

GOVERNMENT OF THE DISTRICT OF COLUMBIA
CONTRACT APPEALS BOARD

PROTESTS OF:

SASHA BRUCE YOUTHWORX)	
)	CAB Nos. P-594, 597
Under Solicitation No. HC/AD9901)	

For the Protester: Deborah Shore, *pro se*. For the Government: Howard Schwartz, Esq., and Warren J. Nash, Esq., Assistants Corporation Counsel.

Opinion by Administrative Judge Jonathan D. Zischkau, with Administrative Judges Phyllis W. Jackson and Matthew S. Watson, concurring.

OPINION

In August 1999, Sasha Bruce Youthwork filed two protests relating to Solicitation No. HC/AD9901 issued by the District's Department of Health ("DOH"), on behalf of the Addiction Prevention and Recovery Administration ("APRA"), alleging bias and other irregularities in the source selection process. The District moved for a stay of protest proceedings pending the agency's reconsideration of the evaluation process. After numerous delays in completing the reevaluation of proposals, on October 2, 2000, the District's interim Chief Procurement Officer approved DOH's request that the solicitation be cancelled based on findings of the contracting officer that the solicitation no longer addressed DOH's requirements and that DOH's needs are being fulfilled by other contracts. On November 2, 2000, the District moved to dismiss the protests as moot in light of the cancellation. Sasha Bruce opposes the motion, contending that the cancellation was improper, violated statutory requirements, and was issued in bad faith. Sasha Bruce requests that it receive its proposal preparation costs. We conclude that the District has adequately justified the cancellation determination. Accordingly, we dismiss the protests as moot.

BACKGROUND

On March 2, 1999, DOH issued Solicitation No. HC/AD9901 for youth prevention and outpatient treatment services. (District's Mem. at 1). The District received proposals from Sasha Bruce, CCI/ACME, Inc., Rap, Inc., and Smith, Thomas & Hawkins by the initial closing date. After an evaluation of the four proposals, but before the contracting officer had made an award decision, Sasha Bruce filed a protest docketed at CAB No. P-594, challenging the rationality of the source selection process and claiming that agency representatives had engaged in improper preaward communications with CCI which deprived Sasha Bruce of a fair and honest consideration of its proposal. Sasha Bruce claimed that the contracting officer, Ms. Emma Fair, had told it that award was being made to another offeror, while the contracting officer's deputy, Mr. Lorenzo Brown, had informed it that proposals were still being evaluated and that no selection or award had been made. In its opposition to the District's motion to dismiss, Sasha Bruce argues that both a selection decision and award decision had been made by the contracting officer prior to August 1999. We find from the record presented to us that although a tentative selection decision may have been made

prior to August, the contracting officer had made no award.

On August 19, 1999, the District moved to stay the protest pending DOH's reevaluation of all proposals and completion of an award recommendation. Sasha Bruce states that the agency requested best and final offerors ("BAFOs") on August 23, 1999, and that Sasha Bruce submitted its BAFO on August 27, 1999. (Opposition at 5). On August 24, 1999, Sasha Bruce filed a second protest, docketed at CAB No. P-597, alleging other irregularities in the procurement. By order of August 31, 1999, the Board consolidated the two protests and granted the District's motion for stay.

The District periodically reported on the status of DOH's efforts to complete the reevaluations. The original contracting officer was replaced by another contracting officer in September 1999 who in turn was replaced by another contracting officer in November 1999. The proposals were reevaluated in November 1999. (District Motion to Dismiss, Attachment, at 3). In March 2000, the District informed us that the contracting officer intended to begin negotiations with the offerors. Sasha Bruce submitted a second BAFO on May 2, 2000. In a June 2000 status conference, the contracting officer advised us that he expected to make an award within 30 days. However, the contracting officer made no award.

On September 12, 2000, the contracting officer executed a determination and findings to cancel the solicitation, identifying the following facts justifying the cancellation:

The Department of Health, Addiction Prevention and Recovery Administration (APRA) expressed in a memo dated September 9, 2000 . . . that the subject solicitation does not meet the current requirements of their Youth Treatment and Prevention Program. The previous program personnel and program management developed the requirements in 1998. Unfortunately, there were a number of delays in the procurement process, which prevented a contract award for over a year.

In the interim, the Director of the Department of Health installed a new program management team and after a careful review of the current scope of work and proposals, program management determined that solicitation HC/AD9901 no longer addresses APRA's current requirements and goals without a complete rewrite of the scope of work. Additionally, according to Attachment A, [a part] of the agency's needs is being fulfilled by other contracts. Therefore, in accordance with DCMR regulation 1615.3, I recommend that in the best interest of the Department of Health, Addiction Prevention and Recovery Administration and the District of Columbia that solicitation HC/AD9901 be cancelled.

(District's Motion to Dismiss, Attachment, at 5). In a memorandum dated September 28, 2000, transmitting the cancellation decision to the District's Inspector General, the interim Chief Procurement Officer approved the contracting officer's recommendation that the solicitation be cancelled based on the determination and findings of the contracting officer. The CPO's signature line on the actual determination and findings bears the date of October 2, 2000, although the September 28 memorandum indicates that the CPO approved the cancellation at least as early as

September 28. Sasha Bruce filed its opposition to the motion to dismiss on November 16, 2000.

DISCUSSION

Our standard of review of a cancellation determination is well settled. A request for proposals may be cancelled only if the CPO determines in writing that the action is taken in the best interest of the District government and there is a reasonable basis for cancellation. D.C. Code § 1-1183.7 (1999); *JHARBO Limited, Inc.*, CAB No. P-527, Jan. 16, 1998, 45 D.C. Reg. 8701, 8703; *Singleton Electric Co.*, CAB No. P-411, Nov. 15, 1994, 42 D.C. Reg. 4888, 4893.

Sasha Bruce argues that the cancellation violated D.C. Code § 1-1183.7 because the CPO transmitted the cancellation determination to the Inspector General on September 28, 2000, that is, several days *prior* to the October 2, 2000, the date on which cancellation was executed by the CPO. According to Sasha Bruce, the statute requires that the determination be transmitted to the Inspector General within 72 hours *after* the determination has been made. Sasha Bruce errs factually and legally. The September 28 memorandum transmitting the cancellation indicates that the CPO had approved the cancellation by September 28. It is of no moment that the determination and findings document bears a date of October 2, 2000. Moreover, even if the CPO had transmitted the cancellation determination to the Inspector General a few days before the CPO's actual approval, there still would be no statutory violation. The purpose of D.C. Code § 1-1183.7 is to provide the Inspector General prompt review of a cancellation determination. It can hardly be said that the CPO's providing earlier notice to the Inspector General violates the law.

Sasha Bruce next argues that the cancellation is legally insufficient because the contracting officer has not issued an amendment to the solicitation notifying offerors of the cancellation. Sasha Bruce is correct that the contracting officer should notify offerors of the cancellation by issuing an amendment. If the contracting officer has not notified offerors, we direct him to do so promptly. Nevertheless, Sasha Bruce has received notice of the cancellation by means of the District's motion to dismiss and has had an opportunity to review and challenge the basis for the cancellation. We thus reject Sasha Bruce's challenge of the cancellation on this basis.

Sasha Bruce contends that the cancellation is not supported by a reasonable basis. We do not agree. Having reviewed the findings of the contracting officer, we find that they adequately justify the cancellation based on changed requirements during the two years since the statement of work was prepared. Sasha Bruce also argues that the District has engaged in bad faith conduct and abused its discretion in canceling the solicitation. The facts do not support its arguments. We see no evidence of bad faith or abuse of discretion in the record.

Because we sustain the cancellation, the protests are moot. Accordingly, we dismiss the protests with prejudice.

SO ORDERED.

DATE: December 1, 2000

/s/
JONATHAN D. ZISCHKAU
Administrative Judge

CONCURRING:

/s/
PHYLLIS W. JACKSON
Administrative Judge

/s/
MATTHEW S. WATSON
Administrative Judge