

STATE OF SOUTH CAROLINA)	BEFORE THE SOUTH CAROLINA
)	PROCUREMENT REVIEW PANEL
COUNTY OF RICHLAND)	
)	
)	ORDER
IN RE: Appeal by Miracle Hill Ministries;)	
Request for Resolution of Contract)	Case No. 2014-10
Controversy by Miracle Hill Ministries)	
(Contract No. 4400003878))	
)	
Solicitation No. 5400002885 -- Statewide)	
Residential Services for Children for the)	
South Carolina Department of Social Services))	

This matter is before the South Carolina Procurement Review Panel (the Panel) for further administrative review pursuant to sections 11-35-4230(6) and 11-35-4410(1)(a) of the South Carolina Consolidated Procurement Review Code (the Procurement Code). On September 22, 2014, Miracle Hill Ministries (Miracle Hill) appealed the September 15, 2014, order of the Chief Procurement Officer (the CPO) denying Miracle Hill's claims based on its contract with the South Carolina Department of Social Services (SCDSS). On February 25, 2015, the Panel convened a hearing to address motions filed by SCDSS. Joel S. Hughes, Esquire, Andrew F. Lindemann, Esquire, and Andrew Johnson, Esquire, represented SCDSS at the hearing. Rivers S. Stilwell, Esquire represented Miracle Hill, and William Dixon Robertson, III, Esquire, represented the CPO.

Background

Miracle Hill has been under contract with SCDSS since July 1, 2011, to provide Level 1 group home services in Greenville, South Carolina. Record at PRP184. The contract was awarded pursuant to a Fixed Price Bid solicitation seeking "to obtain an array of residential services statewide for children/youth who have been victims of abuse and neglect and who are in the custody of [SCDSS]." Record at PRP51. The solicitation set the maximum daily rate for

Level 1 group home care at \$85.00. Record at PRP97. The contract awarded to Miracle Hill has been renewed several times by mutual agreement, and SCDSS increased the daily rate through contract modification in March of 2014. Although Miracle Hill has continued to provide residential services under its contract, it filed two “protests” with the CPO on March 26, 2014, requesting resolution of an ongoing dispute it was having with SCDSS regarding reimbursement rates.¹ Record at PRP12 – PRP17. In particular, Miracle Hill contends that SCDSS has failed to adopt a reasonable cost methodology for setting reimbursement rates and that SCDSS has failed to reimburse providers for their actual costs as required by federal law.²

The CPO held a hearing to consider Miracle Hill’s claims on September 8, 2014. In his written determination of September 15, 2014, the CPO found that he did not need to interpret federal law because the contract did not require compliance with such laws. In addition, the CPO dismissed the portion of Miracle Hill’s request that challenged the original rates set by the contract award as an untimely protest of the solicitation’s terms. However, the CPO declined to dismiss Miracle Hill’s challenge to the current contract rates, finding it to be a timely request for resolution of a contract controversy under section 11-35-4230. Nonetheless, the CPO found that Miracle Hill “failed to identify any contract obligation the State has failed to honor,” and denied Miracle Hill’s claims. Miracle Hill filed a timely request for further administrative review with the Panel on September 22, 2014, raising the same issues it raised before the CPO and also asserting that the CPO erred in dismissing its claims regarding the original contract rates as an untimely solicitation protest.

¹ The e-mails to the CPO were drafted by Miracle Hill’s Chief Operating Officer, Larry Bateman. Both e-mails use the terms “protest” and “contract controversy” almost interchangeably. However, it is clear from the e-mails that Miracle Hill’s dispute with SCDSS arises from the existing contract between them. As the CPO observes in his order, “There is no more classic example of [a contract controversy] than a contractor’s claim that he is owed more money.” The Panel agrees with this assessment and finds that Miracle Hill intended to request resolution of contract controversy under section 11-35-4230 of the Procurement Code, despite its use of the term “protest.”

² Miracle Hill relies on the federal Child Welfare Act of 1980, which created Title IV-E of the Social Security Act to assist states with the costs of foster care. 42 U.S.C. §§ 670 – 679.

Motions filed by SCDSS

I. SCDSS's Motion to Dismiss Contract Controversy on State Law Contractual Grounds

SCDSS has asked the Panel to dismiss Miracle Hill's request for further administrative review on the grounds that Miracle Hill's claims are based on federal law not referenced in the contract and that Miracle Hill has failed to identify any contract provision violated by the State. In essence, SCDSS requests the Panel to affirm the CPO's order as a matter of law and dismiss the appeal before it. As an initial matter, the Panel notes that it has the authority to conduct a *de novo* review of the CPO's written determination pursuant to section 11-35-4410(1)(a) of the Procurement Code. S.C. Code Ann. § 11-35-4410(1)(a) (2011). With particular regard to contract controversy cases, the Panel has observed that the CPO's order holds no precedential value and the "the Panel is not bound by any aspect of it" in conducting a *de novo* hearing. *In re: Protest of McCrory Constr. Co.*, Panel Case Nos. 1994-13 & 1995-7 (May 29, 1995). The Panel finds that Miracle Hill's initial requests for resolution of a contract controversy and the request for further administrative review present questions of fact regarding the applicability of federal law to the contract in question and the State's responsibility to comply with it. Furthermore, these requests also raise an issue regarding the State's general obligation of good faith under the Procurement Code. Because these questions of fact exist, the Panel declines to dismiss Miracle Hill's appeal on state law contractual grounds.³ *See In re: Protest of PS Energy*, Panel Case No. 2002-9 (July 3, 2002) (wherein the Panel denied a motion to dismiss an issue of misrepresentation on legal grounds, finding that it presented a question of fact to be decided by the Panel in its *de novo* hearing).

³ The Panel notes that its decision herein does not directly address the question of Miracle Hill's timeliness with regard to its challenge to the contract's original rates. To the extent that SCDSS's motion asks the Panel to affirm the CPO's finding that certain claims raised by Miracle Hill were barred as an untimely protest, the Panel holds its decision in abeyance until Miracle Hill has had an opportunity to present its case.

II. SCDSS's Motion to Dismiss for Lack of Subject Matter Jurisdiction

Alternatively, SCDSS has asked the Panel to dismiss Miracle Hill's request for review because the Panel lacks jurisdiction to hear and decide questions of federal law. SCDSS asserts that only federal and state courts have jurisdiction to entertain and decide questions of federal law and that the Panel lacks jurisdiction because it is an administrative body. The Panel disagrees that its jurisdiction is limited to matters of state law. Section 11-35-40(3) recognizes that many contracts awarded pursuant to the Procurement Code involve the expenditure of federal funds:

(3) Compliance with Federal Requirements. Where a procurement involves the expenditure of federal assistance, grant, or contract funds, the governmental body also shall comply with federal laws (including authorized regulations) as are mandatorily applicable and which are not presently reflected in this code. . . .

S.C. Code Ann. § 11-35-40(3) (2011). In addition, the Procurement Code provision addressing the resolution of contract controversies provides in pertinent part: "The procedure set forth in this section *constitutes the exclusive means* of resolving a controversy between a governmental body and a contractor . . . concerning a contract solicited and awarded pursuant to the provisions of the South Carolina Consolidated Procurement Code." S.C. Code Ann. § 11-35-4230(1) (2011) (emphasis added). Reading these two provisions together, the Panel concludes that if federal law applies to the contract between Miracle Hill and SCDSS, then it has the authority to consider and interpret such federal law.⁴ *Unisys Corp. v. South Carolina Budget and Control Board*, 346 S.C. 158, 170, 551 S.E.2d 263, 270 (2001) (wherein the South Carolina Supreme Court interpreted section 11-35-4230's phrase "exclusive means" to indicate exclusivity of jurisdiction). Therefore, the Panel denies SCDSS's motion to dismiss for lack of subject matter jurisdiction.

⁴ The Panel notes that the CPO would also have the authority to consider questions of federal law under these circumstances.

Conclusion

For the reasons discussed above, the Panel denies SCDSS's motions to dismiss and will proceed with a hearing on the merits of Miracle Hill's claims as scheduled.

IT IS SO ORDERED.

SOUTH CAROLINA PROCUREMENT REVIEW PANEL

BY: 
C. BRIAN MCLANE, SR., CHAIRMAN

This 11th day of March, 2015.

Columbia, South Carolina