

On February 11, 2005, the District issued Request for Proposals No. DFCL-2005-R-0002 (“RFP”) on behalf of the Department of Corrections (“DOC”) for a three-year multi-year requirements contract for a contractor to provide within the District’s Central Detention Facility and Correctional Treatment Facility (“detention facilities”) comprehensive medical and mental health services. (Agency Report (“AR”) at 2; AR Ex. 1). The RFP was limited to providing “internal” health care services, *i.e.*, health care services provided by health care providers to inmates within the DOC detention facilities. The incumbent provider for internal health care services was the Center for Correctional Health and Policy Studies, Inc. (“CCHPS”). “External” health care services, *i.e.*, health care services provided to inmates who must leave the detention facilities to receive health care, are currently provided by the Alliance Contract primarily at Greater Southeast Community Hospital. (AR at 2, n.2). On the RFP’s closing date of April 1, 2005, the District received proposals from the following four offerors: CMC, Atlantic Health Services, Inc., CCHPS, and League Medical Concepts. (AR Ex. 3). The contracting officer determined that CMC and CCHPS were in the competitive range. (AR Ex. 3). On May 20, 2005, the contracting officer held discussions with CMC and CCHPS and issued requests for BAFOs from both CMC and CCHPS. (AR Exs. 2 and 3). Thereafter, the contracting officer recommended

award to CMC since CMC had the highest technical score and offered the lowest price, pending determination of CMC's responsibility and certification of the availability of funding. (AR Exs. 2 and 3). However, two issues arose that required the District to reconsider the award of the multi-year contract under the RFP. The first issue was the unavailability of funding needed to make an award. (AR Ex. 3). The second issue was the change in the agency's minimum needs to consolidate the scope of work to include both external and internal health care for the Corrections population.

Faced with these two issues, on August 15, 2005, the District requested an extension of the offerors' proposals until December 31, 2005, and also prepared for continuity of services in the event that the District decided to revise its minimum needs. (AR Ex. 3). The contracting agency did not inform CMC of these issues in its August 15, 2005 communication. By Determination and Findings for Sole Source, dated August 19, 2005, the Interim Chief Procurement Officer ("CPO") determined that in order to continue to provide medical and mental services to DOC inmates without interruption while the District revised its minimum needs, analyzed the cost effect, and prepared, issued and awarded a new multi-year contract, an interim one year sole source contract with the incumbent contractor, CCHPS, was justified. On September 30, 2005, the District issued CCHPS a one-year contract, No. DCFL-2005-D-0044, for the period of October 1, 2005, through September 30, 2006, to continue to provide internal comprehensive medical and mental health services at the District's detention facilities. (AR Ex. 7). The contracting agency did not timely inform CMC of the sole source award to CCHPS.

By email dated November 18, 2005, the Deputy Mayor for Public Safety and Justice recommended that the CPO cancel the RFP so that the scope of work could be substantially changed. (AR Ex. 5). On December 2, 2005, the CPO signed the determination and findings to cancel the RFP. (AR Ex. 4). The CPO determined that it was in the best interest of the District to cancel the RFP so that the RFP's scope of work could be substantially changed. Since another ongoing contract for external health services is scheduled to expire on May 31, 2006, the CPO agreed that it was in the District's best interest to combine into one solicitation both the internal and external health services and "seek one vendor or a coalition of vendors who would provide and coordinate all health care for the Corrections population." (AR at 4; AR Ex. 4).

On December 8, 2005, the District notified CMC of its determination to cancel the RFP. (Protest). On December 16, 2005, CMC filed its protest. The District filed an Agency Report on January 9, 2006. CMC has not responded to the Agency Report.

DISCUSSION

We exercise jurisdiction pursuant to D.C. Code § 2-309.03(a)(1). Our Board rules provide in pertinent part:

307.3 Failure of the protester to file comments, or to file a statement requesting that the case be decided on the existing record, or to request an extension of time for filing, shall result in closing the record of the case and may result in dismissal of the protest.

307.4 When a protester fails to file comments on an Agency Report, factual allegations in the Agency Report's statement of facts not otherwise contradicted by the protest, or the documents in the record, may be treated by the Board as conceded.

We treat as conceded the District's statement of facts in its Agency Report regarding the bases for the determination to cancel the RFP and to award a sole source interim contract to CCHPS. 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 § 2-303.07 (2001); *JHARBO Limited, Inc.*, CAB No. P-0527, Jan. 16, 1998, 45 D.C. Reg. 8701, 8703; *Singleton Electric Co.*, CAB No. P-0411, Nov. 15, 1994, 42 D.C. Reg. 4888, 4893. A sole source procurement may be used only under the standards provided in D.C. Code § 2-303.05 (2001). Because CMC has conceded the factual bases for the District's actions, we sustain the determinations to cancel the RFP and to award the sole source interim contract.

We believe the contracting agency should have notified CMC of the funding issue and change in minimum needs at the time it requested the extension of CMC's offer. In addition, we do not understand why the contracting agency was unable to compete the 1-year interim contract requirements and chose rather to issue a sole source award to CCHPS. Here, the contracting agency had identified two viable providers as a result of the RFP, CMC and CCHPS, and with regard to the RFP, CMC had the highest technical score and lowest price. In any event, once the agency made the sole source award to CCHPS, it promptly should have advised CMC of the sole source award because it clearly related to the pending solicitation and covered the same services.

Based on the record presented to us, we deny CMC's protest.

SO ORDERED.

DATED: March 20, 2006

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

CONCURRING:

/s/ Warren J. Nash
WARREN J. NASH
Administrative Judge