

DISTRICT OF COLUMBIA CONTRACT APPEALS BOARD

PROTEST OF:

COMPREHENSIVE COMMUNITY HEALTH)	
AND PSYCHOLOGICAL SERVICES, LLC)	
)	CAB No. P-0859
Under Contract Nos. DCFL-2006-D-6001 and)	
DCFL-2010-R-0001)	

For Comprehensive Community Health and Psychological Services, LLC: Mr. Ernest Middleton, *pro se*. For the District of Columbia Government: Robert Schildkraut, Esq., Assistant Attorney General.

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

OPINION

Filing ID 34265802

Comprehensive Community Health and Psychological Services, LLC (“CCHPS”) protests the approval and administration by the Office of Contracts and Procurement of an option year contract with Unity Health Care, Inc. CCHPS protests for the third time the administration of a contract performed by Unity and the failure of Unity to award a subcontract to CCHPS in connection with a 2006 procurement. We dismissed two earlier protests raising the same allegations in CAB Nos. P-0809 and P-0821. We again conclude that CCHPS as a disappointed subcontractor lacks standing to protest and that the allegations it raises concerning various contract administration issues are not proper grounds for protest. CCHPS also seems to challenge the cancellation of a 2010 solicitation but we conclude that this challenge is untimely. Accordingly, we dismiss CCHPS’s protest. We further find that CCHPS’s repeat protest of the 2006 procurement which we previously rejected in two earlier protest decisions is frivolous pursuant to D.C. Code § 2-309.08(g) and Board Rule 308.2.

BACKGROUND

On July 19, 2006, the Office of Contracting and Procurement (“OCP”) awarded to Unity Health Care (“Unity”) a sole source contract, DCFL-2006-D-6001 (“2006 procurement”), for community oriented correctional health care for the Department of Corrections (“DOC”). (CAB No. P-0809 Opinion, dated August 26, 2009). Prior to this instant protest, CCHPS filed two separate protests with the Board regarding the 2006 procurement. The first protest was filed on June 15, 2009, docketed by the Board as CAB No. P-0809. In that protest CCHPS alleged: (1) the District improperly awarded the 2006 sole source contract to Unity; (2) the District improperly reduced the subcontracting set-aside requirement of the Unity contract from 35 to 20 percent; (3) the District improperly allowed Unity to subcontract with its wholly owned subsidiary (Health Right, Inc.) to the detriment of CCHPS; and (4) Unity improperly refused to subcontract with CCHPS. (CAB No. P-0809 Opinion). On August 26, 2009, the Board

dismissed the protest in CAB No. P-0809 stating that the protest was untimely, that CCHPS lacked standing to protest the procurement, and that CCHPS's contract administration allegations were not proper protest grounds under the Procurement Practices Act. (*Id.*).

Undaunted, CCHPS filed a second protest, CAB No. P-0821, on September 9, 2009, reiterating its earlier grounds from CAB No. P-0809, and again alleging improprieties by the District in administering the 2006 contract and exercise of options. (CAB No. P-0821 Opinion). On September 10, 2009, the Board summarily dismissed CAB No. P-0821, citing the untimely filing, CCHPS's lack of standing, and the absence of valid protest grounds. We also drew CCHPS's attention to the Board Rule 308.2 that allows the Board to award sanctions where a protester files a frivolous protest: "The Board directs CCHPS's attention to Board Rule 308.2 which discusses possible sanctions for parties who file frivolous protests."

On November 30, 2009, Solicitation DCFL-2010-R-0001 was issued for comprehensive health care services by OCP for DOC. (Motion to Dismiss, Ex. 1). The 2010 solicitation was cancelled on May 10, 2010, by Amendment 0011. (Motion to Dismiss, Ex. 2). On May 11, 2010, all prospective offerors were emailed a copy of Amendment 0011 and notified that the solicitation was cancelled. (Motion to Dismiss, Exs. 3, 4). CCHPS was included on the list of prospective offerors and was sent the May 11, 2010 email. (*Id.*).

On July 13, 2010, CCHPS filed the instant protest restating the arguments found in its previous protests, CAB Nos. P-0809 and P-0821, which we rejected. CCHPS also appears to argue that the cancellation of the 2010 solicitation was improper. On July 22, 2010, CCHPS filed an amended protest, that for the most part duplicates its July 13 protest except that CCHPS adds a paragraph challenging the "finding of CAB that CCHPS does not have standing" and asking us to "immediately void the option year" and not allow a new option to be exercised. On July 30, 2010, the District filed a motion to dismiss including a request for sanctions. CCHPS responded to the motion to dismiss on August 27, 2010, and October 4, 2010.

DISCUSSION

With respect to CCHPS's objection to the cancellation of the 2010 solicitation, we note that CCHPS does not deny that it received notice of the cancellation on May 11, 2010. By waiting over two months to file its protest on July 13, 2010, CCHPS has not timely raised its protest ground as required by D.C. Code § 2-309.08(b)(2) and Board Rule 302.2 (requiring this type of protest to be filed "not later than ten (10) business days after the basis of the protest is known or should have been known"). Accordingly, we conclude that this protest ground was untimely filed and must be dismissed.

Regarding the repeat protest challenges of the 2006 procurement involving the award to Unity Health Care of Contract No. DCFL-2006-D-6001, we dismiss all of these protest grounds for the same reasons stated in our August 26, 2009 and September 10, 2009 decisions in CAB Nos. P-0809 and P-0821. D.C. Code § 2-309.08(g) and Board Rule 308.2 provide that:

The Board may dismiss, at any stage of the proceedings, any protest, or portion of a protest, it deems frivolous. In addition, the Board may require the protester to

pay the agency attorney fees, at the rate of \$100 per hour, for time counsel spent representing the agency in defending the frivolous protest or its frivolous part.

CCHPS's repeat challenges of the 2006 procurement are frivolous and we warned CCHPS in our second decision (CAB No. P-0821) on these same allegations that a frivolous protest may result in sanctions. This is the third time that CCHPS has raised these allegations. Sanctions are therefore appropriate under D.C. Code § 2-309.08(g). Pursuant to Board Rules 308.3 and 308.4, the District shall file with the Board within 20 days of receipt of our decision a statement of the number of hours spent by District counsel in responding to the portion of this protest relating to the frivolous allegations concerning the 2006 procurement, accompanied by sufficient documentation supporting the requested costs and/or damages. CCHPS may respond as provided in Board Rule 308.5 by filing its written response to the District's filing within 15 days after its receipt of the District's filing.

The Board will not accept for filing any new protest from CCHPS that challenges the 2006 procurement in DCFL-2006-D-6001.

CONCLUSION

For the reasons discussed above, we dismiss the protest and conclude that a portion of the protest is frivolous pursuant to D.C. Code § 2-309.08(g).

SO ORDERED.

DATED: November 9, 2010

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

CONCURRING:

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