 days after the effective date of the act, or on July 11, 1997. The protest was filed with the Board on July 10, 1997 and therefore the stay provisions were not in effect on the day of filing.

for mailing the February notice of solicitation letter and stated that the February 14 letter was sent to Tricom. On September 23, 1997, Tricom filed a Motion to Strike the September 19 filing of the Receiver arguing that the filing was untimely, was received without a motion for enlargement of time and occurred a month after the closing of the record just before the Board had agreed that it would issue its decision. On September 26, 1997, the Board ordered the Agency to file by September 29, 1997 a motion to enlarge time setting forth the reasons for the late filing. On September 29, 1997, the Agency filed its motion to enlarge time for the filing of its memorandum of law. On the day of the filing, the Board held a telephone conference with the parties to discuss the motion for enlargement of time and motion to strike. Having considered the arguments of the counsel, the Board found no good cause for the late filing and granted the protester's motion to strike. The Board also ruled orally that it was sustaining the protest for the reasons described below.

## DISCUSSION

D. C. Code § 1-1183.4(b) requires that: "[p]roposals shall be solicited from the maximum number of qualified sources and in a manner consistent with the nature of and the need for the supplies or services being acquired, with adequate public notice of the intended procurement pursuant to § 1-1183.3([c])."<sup>2</sup> Section 1-1183.3 (c) provides that: "[a]dequate public notice of the invitation shall be given at a sufficient time before the date set forth in the notice for the opening of bids, but shall not be less than 30 days for all contracts." Sections 1300.3 and 1300.4 of 27 DCMR also provides for at least a one-day advertisement in a newspaper of general circulation a minimum of thirty days before the date set forth for the receipt of bids or proposals.

CFSA advertised the foster care proposals in the Washington Post on February 23, 1997 with proposals due on March 14, 1997, a period of 21 days. The record therefore establishes that the Agency failed to comply with the 30-day notice requirement.

Section 1300.6 of 27 DCMR also provides that a contracting officer may provide additional advertisement of solicitations by "[m]ailing a copy of the solicitation to all prospective bidders or offerors on the bidder's mailing list." The Agency contends that it sent notices of the solicitations to all current vendors and other providers who had requested that their names be placed on the mailing list. The protester, however, produced affidavits from three of the 35 provider organizations on the list which did not receive the notice by mail. Based on this record the Board concludes that the Agency did not use reasonable care to send the notice to Tricom. We find that the Agency failed in its affirmative obligation to use reasonable methods to disseminate the solicitation document to the maximum number of qualified sources. Given the sensitive nature of the services, we also find that the Agency

---

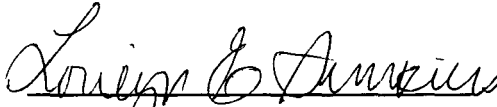
<sup>2</sup>D.C. Code § 1-1183.4(b) contains a typographical error. It cites § 1-1183.3(a) as the section on adequate public notice, when the correct citation is §1-1183.3(c).

should have ensured that all incumbent providers were mailed copies of the solicitation.

The Board held a telephone conference with the parties on September 30, 1997, to discuss appropriate remedies and corrective actions. The Agency indicated that additional continuing care group home slots are needed above the number awarded in May 1997. The Agency agreed to extend protester's contract for at least 45 days until a procurement could be completed. It was also agreed that the Agency will issue a solicitation for at least 10 continuing care group home slots as soon as possible and will advertise the solicitation for at least 30 days before the date set for the receipt of proposals to allow the protester an opportunity to compete. The Agency shall also mail a copy of the solicitation to all vendors on its mailing list as an additional method of advertisement and shall keep records of the mailing.

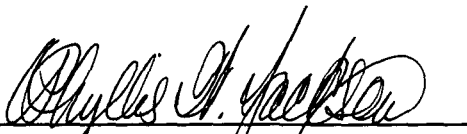
The protest is sustained.

DATE: October 2, 1997

  
LORILYN E. SIMKINS  
Chief Administrative Judge

Concurring:

  
JONATHAN D. ZISCHKAU  
Administrative Judge

  
PHYLLIS W. JACKSON  
Administrative Judge

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
CONTRACT APPEALS BOARD

717 14th STREET, N.W., Suite 430  
Washington, D C. 20005

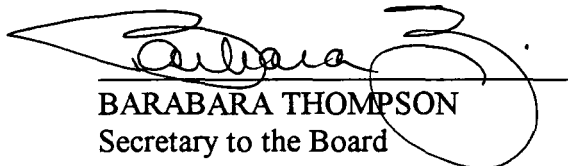
October 9, 1997

TO: Michael K. Love, Esquire  
Epstein Becker & Green, P.C.  
1227 25th Street, N.W.  
Washington, DC 20037-1156

D. Michael Lyles  
LaShawn General Receiver  
900 2nd Street, N.E., Suite 212  
Washington, DC 20002

SUBJECT: CAB No. P-503, TRICOM TRAINING INSTITUTE

Attached is a copy of the Board's Opinion and Order in the above-reference protest.

  
BARABARA THOMPSON  
Secretary to the Board