

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

<b>PROTEST OF:</b>	)	
<b>EXCEL TREE EXPERTS CO., INC.</b>	)	
<b>7549 MONTEVIDEO ROAD,</b>	)	
<b>JESSUP, MD 20794</b>	)	
	)	<b>CAB No. P-0787</b>
<b>UNDER SOLICITATION NO.:</b>	)	
<b>DCKA-2008-B-0050</b>	)	

**MOTION TO INTERVENE**

C&D Tree Service, Inc. ("C&D"), by its undersigned counsel, and in accordance with Rule 110.1 of the D.C. Contract Appeals Board ("Board"), hereby respectfully requests that the Board grant C&D leave to intervene in the above-captioned pre-award protest as an interested party as defined under Board Rules 100.2(k) and (l). C&D is clearly a prospective awardee as noted below.

Excel Tree Expert Co., Inc. ("Excel"), located at 7549 Montevideo Road, Jessup, MD, 20794 (Tel. (410) 799-3266), filed a pre-award protest on October 9, 2008 concerning Solicitation No. DCKA-2008-B-0050 ("Solicitation") issued by the District Department of Transportation ("DDoT") for tree pruning services. Under the Solicitation, DDoT was to make four separate contract awards.

C&D submitted the overall lowest unit bid price. Attachment A. C&D furnished all the requisite responsibility information to the District. Attachment B. C&D is also an incumbent contractor for this type of work and has in place all of the required equipment and personnel to perform all four awards at a significant savings to the District. Attachment C. On September 22, 2008, DDoT in fact had informed C&D that it would be receiving an award package under the Solicitation during that week. Attachment D. For these reasons, C&D clearly is a prospective awardee whose direct economic interest would be affected by the award of the resulting contract

or by the failure to award the resulting contract due to Excel's protest, and therefore, C&D is entitled to intervene in this protest under the Board's rules. *See Protest of: Fort Myer Construction Corporation*, CAB No. P-261(A), 1992 LEXIS 216 at 3 (D.C.C.A.B. Jan. 28, 1992).

WHEREFORE, for the reasons set forth above, C&D respectfully requests that the Board grant its motion to intervene in the above-captioned protest.

Respectfully submitted,

s/RICHARD L. MOORHOUSE

Richard L. Moorhouse

Sean M. Connolly

Counsel for C&D Tree Service, Inc.

**CERTIFICATE OF SERVICE**

I hereby certify that I caused a true copy of the foregoing Motion to Intervene to be served upon the Contracting Agency and Counsel for Excel Tree Export Co., Inc., listed below by Lexis Nexis File and Serve this 24<sup>th</sup> day of October 2008:

Mr. Jerry Carter  
Contracting Office  
District of Department of Transportation  
2000 14<sup>th</sup> Street, N.W., 6<sup>th</sup> Floor  
Washington, D.C. 20009

Donald J. Walsh, Esq.  
Offit Kurman  
8 Park Center Court, Suite 200  
Owings Mills, MD 21117  
Counsel for Excel Tree Export Co., Inc.

s/RICHARD L. MOORHOUSE  
Richard L. Moorhouse  
Sean M. Connolly  
Counsel for C&D Tree Service, Inc.

# **ATTACHMENT A**

DCKA-2008-B-0050  
PRUNING SERVICE  
SUMMARY OF BIDDERS FROM  
LOWEST TO THE HIGHEST BID

Bid Opening Date: August 18, 2008

Contractors	Base Year		Option Year 1		Option Year 2		Option Year 3		Option Year 4		Evaluated Base + Option Years	
	Minimum	Maximum	Minimum	Maximum	Minimum	Maximum	Minimum	Maximum	Minimum	Maximum	Minimum	Maximum
1. Heavy Equipment Training Academy	\$2,990.00	\$365,625.00	\$2,990.00	\$365,625.00	\$2,990.00	\$365,625.00	\$2,990.00	\$365,625.00	\$2,990.00	\$365,625.00	\$14,950.00	\$1,828,125.00
2. C&D	\$2,700.00	\$367,500.00	\$2,700.00	\$367,500.00	\$2,700.00	\$367,500.00	\$2,700.00	\$367,500.00	\$2,700.00	\$367,500.00	\$13,500.00	\$1,837,500.00
3. Community Bridge	\$3,590.00	\$451,000.00	\$3,697.70	\$464,530.00	\$3,808.64	\$478,468.00	\$3,922.92	\$492,824.50	\$3,297.77	\$507,608.75	\$18,317.03	\$2,394,431.25
*LSDBE Preference Points – 10%	\$3,231.00	\$405,900.00	\$3,327.93	\$418,077.00	\$3,427.78	\$430,621.20	\$3,530.63	\$443,542.05	\$2,967.99	\$456,847.87	\$16,485.33	\$2,154,988.12
4. Adirondack Tree	\$3,660.00	\$438,125.00	\$3,865.00	\$466,500.00	\$4,055.00	\$493,375.00	\$4,255.00	\$521,875.00	\$4,465.00	\$552,750.00	\$20,300.00	\$2,472,625.00
5. Kennedy Development	\$3,330.00	\$522,250.00	\$4,200.00	\$545,250.00	\$4,200.00	\$545,250.00	\$4,485.00	\$585,625.00	\$4,395.00	\$585,625.00	\$20,610.00	\$2,785,000.00
6. The Care of Trees	\$10,395.00	\$1,246,500.00	\$8,235.00	\$1,246,500.00	\$10,706.85	\$1,283,895.00	\$11,027.97	\$1,322,403.75	\$11,358.44	\$1,362,040.56	\$51,723.26	\$6,461,339.25





# **ATTACHMENT B**



C&D Tree Service, Inc.  
1150 Downey Drive  
Vienna, VA 22182

September 8, 2008

Ms. Kathy Hatcher  
D.C. Department of Transportation  
Office of Contracting and Procurement  
2000 14<sup>th</sup> St N.W.  
Washington, D.C. 20009

Via: Hand Delivery

RE: Responsibility Data DCKA-2008-B-0050

Dear Ms. Hatcher,

Please find herewith the following updated documents in support of C&D's capability and capacities for this procurement.

1. Balance Sheet, Profit & Loss Statement and Statement of Cash Flows for FY-2008 (Please note C&D is current on all of its District taxes and filings).
2. List of current contracts relative to this service or commodity:  
For the past 5 years C&D performed like and kind services to the District under Contract #02-0014-AA-2-0-KA.
3. Please find an attached list of **current** employees who are specifically trained to provide pruning services under these contract(s) based on their prior contract experience under Contract #02-0014-AA-2-0-KA and their qualifications.
3. C&D maintains an office facility in Northern Virginia and a recycling center located in Southern Maryland. Please find the attached current inventory of equipment **owned** by C&D available for use on this contract(s).

4. With a highly experienced staff oriented to the UFA's operational processes C&D has provided these specific services to the District for over twenty years.

Additionally, C&D would like to state for the record that it currently maintains in place, the required staff, equipment, and expertise to perform all (4) four of the potential awards for these services at a very significant financial savings to the District based on the bid tabulations of the other contractors submitting bids of between **140%-400%** above the cost of same services if provided by C&D.

Please feel free to contact me if you have any questions.

Respectfully,

Scott Nelson

President

Attachments

# **ATTACHMENT C**

**From:** CDTREEVA@aol.com [mailto:CDTREEVA@aol.com]

**Sent:** Tuesday, October 21, 2008 9:21 AM

**To:** kathy.hatcher@dc.gov

**Cc:** deborah.bryant@dc.gov; alton.woods@dc.gov; Jerry.Carter@DC.Gov; Moorhouse, Richard (Shld-DC-GvtCntr)

**Subject:** Re: Award of DCKA-2008-B-0050

Hi Ms. Hatcher,

Thank you for your quick response to this issue as I was not sure why the award had been made per our previous discussion.

In counter of Excel's claims, I wish to again state for the record, that C&D as the previous incumbent District contractor on this type of contract, (as well as C&D being the low, responsive and responsible bidder on this solicitation), has in place all of the required equipment and personnel to perform all four awards at a significant savings to the District.

Again, thank you for your prompt response as we await the results of the Excel Tree Experts Protest.

Sincerely,

Scott Nelson

President

In a message dated 10/20/2008 7:25:29 P.M. Eastern Daylight Time, kathy.hatcher@dc.gov writes:

Mr. Nelson – No contracts were awarded. Per District law, no contracts will be awarded until this protest is settled by CAB or some other means. The only exception to the law, is if the Chief Procurement Officer (CPO) determines in writing that there is some compelling reason why the District needs to award the contracts. We do not anticipate the CPO making such a determination.

Kathy Hatcher

# **ATTACHMENT D**

C&D Tree Service, Inc.  
1150 Downey Drive  
Vienna, VA 22182  
703 821-1332

October 20, 2008

Ms. Kathy Hatcher  
D.C. Department of Transportation  
Office of Contracting and Procurement  
2000 14<sup>th</sup> St N.W.  
Washington, D.C. 20009

Via: E-Mail & Federal Express

RE: Award of DCKA-2008-B-0050

Dear Ms. Hatcher,

On September 22, 2008 I requested that your office provide award information to C&D as the low, responsive and responsible bidder on this solicitation. On that same day I was informed by your office that the District would be sending out an award package by mid-week. That was nearly a month ago, and we have received no award package to date.

In addition, I have learned just this morning of a bid protest concerning this procurement filed by Excel Tree Experts with the DC CAB on or about October 9, 2008 and docketed as Cab No. P-0787. We received no prior indication of a possible problem with the procurements award, and it appears from the protest papers that Excel's bid was rejected as long ago as August 25 (also begging the question how Excel's protest could be timely under any circumstances).

Please advise me immediately as to the status of the awards given the filing of the protest, i.e., whether a stay is in place or if the District is considering to proceed forward and make the awards on the basis of urgent and compelling circumstances.

Also, please be advised that C&D may intervene in this protest to protect its own interests.

Sincerely,



Scott Nelson  
President

C&D Tree Service, Inc.