

Government of the District of Columbia

CONTRACT APPEALS BOARD

717 14TH STREET, N.W., SUITE 430
WASHINGTON, D.C. 20005



(202) 727-6597

DATE: December 17, 1991

TO: Melvin Lee, President
Lee & Sons Tree Service
17 Mississippi Avenue, S.E.
Washington, D.C. 20001

Nancy Hapeman
Assistant Corporation Counsel
613 G Street, N.W., Room 916
Washington, D.C. 20001

SUBJECT: CAB No. P-148, Protest of Lee & Sons Tree Service

Attached is a copy of the Board's opinion in the above-referenced matter.

A handwritten signature in cursive script, reading "Rose M. Gillison", written over a horizontal line.

ROSE M. GILLISON
Clerk to the Board

Attachment

RMG/mjh

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
CONTRACT APPEALS BOARD**

PROTEST OF:

LEE & SONS TREE SERVICE)	
)	CAB No. P-148
Under Invitation No. 9081-AA-99-0-9-RS)	

For the Protestor: Melvin Lee, President. For the Government: Nancy Hapeman, Assistant Corporation Counsel.

Opinion by Administrative Judge Benjamin B. Turner, with Administrative Judges Zoe Bush and Terry Hart Lee concurring.

OPINION AND ORDER

This protest, filed with the Board on January 4, 1989, raises the issue of whether the failure of the protestor (the incumbent contractor) to receive a copy of Invitation No. 9081-AA-99-0-9-RS (IFB) constitutes grounds for re-solicitation of bids for tree trimming services.

The facts are that the District of Columbia Department of Administrative Services (DAS) issued the IFB in the Sheltered Market.¹ It posted a copy of the IFB to the six certified minority business enterprises on the list it received from the Minority Business Opportunity Commission. In addition, the District advertised the subject IFB in the Washington Post and the D.C. Procurement Digest. Based on these advertisements, several prospective bidders requested and were provided copies of the IFB.

The District received three bids in response to the solicitation. Two of these bids were from certified minority business enterprises, and were therefore eligible to be

¹ "Sheltered Market" is defined as a process whereby contracts or subcontracts are designated, before solicitation of bids, for limited competition from minority business enterprises on either a negotiated or competitive bid process. D.C. Code §1-1142(7) (1987). Each sheltered market procurement is required to be made in accordance with the District of Columbia Procurement Practices Act of 1985, D.C. Code §1-1181.1 et seq. (1987); the Minority Contracting Act of 1976, D.C. Code §1-1141 et seq. (1987); and the regulations issued pursuant thereto, 27 DCMR (July 1988).

considered for a "sheltered market" contract. The District contends that the \$488,500.00 price of the apparent low bidder was reasonable in that the price paid the incumbent for the previous year was \$496,980.00. At the time of the filing of the agency report, the contracting officer had not yet conducted a formal price analysis.

Prior to the award of the contract, the protestor (incumbent contractor) filed its protest with the Board, stating that it was protesting because it did not receive a copy of the invitation for bids. The protestor added that due to a typographical error the IFB was sent to 317 Mississippi Avenue, S.E., instead of to 17 Mississippi Avenue, S.E., the correct address.

The District filed its agency report in accordance with the bid protest procedures on March 10, 1989, and a copy was served on the protestor. (Rule 305.2, Rules of Practice of the D.C. Contract Appeals Board, 36 DCR 2712 (April 21, 1989). However, there has been no response from the protestor.

The District contends that failure of the protestor to receive a copy of the subject IFB is not a sufficient basis for re-solicitation of bids for such tree trimming services, and it requests that the Board deny this protest.

The Comptroller General has found that a procuring agency's failure to solicit a potential bidder does not provide a compelling reason for re-soliciting the procurement absent a showing that the agency made a deliberate attempt to preclude the potential bidder from competing, did not make a significant effort to obtain adequate competition, or failed to obtain reasonable prices. Ansonia Copper & Brass, Inc., B-227002, 87-2 CPD ¶76 (July 23, 1987). See also Adrian Supply Co., B-225630, 87-1 CPD ¶489 (May 7, 1987); G & L Oxygen and Medical Supply Services, B-220368, 86-1 CPD ¶78 (January 23, 1986); and Link Telecommunications, Inc., B-216547, 85-1 CPD ¶41 (January 16, 1985).

In the instant case there was obviously no deliberate attempt to prevent the protestor from bidding, because the District did send a copy of the IFB to the protestor, although it was improperly addressed. According to the record, the mistake was apparently inadvertent. Agency Report, Exhibit L, Affidavit of Ronnie Edwards. See also, Trifax Corp., CAB Nos. P-194 and P-197 (July 9, 1991). In addition, the District made a significant effort to obtain adequate competition by advertising the solicitation, sending copies of the IFB to those who requested it, and also sending copies to the six certified minority business enterprises listed by the Minority Business Opportunity Commission. Finally, there is no evidence in the record which suggests that the District failed to obtain reasonable prices.

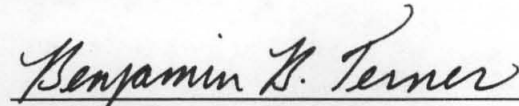
The protest procedures of the Board provide that when a protestor fails to file comments on an agency report, it may result in dismissal of the protest, and the factual allegations in the protest that are not admitted in the agency report, or otherwise

corroborated on the record, may be disregarded, Rule 307.3 and 307.4, Rules of Practices of the Contract Appeals Board, 36 DCR 2710 (April 21, 1989).

Therefore, it is,

ORDERED, the protest is DISMISSED with prejudice.

DATE: December 12, 1991



BENJAMIN B. TERNER
Administrative Judge

CONCUR:



ZOE BUSH
Chief Administrative Judge



TERRY HART LEE
Administrative Judge