

Claims Court Won't Let Protest Halt \$17.8M Treasury Contract

By **Nicole Rosenthal**

Law360 (May 25, 2022, 7:46 PM EDT) -- A wastewater treatment company that serviced the Treasury Department for about 24 years can't stop the government from switching to a competitor for a \$17.8 million contract after the U.S. Court of Federal Claims said the company's protest may not be successful.

C&E Services Inc. had asked the court to stop work from proceeding while it protests the award to Alaskan Native company Kadiak LLC from the U.S. Department of the Treasury's Bureau of Engraving and Printing, which makes currency and Federal Reserve notes. The government had chosen to override a stay that automatically kicks in when a protest is filed, but this action was not warranted since BEP had chosen to extend C&E's contract through the end of April instead of letting Kadiak take over the contract on April 1, C&E said.

But Judge Patricia Elaine Campbell-Smith **rejected** C&E's contention that the bridge contract demonstrated the company's performance was up to par and noted allegations from BEP that C&E had been operating with less than a full staff, creating a risk of chemical spills and wasted currency notes and leaving the agency to pick up some of the contracted work.

"To the extent that a disagreement exists with regard to whether plaintiff has properly maintained certain instruments, plaintiff indicates that the agency is the source of any problems," Judge Campbell-Smith said in an opinion filed under seal on April 28 and unsealed on Monday. "The court, though, does not have before it the complete administrative record ... As such, the court cannot yet predict which party is likely to prevail, and the court finds that plaintiff has not shown that this factor weighs in its favor."

C&E filed its protest of the award before the U.S. Government Accountability Office on March 23, triggering an automatic stay of the award. But the government overrode that stay on March 29 and extended C&E's contract two days later to run through April, according to the decision.

C&E argued that the contract extension shows that BEP should have known Kadiak was unprepared to take over the contract on April 1, but Judge Campbell-Smith said she could not consider that argument since it "focuses on events that post-date the override decision."

Judge Campbell-Smith ruled that C&E failed to satisfy other requirements needed to win a preliminary injunction to halt Kadiak's work, including demonstrating irreparable harm, adequately explaining that the balance of hardships is on its side and that preliminary injunctive relief will be in the public interest.

C&E had argued that Kadiak intended to hire C&E employees for the contract, which would leave it a competitive disadvantage if it wins its protest and can vie for the deal again, but Judge Campbell-Smith repeated the court's precedent from a prior case that "economic loss alone does not constitute irreparable harm."

"If the workforce is likely to follow the work rather than the employer in these circumstances, it also stands to reason that the agency would understand the flow of employees and consider that pattern in weighing the importance of presently employed personnel," she said.

And while the public has an interest in the integrity of the competitive process, C&E did not

adequately explain how blocking the BEP from pursuing the Kadiak contract would compromise the competitive market.

"Having reviewed the relevant factors, the court finds that plaintiff has shown, by a slight margin, that it may suffer irreparable harm absent the requested injunction," Judge Campbell-Smith wrote. "None of the remaining three factors, however — including and most importantly, the likelihood of success on the merits — militates in favor of the court's intervention here. Therefore, plaintiff has not demonstrated that it is entitled to preliminary injunctive relief."

Judge Campbell-Smith gave the parties until May 13 to confer and file a joint status report on how they wish to proceed.

Counsel for C&E and the government did not respond to a request for comment.

C&E Services Inc. is represented by Kevin Paul Connelly of Vedder Price PC.

Kadiak LLC is represented by Devon Elizabeth Hewitt of Protorae Law PLLC.

The U.S. government is represented by Vincent de Paul Phillips and Douglas K. Mickle of the U.S. Department of Justice Commercial Litigation Branch, Civil Division.

The case is C&E Services Inc v. U.S.A., case number 1:22-cv-00366, in the U.S. Court of Federal Claims.

--Editing by Vaqas Asghar.