

GOVERNMENT OF THE DISTRICT OF COLUMBIA
CONTRACT APPEALS BOARD

PROTEST OF:

TRINITY YOUTH SERVICES, INC.)	
)	CAB No. P-0684
Under Solicitation No. CFSA-03-R-0005)	

For the Protester, DeMaurice F. Smith, Esq., S. Abena Glasgow, Esq., Latham & Watkins. For the District of Columbia Government: Howard Schwartz, Esq., Talia S. Cohen, Esq., Assistant Attorney General.

Opinion by Chief Administrative Judge Jonathan D. Zischkau, with Administrative Judge Matthew S. Watson, concurring.

OPINION

LexisNexis Filing ID 3683408

Trinity Youth Services, Inc., protested its failure to make the competitive range in a procurement to provide congregate care services for the District of Columbia Child and Family Services Agency ("CFSA"). During debriefing, Trinity was informed that it received no points for past performance. CFSA apparently neglected to provide the evaluators the information concerning Trinity's past contract performance and that is the reason that Trinity received no points during the evaluation. CFSA has recognized the error, Trinity's past performance information has been sent to the contracting officer, and that information is being evaluated. Should the contracting officer determine that Trinity is in the competitive range based on the recomputed past performance score, Trinity will be invited to submit a best and final offer. The District has moved to dismiss the protest on the ground that the protest is now moot since the contracting officer has remedied the error which was the basis for the protest. Trinity has not responded to the motion. Accordingly, we dismiss the protest as moot.

BACKGROUND

On July 28, 2003, CFSA issued Solicitation No. CFSA-03-R-0005 ("RFP") requesting proposals to provide congregate care services for CFSA (Motion to Dismiss, Ex. 2). On August 29, 2003, CFSA issued one amendment to the RFP to further clarify the requirements and to provide responses to offerors' questions concerning the RFP. The RFP contained 11 contract line items ("CLINS") and the resulting contracts would be for a base period of one year and four option years for congregate care service for each CLIN. Offerors could submit proposals for one or all of the CLINS.

Trinity was one of 22 offerors that submitted proposals competing for the requirement of Traditional Group Home Care under CLIN 3. CFSA's License and Monitoring section forwarded to the evaluation team the past performance reports for all offerors that had previously provided congregate care services to CFSA, but omitted a report for Trinity. Therefore, the past performance evaluation team did not have any information from CFSA with which to consider Trinity's past performance on government contracts. (Motion, Ex. 1). On December 19, 2003, during the evaluation meeting, the evaluators determined that they could not consider Trinity's past performance references because the references were not contracts with "government agencies for which the Offeror has previously provided

congregate care services.” (Motion, at 2; Ex. 2, Section M.3.2, as amended). As a result, the evaluators scored Trinity a “0” for past performance.

On February 12, 2004, Trinity was notified by CFSA that it did not make the competitive range for proposals submitted for CLIN 3. Trinity requested a debriefing which was held on March 2, 2004, and learned that it received no points for past performance even though it had been providing congregate care services to CFSA since November 2001. (Protest, at 2). On February 25, 2004, Trinity filed its protest with the Board. Trinity challenged its past performance rating and the consequent determination that it was not within the competitive range. Trinity requested that CFSA reevaluate Trinity’s past performance.

In an April 1, 2004 memorandum entitled “Contracting Officer’s Determination for Trinity Services, Inc. Protest”, the contracting officer agreed to conduct a reevaluation of Trinity’s past performance using the past performance information subsequently obtained from CFSA. (Motion, Ex. 3). The District states:

Should the Contracting Officer place Trinity in the competitive range, Trinity will have an opportunity to submit a Best and Final Offer. Moreover, CFSA has agreed to delay the final selections of Offeror for Traditional Group Home Care until Trinity has had the opportunity to submit a Best & Final Offer/Proposal, should Trinity be included in the competitive range based on the recomputed past performance score.

(Motion, at 3). The District states that because it has agreed to reevaluate Trinity’s past performance, there no longer exists a basis for the protest and the protest is now moot.

DISCUSSION

There is no dispute that the District has taken corrective action which resolves the basis for the protest. Trinity has not objected to the motion. Accordingly, we dismiss the protest as moot. Because the District has taken corrective action in a timely manner, we decline to award protest costs pursuant to D.C. Code § 2-309.08(f)(2).

SO ORDERED.

DATED: June 4, 2004

/s/ Jonathan D. Zischkau
JONATHAN D. ZISCHKAU
Chief Administrative Judge

CONCURRING:

/s/ Matthew S. Watson
MATTHEW S. WATSON
Administrative Judge