

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
CONTRACT APPEALS BOARD

PROTEST OF:

INFORMATION, PROTECTION, AND ADVOCACY )		
CENTER FOR PEOPLE WITH DISABILITIES )		
	)	CAB No. P-427
Under RFP No. JA/94826	)	

For the Protester: Harry M. Singleton, Esquire. For the Government: Warren J. Nash and Nancy Hapeman, Assistants Corporation Counsel.

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

**OPINION**

Information, Protection, and Advocacy Center for People with Disabilities ("IPACHI") protests the award made by the Commission on Mental Health Services ("CMHS") of the Department of Human Services ("DHS") under RFP No. JA/94826 to Woodley House/Our Turn. IPACHI claims that Woodley House did not timely submit a proposal and that IPACHI, as the sole offeror, should have received the award. Because the District has offered sufficient evidence that Woodley submitted a proposal prior to the RFP's closing date and time, we deny the protest.

**FACTS**

The facts are based on our analysis of IPACHI's December 21, 1994 protest, the January 30, 1995 agency report with exhibits, IPACHI's February 17, 1995 response to the agency report with exhibits, and the District's March 2, 1995 reply (with exhibits) to IPACHI's February 17 response.<sup>1</sup>

On May 9, 1994, CMHS issued RFP No. JA/94826 to prospective offerors. (Agency Report ("AR") Exhibit 1). Proposals were due by June 9, 1994, at 4:30 p.m. Two proposals were received in response to the RFP on the date of closing, June 9. The proposal of IPACHI, and its partner on the proposal, the District of Columbia Mental Health Consumers League, was hand-delivered to Mr. Jerry Brumfield, a CMHS representative. (AR Exhibit 2). In its protest, IPACHI claims that its proposal was time stamped at 4:29 p.m. (Protest ¶ 7). IPACHI also

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<sup>1</sup> For good cause shown, we have granted IPACHI's motion for an extension of time within which to file its response to the agency report and the District's motion to file its limited reply to IPACHI's response. Board Rules 123.1 and 116.1.

claims that its representative remained on DHS premises well after the closing time for the submission of proposals, observed that no other proposal was submitted after IPACHI's proposal, and that certain unnamed "DHS officials" at the time indicated that no other proposal had been submitted in response to the RFP. (Protest ¶ 9). However, according to an affidavit submitted as an exhibit to the agency report, Ms. Janet Hill, a CMHS representative,<sup>2</sup> received a proposal from Woodley House well before 4:30 p.m. on June 9. (AR Exhibit 3). Ms. Hill states that she tendered a receipt to Woodley House and that Mr. Brumfield tendered a receipt to IPACHI acknowledging that CMHS had received the offerors' proposals on June 9, 1994. (AR Exhibit 2). Ms. Hill states in her affidavit that the receipts were not time stamped because CMHS' time stamp was broken. (AR Exhibit 3). IPACHI does not deny that it received such a receipt, a copy of which is shown in Exhibit 2 of the agency report. The District has submitted an affidavit of the executive director of Woodley House who states that she delivered Woodley's proposal to DHS prior to 4:30 p.m. on June 9 and received a receipt as depicted in Exhibit 2 of the agency report. (District Reply Exhibit 1 & Exhibit A).

As additional support for its assertion that any Woodley proposal submission was untimely, IPACHI states that on October 27, 1994, its executive director was informed by the contract specialist responsible for the RFP that Woodley House had not responded to the RFP. (Protest ¶ 10). A statement in the affidavit of IPACHI's executive director supports the claim. (IPACHI Response Exhibit 1). The contract specialist denies having told IPACHI's executive director that Woodley House did not submit a proposal. (AR Exhibit 4). IPACHI has also included in its reply to the agency report an affidavit from another IPACHI employee who states that another representative of Woodley House told her that Woodley had submitted its proposal late, *i.e.*, after the June 9, 1994 deadline. (IPACHI's Response, Exhibit 3). The Woodley representative denies that assertion. (District Reply, Exhibit 2).

Notwithstanding the conflict over what was said in the October 27 conversation between IPACHI's executive director and the contract specialist, and in the conversation between the IPACHI employee and the other Woodley representative, we find adequate evidence in the record that Woodley House timely submitted its proposal. Even if IPACHI's executive director correctly recalls the October 27 telephone conversation (though we think most likely IPACHI's executive director misunderstood the contract representative), that cannot alter Ms. Hill's sworn statement that she received Woodley's proposal well before closing time on June 9, coupled with the receipt issued contemporaneously with Woodley's proposal submission. We do not believe that the particular alleged oral communications, which lack contemporaneous written corroboration (such as confirming letters), overcome Ms. Hill's sworn statement and the written receipt issued to Woodley.

IPACHI also claims in its protest that CMHS violated procurement regulations by failing to give it prompt notice of the agency's decision to award the contract to Woodley House. There is no dispute that the agency notified Woodley House of contract award on January 23,

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<sup>2</sup> Ms. Hill is a program assistant with the CMHS Contracts Branch and was responsible for receiving proposals from prospective vendors in response to the RFP. (AR Exhibit 3).

1995. (AR Exhibit 4; IPACHI Response at 5-6; District Reply Exhibit 1 & Exhibit B).<sup>3</sup> IPACHI contends that CMHS had decided to award to Woodley House at least by December 7, 1994. In the protest, IPACHI states that the contract specialist told IPACHI's executive director in a December 7 telephone conversation that "Woodley House/Our Turn had in fact 'secured' the contract and that it would be awarded to them." (Protest ¶ 11). The statement is supported by the executive director's affidavit. (IPACHI's Response, Exhibit 1, ¶ 8). The contract specialist disputes that version of the conversation. According to the contract specialist, she spoke to IPACHI's executive director on December 6 and "simply told [IPACHI's executive director] that the contract had not yet been awarded" and that "when contract award was made, each of the agencies [offerors] responding to the RFP would be notified of the contract award." (AR Exhibit 4). In the January 30, 1995 agency report, the District stated that the agency was in the process of preparing award notifications. (AR at 4). As of February 17, IPACHI states that it still had not received a formal notice from CMHS of the award to Woodley House.

### DISCUSSION

The Board has jurisdiction over the protest pursuant to D.C. Code § 1-1189.3 (1992).

Based on our finding that Woodley House timely submitted a proposal, we cannot sustain IPACHI's protest ground that the agency violated law and regulation by evaluating a late proposal.

We also see no legitimate basis for concluding that the agency violated the procurement regulations by failing to tender timely notice of award. The District correctly argues that because IPACHI's proposal was *not* determined to be unacceptable, the agency was not required to provide the preaward notifications contemplated by 27 DCMR §§ 1630.1 and 1630.2.<sup>4</sup> IPACHI is left with arguing that the agency violated 27 DCMR § 1630.3 (requiring the contracting officer to award a contract "with reasonable promptness to the successful offeror by transmitting written notice of the award to that offeror") and 27 DCMR § 1630.4 (requiring the contracting officer to notify unsuccessful offerors in writing promptly after award unless

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<sup>3</sup> There is also no dispute that the executive director of Woodley House signed the proposed contract documents on November 22, 1994, and that the contracting officer signed them on January 20, 1995. (District Reply Exhibit 1 & Exhibit B).

<sup>4</sup> The two regulations provide:

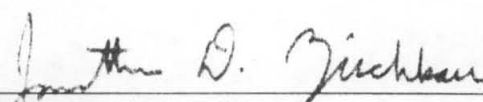
1630.1 The contracting officer shall notify each offeror whose proposal is determined to be unacceptable before award unless disclosure might prejudice the best interests of the District.

1630.2 If the proposal evaluation period for a solicitation is expected to exceed thirty (30) days, or when a limited number of offerors have been selected as being within the competitive range, the contracting officer, upon determining that a proposal is unacceptable, shall promptly notify the offeror.

preaward notice was given). There is nothing in the record which suggests that the agency violated section 1630.3 simply because the contracting officer signed the contract two months after Woodley's executive director signed the proposed contract documents. As for section 1630.4, prompt notification to unsuccessful offerors is an important part of the procurement process, both from the standpoint of fairness and efficiency. In most cases, an agency should be capable of issuing the award notice to the successful offeror and the notice to unsuccessful offerors on the same day. Under the circumstances here, the agency committed no violation, technical or otherwise. IPACHI received actual notice of the award to Woodley by virtue of the January 30 agency report -- just a few days after the agency notified Woodley House of the award. In sum, the agency did not violate the requirements of 27 DCMR §§ 1630.1-1630.4.

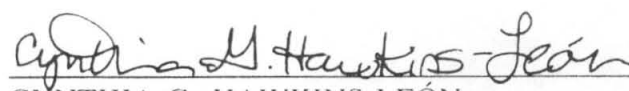
Accordingly, the protest is denied.

DATE: March 21, 1995

  
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JONATHAN D. ZISCHKAU  
Administrative Judge

CONCURRING:

  
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LORILYN E. SIMKINS  
Chief Administrative Judge

  
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CYNTHIA G. HAWKINS-LEÓN  
Administrative Judge