

## DISTRICT OF COLUMBIA CONTRACT APPEALS BOARD

APPEAL OF:

AMERICAN CONSULTANTS & MANAGEMENT )  
ENTERPRISES, INC. )  
 ) CAB No. D-1258  
Under Contract Nos. JA/93584, POHC-2000-C0036 )

For the Appellant: Dr. Ernest Middleton, *pro se*. For the District of Columbia Government: Kimberly M. Johnson, Esq., Section Chief, General Litigation Section I, Office of the Attorney General.

Opinion by Chief Administrative Judge Jonathan D. Zischkau, with Administrative Judge Warren J. Nash, concurring.

### OPINION

*Filing ID 30054064*

American Consultants & Management Enterprises, Inc. (“ACME”) participated in a joint venture with Capitalcare, Inc. (“CCI”), which contracted with the District to provide comprehensive outpatient substance abuse treatment services. ACME appeals the contracting officer’s final decision denying its claim for District funds paid to CCI and for payment resulting from an unjustified sole source contract award to CCI. The District has moved to dismiss the appeal, arguing that the complaint fails to state a claim for which relief can be granted, and that the appeal was untimely filed. ACME did not respond to the District’s motion. We conclude that the appeal was untimely filed pursuant to D.C. Code § 2-309.04(a). Accordingly, we dismiss the appeal.

### BACKGROUND

On July 17, 1995, CCI/ACME Joint Venture executed contract number JA/93584 with the District’s Department of Human Services (“DHS”) to provide comprehensive outpatient substance abuse treatment services for 360 alcohol or chemically dependent adults. The term of the contract was from July 25, 1995, to July 23, 1996, with four one year options. (Appeal File (“AF”) Ex. 3, Attachment A). All options were exercised by DHS, so that CCI/ACME provided services through July 24, 2000. (AF Ex. 3, at 2).

The CCI/ACME joint venturers, Capitalcare and ACME, executed a letter of dissolution on December 23, 1998, stating in part:

[I]t is mutually agreed upon that effective 12/25/98, Capitalcare Inc. will take complete responsibility of execution and administration of the DHS Contract # JA93584. ACME Inc. and all its corporate officers . . . relinquish all rights to CCI/ACME JOINT VENTURE DHS contract # JQA93584. It is further agreed upon

that for the remaining length of the contract CCI will pay to ACME \$4,341.00 per month.

Starting Dec. 25th, 1998's invoice, [e]ach month, when the monies are received from DC Government for the services rendered, CCI will pay to ACME \$4,341.00 to ACME.

(AF Ex. 3, Attachment B). There is no evidence in the record that the contract was modified to reflect a novation. (AF Ex. 3, at 3).

The contract expired on July 24, 2000. According to a 2003 report of the District's Inspector General, between July 25 and September 25, 2000, CCI continued to provide outpatient substance abuse treatment services without a written contract to do so. (AF Ex. 3, at 3). CCI received two payments for services provided during this period. (*Id.*). On September 26, 2000, CCI and District entered into a one year sole source contract, POHC-2000-C0036, to provide continuing substance abuse services. (*Id.*).

On February 22, 2004, ACME, by letter to Mr. Jacques Abadie, III, the District's Chief Procurement Officer, asserted claims related to the original ACME/CCI contract and the CCI sole source contract. The contracting officer, Ms. Esther Scarborough, responded with a final decision dated June 4, 2004, sent certified mail, return receipt requested, denying ACME's claim for relief sought against the District for payments made to CCI under the above referenced contracts, stating in pertinent part:

Issue #1. You have requested \$15,513 in compensation out of \$89,342.36 paid to [CCI/ACME] for outpatient substance abuse treatment services performed between July 25, 2000 and September 25, 2000. Despite the fact that the Inspector General found the District paid CCI/ACME for these services beyond the period of the written contract, No. JA/93584, CCI/ACME was the actual entity performing the services and full payment was rendered to it. Therefore, any amount that may be owed to you out of that payment is a matter between you and CCI/ACME.

Issue #2. You have claimed \$52,504 on account of a sole source contract, No. POHC -2000-C-0036 that was awarded to CCI on September 25, 2000 for the same services. Because the Inspector General concluded . . . that the procurement as a sole source contract was unjustified, you assert that your company, ACME, should have been entitled to a share of the amount due under that contract. In no way does the determination that the sole source contract was not justified give rise to an entitlement of payment to you in lieu of payment under that contract. To approve payment to you without a contract would be tantamount to the District's authorizing an oral contract, which is the same violation for which the Inspector General cited the Office of Contracting and Procurement as to Issue Number 1. . . .

....

This is the final decision of the Contracting Officer. In accordance with D.C. Official Code § 2-309.04, you may appeal this decision within 90 days from the date of receipt to the Contract Appeals Board . . . .

(AF” Ex.1). ACME does not contend that it received the June 4, 2004 final decision in an untimely manner. (Notice of Appeal, at 2). On February 22, 2005, ACME filed its notice of appeal, dated February 17, 2005, with the Board, and amended its factual statement on March 1, 2005. Although the appeal lacks clarity, it is without question an appeal of the contracting officer’s June 4, 2004 final decision. On April 1, 2005, the District filed a motion to dismiss. ACME did not respond to the District’s motion to dismiss.

### **DISCUSSION**

We exercise jurisdiction pursuant to D.C. Code § 2-309.03(a)(2).

The contracting officer’s final decision was issued on June 4, 2004. ACME’s notice of appeal of the final decision was received by the Board 261 days later on February 22, 2005. The Procurement Practices Act, in D.C. Code § 2-309.04 (“Contractor’s right of appeal to Board”), sets forth a time limit for appealing to the Board a contracting officer’s final decision:

- (a) Except as provided in § 2-308.05, within 90 days from the date of receipt of a decision of the contracting officer, the contractor may appeal the decision to the Board.

As the appeal was filed long after the appeal period mandated by the statute, we must dismiss the appeal as untimely. Accordingly, we dismiss ACME’s appeal with prejudice.

### **SO ORDERED.**

DATED: March 15, 2010

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

CONCURRING:

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