

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeals of --)
)
United Healthcare Partners, Inc.) ASBCA Nos. 58123, 59214
)
Under Contract No. FA4877-12-C-0002)

APPEARANCE FOR THE APPELLANT: Ludlow B. Creary II, Esq.
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APPEARANCES FOR THE GOVERNMENT: Jeffrey P. Hildebrant, Esq.
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Trial Attorney

OPINION BY ADMINISTRATIVE JUDGE PAGE

By Alternative Dispute Resolution (ADR) agreement approved by the Board on 27 March 2017, United Healthcare Partners, Inc. (UHP) and the government requested that entitlement and quantum in these appeals be decided using a “summary proceeding with a binding decision.” The parties stipulated that the single-judge decision would “contain no findings of fact or conclusions of law,” and would “be final, conclusive, not subject to reconsideration or appeal, and may not be set aside, except for fraud [and] shall have no precedential value.” (ADR Agreement at 2, 6) A hearing was held 18-20 July 2017 in Tucson, Arizona. Familiarity with the Board’s 17 May 2016 decision on the parties’ cross-motions to dismiss is presumed. *See United Healthcare Partners, Inc.*, ASBCA No. 58123, 16-1 BCA ¶ 36,374.

DECISION

Regrettably for UHP, this contract was predicated upon a pricing structure different from other contracts for telephonic nurse triage services it had performed successfully and was compensated in an annual, lump sum amount. By contrast, this agreement paid UHP at the firm-fixed-price of \$12.90 for each compensable call as defined by the Performance Work Statement (PWS). The government withheld payment after UHP did not furnish patient information in accordance with the PWS for all calls billed, then terminated the contract for default after warning the contractor.

ASBCA No. 58123, in which UHP appealed the termination for default, is denied. Although the agreement lacked salient terms to qualify as a requirements-type contract and UHP is not penalized for discontinuing performance, the government was

justified in terminating the contract for default for UHP's failure to comply with the PWS.

ASBCA No. 59214, in which UHP alleged that the government materially breached the contract, is sustained to the following extent: UHP may recover \$19,788.60 for properly submitted daily reports and accrued interest in accordance with 41 U.S.C. § 7109. In all other aspects, this appeal is denied.

Dated: 1 August 2017



REBA PAGE
Administrative Judge
Armed Services Board
of Contract Appeals

I certify that the foregoing is a true copy of the Opinion and Decision of the Armed Services Board of Contract Appeals in ASBCA Nos. 58123, 59214, Appeals of United Healthcare Partners, Inc., rendered in conformance with the Board's Charter.

Dated:

JEFFREY D. GARDIN
Recorder, Armed Services
Board of Contract Appeals