

Government of the District of Columbia
CONTRACT APPEALS BOARD
717 14TH STREET, N.W., SUITE 430
WASHINGTON, DC 20005



(202) 727-6597

DATE: April 14, 1995


TO:

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SUBJECT: CAB No. D-945, Appeal of Information, Protection and Advocacy Center
For Handicapped Individuals, Inc.

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


MIA J. HOUSE
Clerical Assistant (Typist)

Attachment

GOVERNMENT OF THE DISTRICT OF COLUMBIA
CONTRACT APPEALS BOARD

APPEAL OF:

INFORMATION, PROTECTION AND ADVOCACY
CENTER FOR HANDICAPPED
INDIVIDUALS, INC.

Under Contract No. JA-89999

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) CAB No. D-945
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For the Appellant: Harry M. Singleton, Esq. For the Government: Gail S. Miller,
Assistant Corporation Counsel.

Opinion by Administrative Judge Cynthia G. Hawkins-León with Administrative Judges
Lorilyn E. Simkins and Jonathan D. Zischkau concurring.

OPINION

Procedural Background

Information, Protection and Advocacy Center for Handicapped Individuals, Inc. ("Appellant" or "IPACHI") has filed the instant appeal of a deemed denial of its claim by the Director of the Department of Administrative Services ("DAS"). IPACHI filed its claim with DAS on March 23, 1993. Complaint, Exhibit E; A.F. 3.^{1/} By letter dated April 30, 1993, DAS' claims officer acknowledged receipt of the claim. Complaint, Exhibit F; A.F. 2.

On September 1, 1993, Appellant filed the above-named appeal which included a Notice of Appeal and Complaint with the Board. Appellant seeks \$99,728.16 (plus interest) for services rendered pursuant to an option, allegedly executed by the District, as contained in Contract No. JA-89999.

Following two Orders^{2/} from the Board requesting compliance with the Board's Rules

^{1/} References to the Appeal File in this case shall be denoted as "A.F. ____".

^{2/} The Board issued an Order to Show Cause on December 14, 1993 requesting that the District file an Answer and Appeal File in accordance with Board Rule 203.1, 36 D.C. Reg. 2701 (April 21, 1989) and Board Rule 205.1, 36 D.C. Reg. 2703 (1989). In light of the

of Practice and Procedure, the District filed an Answer to the Complaint and transmitted the Appeal File on April 18, 1994.

On April 29, 1994, Appellant filed a Notice of Election of Procedure and Request to Supplement the Record. As allowed by Board Rule 208.1, 36 D.C. Reg. 2704 (1989), Appellant elected to waive its right to a hearing on its appeal and have the Board decide the appeal on the record.

On May 9, 1994, the Board issued an Order granting Appellant's request and setting deadlines for the filing of supplemental documents to the record. Over the next several months, the parties filed accordingly.

Findings of Fact

1. On February 22, 1989, Request for Proposals No. JA/89999 ("RFP") was issued by the Department of Human Services ("DHS"), Commission on Mental Health Services ("CMHS") for patient advocacy services. The RFP set the closing date and time for the submission of proposals as March 23, 1989 at 4:30 p.m. A.F. 14.
2. On March 9, 1989, Amendment No. 1 to the RFP was issued. The amendment stated that "[t]his Request for Proposals is designated for Open Market solicitation." A.F. 13.
3. On October 3, 1989, Contract No. JA/89999 was awarded to IPACHI. The contract was a fixed unit price contract. The fixed unit price was set per hour of service provided. A.F. 11.
4. Article IX of the Contract, titled "Payment/Invoices" stated as follows:
 - A. The Contractor shall submit invoices to the Contract Administrator on a monthly basis evidencing hours of service provided pursuant to this contract.
 - B. The Contractor shall be renumerated monthly based on the units of service provided.
 - C. The Contractor's invoices shall be certified by the Contract Administrator acknowledging receipt of satisfactory services prior to authorizing payment.

...

District's continued failure to file an answer and to transmit an appeal file, on April 11, 1994, the Board issued a second Order requesting compliance.

- [G.] The Contractor shall submit invoices to the Contract Administrator on a monthly basis, evidencing expenditures incurred in performing the services required pursuant to this contract.

Id. at page 10.

5. Article X of the Contract, titled "Duration of Contract" stated as follows:
- A. The term of this contract shall be from the date of award [October 3, 1989] through September 30, 1990.
- B. The District may extend the term of this contract for a period of one year or any portion thereof by written notice to the Contractor before expiration of the contract, provided that the District shall give notice of its intent at least 60 days before the contract expires. The preliminary notice does not commit the District to an extension. The Contractor may waive the 60 days notice requirement by providing a written waiver to the Contracting Officer prior to the expiration of the contract.
- C. If the District exercises this option, the extended contract shall be considered to include this option provision. The exercise of this option is subject to the availability of funds at the time of the exercise of the option.
- D. The total duration of this contract, including the exercise of any options under this option shall not exceed five years.

Id. at page 11.

6. On September 30, 1990, DHS' Contracting Officer executed Amendment 1 to the Contract. The amendment stated as follows:

The Government of the District of Columbia hereby exercises its option to renew this contract, for the period October 1, 1990 until September 30, 1991 in accordance with ARTICLE X - DURATION OF CONTRACT.

A.F. 10.

Although it is uncontested that Appellant provided services to the District during the October 1, 1990 through September 31, 1991 time frame, billed the District for these services, and was paid for same on a regular basis (Hardy-Townes Deposition, pages 18-20), pursuant to an allowable extension of the contract, it is unclear whether the amendment was ever transmitted

to Appellant for signature. The amendment as filed does not bear the signature of Appellant's representative on the appropriate signature line. A.F. 10.

In support of its contention that no written agreement/Amendment was executed by Appellant, Appellant has supplied sworn affidavits from its past Executive Director and the Executive Assistant to the Executive Director that no such amendment was received by Appellant. Appellant's Supplement to the Record, Galiber Affidavit, pages 3-4, Leake Affidavit, page 2.

7. Prior to completion of the October 1, 1990 through September 30, 1991 renewal period, DHS determined that it would not renew the contract for an additional renewal period. On June 26, 1991, the Contract Administrator wrote a memorandum to the Commissioner of CMHS recommending that "the option to renew the Contract not be implemented for the next fiscal year, October 1, 1991 through September 30, 19[9]2." A.F. 9.^{3/}

8. On July 3, 1991, in keeping with the recommendation of the Contract Administrator, the non-renewal of Contract No. JA/89999 for the option year to begin on October 1, 1991 was approved by the Commissioner of CMHS. A.F. 8.

9. A letter from the District to Appellant and the deposition of a DHS employee show that in August of 1991, DHS held a meeting with all DHS contractors, including *IPACHI* representatives, during which contractors were informed that all contracts were to expire as of September 30, 1991, unless prior written notification was provided to the contractors by DHS. A.F. 6; Scarpelli Deposition, pages 24-25. *IPACHI* representatives in attendance refute this assertion. Appellant's Brief to Supplement the Record, page 12.

10. It is uncontested that *IPACHI* did not receive written notice from DHS for any further renewal of the contract. *IPACHI* agrees that Article X(B) of the contract does not require DHS to send *IPACHI* a written notice of non-renewal. Hardy-Townes Deposition, page 14.

11. Appellant has supplied the Board with a sworn affidavit from its Executive Director attesting to statements made by a DHS contract specialist during September of 1991 referring to the "likelihood" of the renewal of the contract option for the fiscal year beginning October 1, 1991. No contemporaneous documents have been supplied by Appellant in support of this affidavit. Appellant's Supplement to the Record, Hardy-Townes Affidavit, page 2.

12. The District has supplied the Board with a sworn affidavit from the DHS contract specialist refuting Appellant's contention that he assured Appellant that Contract No. JA/89999 would be renewed pursuant to an option for the fiscal year commencing on October 1, 1991.

^{3/} Despite *IPACHI*'s contention to the contrary, the record does not support the supposition that A.F. 9 lacks authenticity.

According to his affidavit, the contract specialist was never assigned to, nor had any involvement with, the contract. No contemporaneous documents have been supplied by the District in support of this affidavit. Appellee's Supplements to the Record, Wooten Affidavit, page 1.

13. In the middle of September of 1991, the Commissioner of CMHS, who was the Chief Contracting Officer, informed the Contract Administrator that IPACHI's contract would not be renewed. Scarpelli Deposition, page 26. The Contract Administrator recalled a second conversation with the Commissioner in early October of 1991. At that time, the Commissioner instructed the Contract Administrator, as a courtesy to IPACHI, to call IPACHI's Executive Director to inform her that the contract had not been renewed. The Contract Administrator has testified that he did in fact make this courtesy call early in October of 1991. Scarpelli Deposition, pages 27-29.

14. On or about November 27, 1991, the Contract Administrator received a telephone call from Appellant inquiring about the status of the contract. The Contract Administrator instructed Appellant to "cease and desist" from the provision of advocacy services since the contract option had not been renewed for the fiscal year that began on October 1, 1991. Scarpelli Deposition, pages 28-30. IPACHI contends that the telephone call related to payment of services for the renewal period beginning October of 1991. Hardy-Townes Deposition, page 3 (July 11, 1994).

15. By letter dated March 26, 1992, Appellant requested payment for services rendered during the months of October, November and December of 1991 and January, February, and March of 1992. A.F. 7; Complaint, Exhibit A. It is unclear when these invoices were first received by the District. Scarpelli Deposition, pages 31-37; Scarpelli Deposition, Exhibits 4-5.

16. By letter dated May 27, 1992, in response to the March 26 correspondence, the Acting Commissioner of CMHS notified Appellant as follows:

This is in response to your March 26 letter in which you requested payment for services rendered between October 1, 1991 and March 31 under contract number JA/89999. I regret to inform you that payments cannot be made under that contract due to the fact that the Commissioner of Mental Health determined in July, 1991 not to exercise the option for contract renewal for the period beginning in October. ...

I have been informed that IPACHI staff were in attendance at a meeting in August, 1991 in which Department of Human Services (DHS) contractors were informed that all contracts terminated on September 30 unless written notification to continue services was provided prior to that date. I am also informed that you were specifically advised in October that the contract (JA/89999) had not been renewed.

A.F. 6; Complaint, Exhibit B.

17. Pursuant to 27 DCMR § 3803, by letter dated January 8, 1993, Appellant filed a claim and request for final decision with DHS' Contracting Officer. The claim was in the amount of \$99,728.16 for services rendered from October 1, 1991 through May 30, 1992 (the date of receipt of the Acting Commissioner's May 27, 1992 correspondence). A.F. 4; Complaint, Exhibit D.

18. Pursuant to 27 DCMR §§ 3801 and 3803 (July 1988), after failing to receive a decision from the Contracting Officer, on March 29, 1993, a claim was filed with the Director of DAS for the above-stated amount. A.F. 3; Complaint, Exhibit E.

19. By letter dated April 30, 1993, DAS' Claims Officer acknowledged receipt of the claim. A.F. 2; Complaint, Exhibit F.

20. In light of the Director of DAS' failure to issue a timely decision on the claim, on September 24, 1993, IPACHI filed the above-captioned appeal with the Board pursuant to section 805 of the Procurement Practices Act of 1985, D.C. Code § 1-1188.5 and in accordance with Board Rule 200.2, 36 D.C. Reg. 2700 (1989). A.F. 1; Complaint.

Decision

Contract No. JA/89999 was a one-year contract with an option to extend the term for an additional four years. F.F. 5. Article X of the contract states the applicable, required procedures for the extension of the contract beyond its one year term. *Id.* Specifically, the term of the contract was to be extended "upon written notice to the Contractor before expiration of the contract, provided that the District shall give notice of its intent at least 60 days before the contract expires." Article X(B)(emphasis added). The contractor was allowed, in writing, to waive the 60-day notice provision. The meaning and intent of the contract document is clear on its face. Any change to the method of renewal defined by Article X would have to be a product of mutual agreement by the parties because the notice requirements are meant to afford a measure of protection to each party.

Apparently, IPACHI tendered its services during the first contract extension during the fiscal year commencing on October 1, 1990 without receiving the executed Amendment 1, but believing that the District had validly extended the contract period. Although the District signed an amendment to effectuate a time extension, the agreement was neither presented to nor executed by IPACHI. F.F. 6. Despite this fact, upon an apparent mutual agreement of the parties, IPACHI regularly billed the District and was paid for services rendered to the District from October 1, 1990 through September 30, 1991.

It is clear from the record that the District never exercised its option to renew after September 30, 1991. The record shows that the District never communicated an intention to renew -- either oral or written. Contrarily, the District communicated to IPACHI its intention

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CAB No. D-945, IPACHI

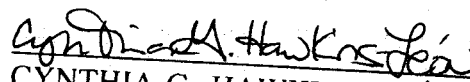
not to renew after September 30, 1991. F.F. 9, 10, 13 and 14. The District had no similar contractual duty to inform IPACHI that the term of the contract would not be extended. F.F. 5.

In view of the August, 1991 meeting and the Contract Administrator's discussions with IPACHI's representatives in early October of 1991 and late November of 1991 (F.F. 9, 13 and 14), it was entirely unreasonable for Appellant to assume that the District had renewed the contract for any period after September 30, 1991. In essence, IPACHI acted as a volunteer in providing services during the period beginning October 1, 1991.

Although it is unfortunate that the District may have gained a benefit from IPACHI's services from October 1, 1991 through May 30, 1992, IPACHI provided these services without the benefit of a contract and equitable principles do not provide IPACHI with any alternative grounds for a remedy.^{4/} Therefore, pursuant to D.C. Code §1-1181.5(d)(1), the District was unauthorized to pay for such services at the time rendered.^{5/} The Board does not find evidence to support payment.

Wherefore, based upon the foregoing, the appeal is **DENIED**.

DATE: April 14, 1995

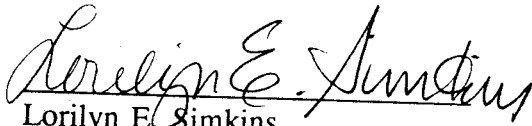

CYNTHIA G. HAWKINS-LEÓN
Administrative Judge

^{4/} IPACHI was required by Article IX of the contract to tender invoices to the District for payment on a monthly basis. F.F. 4. Appellant requested payment for "services rendered" from October 1991 through March 1992 in March of 1992. F.F. 15. By failing to file timely invoices for "services rendered" beginning in October of 1991, IPACHI prevented itself from mitigating its damages and is culpable for its own decision to continue working without a valid renewal.

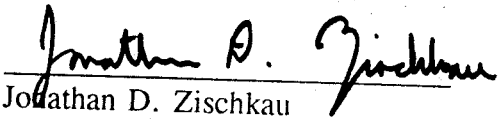
^{5/} D.C. Code §1-1181.5(d)(1) states, in pertinent part:

[n]o District official or District employee subject to this chapter shall authorize any payment for the value of goods and services received without benefit of a valid written contract, except that this subsection shall not apply to a payment required by a court order or final decision of the Contract Appeals Board.

CONCUR:



Lorilyn E. Simkins
Chief Administrative Judge



Jonathan D. Zischkau
Administrative Judge