

DISTRICT OF COLUMBIA CONTRACT APPEALS BOARD

PROTEST OF:

COMPREHENSIVE COMMUNITY HEALTH)	
AND PSYCHOLOGICAL SERVICES, LLC)	CAB No. P-0904
)	
Under Solicitation No. RM-11-RFP-83-BY4-VM)	

For Comprehensive Community Health and Psychological Services, LLC: Dr. Ernest Middleton,
pro se. For the District of Columbia Government: Janice N. Skipper, Esq., Assistant Attorney General.

Opinion by Administrative Judge Maxine E. McBean, with Chief Administrative Judge Marc D. Loud, Sr., (concurring with separate opinion) and Administrative Judge Monica C. Parchment, concurring.

OPINION

Filing ID 44841842

Comprehensive Community Health and Psychological Services, LLC (“CCHPS”) protests the District’s decision to award a contract to Pathways to Housing DC (“Pathways”) under Solicitation No. RM-11-RFP-83-BY4-VM. The protester challenges the award on the grounds that the District’s Department of Mental Health (“DMH”) (a) violated the District of Columbia’s Municipal Regulations (“DCMR”) in accepting a proposal that did not contain a 35% subcontracting plan; and (b) violated the DCMR by accepting and approving a waiver request for the 35% small business set aside requirement.

This Board has dismissed three earlier protests by protester in cases referenced as *Comprehensive Community Health and Psychological Services, LLC*, CAB No. P-0809, 57 D.C. Reg. 850 (Aug. 26, 2009); *Comprehensive Community Health and Psychological Services, LLC*, CAB No. P-0821, 57 D.C. Reg. 852 (Sept. 10, 2009); *Comprehensive Community Health and Psychological Services, LLC*, CAB No. P-0859, 2011 WL 7402959 (Nov. 9, 2010). In each instance, we concluded that CCHPS, as a disappointed subcontractor, lacked standing to protest. The three earlier protests all concerned the same solicitation and although this protest relates to a new solicitation, the status of CCHPS is, once again, that of a subcontractor. Accordingly, as we have previously held in each of the three referenced protests that CCHPS, as a potential subcontractor, does not have standing to protest, we dismiss CCHPS’s protest and, given the Board’s earlier rulings, find that the protest is frivolous pursuant to D.C. Code § 2-360.08(g) and D.C. Mun. Regs. tit. 27, § 308.2.

BACKGROUND

On May 24, 2011, DMH issued a request for proposals for Solicitation No. RM-11-RFP-83-BY4-VM (“RFP”) for contractors to provide Court Urgent Care Services. (AR at Ex. 1.) On June 13, 2011, in response to a request from CCHPS, the Contracting Officer issued Amendment No. 1 to the RFP advising prospective offerors that CCHPS was interested in becoming a subcontractor. (AR at Ex. 2.) On June 27, 2011, the solicitation closed with two offerors submitting proposals, (i) Pathways, and (ii) Psychiatric Institute of Washington. (Mot. to Dismiss & Req. for Sanctions 2, Feb. 27, 2012.) On February 6, 2012, CCHPS filed a protest contesting the contract award to Pathways. On February 7, 2012, the District issued a notice of intent to award the contract to Pathways.

On February 27, 2012, the District filed a motion to dismiss and request for sanctions asserting that the protester, as a potential subcontractor, “has no legally enforceable interest in the procurement and therefore lacks standing to protest.” (Mot. to Dismiss & Req. for Sanctions 1.) Further, the District requested that the Board find the protest frivolous and order the protester to pay agency attorney fees. (*Id.*) It asserted that the protester “knew from the Board’s dismissals of three previous protests that the present protest was frivolous.” (*Id.* at 3.) The District was referring to (i) CAB No. P-0809, wherein the Board, in its August 26, 2009, opinion dismissed protester’s claims relating to a sole source contract; (ii) CAB No. P-0821, wherein the Board in its September 10, 2009, opinion dismissed protester’s claims and called protester’s attention to Board Rule 308.2 which discusses possible sanctions for parties who file frivolous protests; and (iii) CAB No. P-0859, wherein the Board in its November 9, 2010, opinion dismissed the protest and concluded that a portion of the protest was frivolous pursuant to D.C. Code § 2-309.08(g).¹ In each case, the Board cited protester’s status as a subcontractor for the basis of its conclusion that protester lacked standing.

On May 23, 2012, the District issued a Notice of the District’s Determination to Proceed with Award and Performance of the Contract while a Protest is Pending. CCHPS filed its response thereto on May 29, 2012.²

DISCUSSION

CCHPS is a potential subcontractor to provide Court Urgent Care Services. In three separate opinions this Board has ruled that, as a subcontractor, the protester has no standing. Although the earlier rulings concerned the same solicitation while this protest relates to a more recent solicitation, the protester’s status as a subcontractor is the same. Therefore, the Board’s analysis and resulting decision remain consistent in finding that the protester has no standing in the present protest.

Furthermore, in light of the protester’s refusal to accept the Board’s earlier rulings that a subcontractor does not independently have standing to pursue a protest before the Board, and heed its warnings regarding sanctions, the Board also finds that the current protest is frivolous. Under D.C. Code § 2-360.08(g)(2), “the Board may require the protester to pay reasonable attorneys’ fees, for time spent representing the agency in defending the frivolous protest.” D.C. Mun. Regs. tit. 27, § 308.2 also states that, “the Board may require the protester to pay the agency attorney fees, at the rate of \$100 per hour.” In that regard, the Board directs the District to submit sufficient documentation supporting its costs to defend this matter pursuant to D.C. Mun. Regs. tit. 27, § 308.4. The protester will thereafter be allowed to respond to the District’s cost submission pursuant to D.C. Mun. Regs. tit. 27, § 308.5.

CONCLUSION

For the reasons stated herein, we dismiss the protest and find the protest frivolous pursuant to D.C. Code § 2-360.08(g)(2) and D.C. Mun. Regs. tit. 27, § 308.2.

SO ORDERED.

DATED: June 15, 2012

/s/ Maxine E. McBean
MAXINE E. MCBEAN

¹ D.C. Code § 2-309.08(g) has since been repealed and replaced with D.C. Code § 2-360.08(g).

² The protester’s response requests the Board to disallow contract award pending the protest. The Board construes the protester’s May 29, 2012, filing as a motion challenging the Director’s determination to proceed with performance under D.C. Mun. Regs. tit. 27, § 304.4. Because we have ruled that the protester lacks standing herein, we deny protester’s May 29th motion as moot.

Administrative Judge

LOUD, Chief Administrative Judge, concurring:

While I view sanctions against either the District government or members of our business community as a grave matter, the District and the taxpayers that support the District, do not have unlimited resources to defend frivolous protests ad infinitum. The record herein amply supports our finding that the protester has filed a frivolous lawsuit, and either knows or should have known that its status as a potential subcontractor cannot confer it standing to protest on the record before our Board.

/s/ Marc D. Loud, Sr.
MARC D. LOUD, SR.
Chief Administrative Judge

CONCURRING:

/s/ Monica C. Parchment
MONICA C. PARCHMENT
Administrative Judge

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