

GOVERNMENT OF THE DISTRICT OF COLUMBIA
CONTRACT APPEALS BOARD

PROTEST OF:

SAFE, INC.)	
)	CAB No. P-0702
Under RFA No. 1001-04-FY 2005)	
Ryan White Title I Regional Grant)	

For the Protester: Jacqueline Bacchus, Executive Director, SAFE, Inc. For the District Government: Howard Schwartz, Esq., and Talia Cohen, Esq., Assistant Attorneys General, District of Columbia.

Opinion by Administrative Judge Warren J. Nash, with Chief Administrative Judge Jonathan D. Zischkau and Administrative Judge Matthew S. Watson, concurring.

OPINION

(Lexis-Nexis Filing ID 5020670)

SAFE, Inc. (“SAFE”), by letter to this Board dated November 15, 2004, requests that the Department of Health (“DOH”), HIV/AIDS Administration, extend the deadline for submission of applications for the FY 2005 Ryan White Title I Regional Grant for HIV/AIDS services (Request for Applications (“RFA”) No. 1001-04-FY 2005) by one week to November 22, 2004, from November 15, 2004. SAFE asserts that the District failed to properly post the existing Amendments and Responses to applicant’s questions in a timely manner before the RFA submission date of November 15, 2004, at 5:00 p.m. In its Motion to Dismiss, the District responds that the Board lacks jurisdiction to consider a protest regarding a grant application. The protester did not file comments on the District’s Motion to Dismiss. We agree with the District that we do not have jurisdiction and we dismiss the protest.

BACKGROUND

On October 1, 2004, DOH placed in the District Register an announcement of the RFA and posted the RFA on the DOH Website. DOH held a pre-application conference on October 14, 2004. On November 1 and November 9, 2004, DOH posted on its website questions submitted by interested grant applicants and answers to those questions prepared by DOH. On November 3 and November 8, 2004, DOH sent to all organizations that had expressed an interest in the RFA certain amendments that consisted of questions submitted by interested grant applicants and answers to those questions prepared by DOH. SAFE filed its protest on November 15, 2004, alleging that DOH belatedly notified SAFE of information that was necessary for SAFE to satisfactorily complete and file with DOH its response to the RFA.

DISCUSSION

The protester asserts that the District failed to properly post the existing Amendments and

Responses to applicant's questions in a timely manner before the RFA submission date of November 15, 2004. In its Motion to Dismiss, the District responds that the Board lacks jurisdiction to consider a protest regarding a grant application. The Board agrees with the District and dismisses the protest. Protester's applications were submitted pursuant to an RFA for subgrants of Federal grant funds administered by the District of Columbia. Had the protester's application been successful, it would have resulted in a grant award and not a contract. The Procurement Practices Act establishes and limits the Board's jurisdiction to be "consistent with the coverage of ... [the PPA] as defined in 2-301.04 and 2-303.20" D.C. Code § 2-309.03(b) (2001 ed.). Section 2-301.04(b) specifically excludes from the PPA's coverage, and therefore from the Board's jurisdiction, any "contract or agreement receiving or making grants-in-aid or for federal financial assistance." Since this matter relates to award of a grant, the Board is without jurisdiction. *District of Columbia Local Development Corporation*, CAB No. P-0421, Nov. 14, 1994, 42 D.C. Reg. 4885, holding affirmed, but vacated on other grounds, Jan. 31, 1995, 42 D.C. Reg. 4914.

We DISMISS the protest for lack of jurisdiction.

SO ORDERED.

DATE: January 26, 2005

/s/ Warren J. Nash

WARREN J. NASH
Administrative Judge

CONCURRING:

/s/ Jonathan D. Zischkau

JONATHAN D. ZISCHKAU
Chief Administrative Judge

/s/ Matthew S. Watson

MATTHEW S. WATSON
Administrative Judge