

**BEFORE THE MARYLAND STATE BOARD OF CONTRACT APPEALS**

**In the Appeal of The Law Office of  
Deborah Ullmann, LLC**

**Docket No. MSBCA 3101**

**Under  
Department of Human Resources  
Contract No. OS/MLSP-16-007**

Appearance for Appellant

Camilla J. Rogers, R.N., MSN, Esq.  
Law Office of Kanaras and Rogers, LLC  
Bel Air, MD

Appearance for Respondent

Aretha J. Ector, Esq.  
Simon T. Cornberg, Esq.  
Assistant Attorneys General  
Department of Human Services  
Baltimore, MD

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**OPINION AND ORDER BY BOARD MEMBER STEWART**

Appellant appeals the denial of its claim by the procurement officer for damages due to the alleged breach of its contract with Respondent Maryland Department of Human Services (“DHS”)<sup>1</sup> to provide legal representation for minor children in Child in Need of Assistance (“CINA”) and Termination of Parental Rights (“TPR”) hearings in Somerset and Worcester Counties.

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<sup>1</sup> The Maryland Department of Human Resources changed its name to the Maryland Department of Human Services on July 1, 2017.

## FINDINGS OF FACT

§ 3-813(a) of the Courts Article of the Annotated Code of Maryland mandates that minor children who have suffered from abuse or neglect are entitled to be represented by counsel in CINA hearings. § 3-813(d) of the Courts Article mandates:

- (1) A child who is the subject of a CINA petition shall be represented by counsel.
- (2) Unless the court finds that it would not be in the best interests of the child, the court shall:
  - (i) Appoint an attorney with whom the Department of Human Services has contracted to provide those services, in accordance with the terms of the contract; and
  - (ii) If another attorney has previously been appointed, strike the appearance of that attorney.

Respondent, through its Maryland Legal Services Program (“MLSP”), issues requests for proposals and awards contracts for legal representation in CINA cases in the various jurisdictions in Maryland. MLSP has also established the Court Appointed Attorney Program (“CAAP”) to allow private attorneys statewide to provide legal representation in cases where a conflict of interest in representation arises with an MLSP provider.

On April 20, 2015, Respondent issued Request for Proposals Solicitation No.: OS/MLSP-15-001-S (“RFP No. OS/MLSP-15-001-S”), to provide legal representation services throughout the State to children involved in CINA/TPR and related proceedings.<sup>2</sup> Respondent stated in RFP No. OS/MLSP-15-001-S that it intended to allow contractors that currently have contracts with it to provide CINA/TPR services the opportunity to keep their current cases. An offeror currently providing CINA/TPR services was required to indicate its desire to retain its current cases. If an offeror currently providing CINA/TPR services did not intend to seek new cases, but wished to continue providing services for its currently assigned caseload, that offeror had to still submit a proposal in response to the RFP No. OS/MLSP-15-001-S in order to maintain its currently

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<sup>2</sup> RFP No. OS/MLSP-15-001-S, Section 1.1.1.

assigned cases, and had to demonstrate that it intended to comply with all of the requirements of this RFP No. OS/MLSP-15-001-S. For the final award determination for existing caseloads only, preference would be given to current providers who submitted a proposal to keep their current caseload, provided it was determined to be in the best interest of and most advantageous to the State after evaluation of proposals.<sup>3</sup>

The Award Basis for the RFP No. OS/MLSP-15-001-S stated that the Respondent intended to award new CINA/TPR cases based on the number of providers needed for each jurisdiction. In jurisdictions with a single provider, the offeror with the highest overall ranking would be awarded that jurisdiction's *new* cases and *existing* cases, if applicable. *New* Contracts awarded to providers that currently had *existing* caseloads under contracts with Respondent to provide CINA/TPR services, but who did not intend to seek *new* cases and only wished to continue providing services for their currently assigned caseload would not count towards the number of providers needed for each jurisdiction.<sup>4</sup> The number of potential contracts to be awarded in Somerset and Worcester Counties was one (1) in each county.<sup>5</sup>

The Award Determination set forth in the RFP No. OS/MLSP-15-001-S stated that to attempt to maintain continuity of representation to children who are involved in CINA/TPR and related proceedings, that for the *existing* cases only, preference would be given to offerors currently providing services that wished to keep their current caseload, and wished to take on new cases, provided that award recommendations to such offerors were determined to be in the best interest of and most advantageous to the State after evaluation of the proposals. New contracts awarded to providers that currently had contracts to provide CINA/TPR services, but who did not intend to

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<sup>3</sup> RFP No. OS/MLSP-15-001-S, Section 1.1.3.

<sup>4</sup> RFP No. OS/MLSP-15-001-S, Section 1.15.2.

<sup>5</sup> RFP No. OS/MLSP-15-001-S, Attachment Z.

seek *new* cases and only wish to continue providing services for their currently-assigned cases, would not count towards the number of providers needed for each jurisdiction.<sup>6</sup>

In response to the RFP No. OS/MLSP-15-001-S, Appellant, The Law Office of Deborah Ullmann, LLC (“Ullmann”), submitted a proposal to provide legal representation in CINA/TPR and related proceedings in Somerset and Worcester Counties. Appellant submitted a primary pricing proposal to represent children who were *new* entries into the CINA/TPR system, and also submitted an alternate plan to represent the entire projected caseload for both counties “in case the incumbent contractor is not permitted to continue representation of its current clients.”

On July 7, 2016, Respondent entered into a contract, OS/MLSP-16-007-S (the “Contract”), with Appellant to represent children in *new* CINA/TPR cases in Somerset and Worcester Counties for three years from the effective date of June 1, 2016, until May 31, 2019, with Respondent having the unilateral right to extend Appellant’s contract for two additional one-year terms. Section 2.1 of the Contract states that, “[t]he Contractor shall provide deliverables, programs, goods, and services specific to the Contract awarded in accordance with Exhibits A-C listed in this section and incorporated as a part of this Contract.” Section 2.1 also provides an order of precedence in the event of conflicts among the documents forming the Contract:

If there is any conflict between this Contract and Exhibits, the terms of the Contract shall govern. If there is any conflict among the Exhibits, the following order of precedence shall determine the prevailing provisions:

Exhibit A – The RFP and Attachments

Exhibit B – The Proposal (Technical and Financial)

Exhibit C – State Contract Affidavit, executed by the Contractor and dated February 22, 2016

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<sup>6</sup> RFP No. OS/MLSP-15-001-S, Section 5.5.3.

The Contract does not explicitly state that Appellant was award only *new* CINA/TPR cases in Somerset and Worcester Counties, but Appellant conceded at the hearing on the merits that she only received *new* CINA/TPR cases in the two jurisdictions pursuant to its Contract.

Pursuant to an offer made in response to RFP No. OS/MLSP-15-001-S, Respondent also entered into a contract with an effective date of June 1, 2016, with the Child Advocacy Project of the Eastern Shore, Inc. (“CAPES”) led by David C. Wright, Esquire (“Mr. Wright”) to represent children in CINA/TPR cases in Caroline, Dorchester, Kent, Queen Anne’s, Talbot and Wicomico Counties. CAPES did not win the award for *new* cases in Baltimore City, Baltimore, Cecil, Somerset and Worcester Counties, but was permitted to keep its *existing* cases in those jurisdictions it had been assigned pursuant to its previous contract.

Respondent terminated CAPES’ contract in part for representation in existing CINA/TPR cases in Cecil County effective October 13, 2017, and MLSP transferred all of CAPES’ existing cases (all assigned to Mr. Wright) to the firm under contract with Respondent for Cecil County. On April 2, 2018, Respondent sent identical letters to the administrative judges in both Somerset and Worcester Counties, Judge Brian Shockley and Judge Daniel W. Powell, respectively, informing them that Respondent was terminating CAPES’ contracts in Somerset and Worcester Counties on April 5, 2018. The April 2<sup>nd</sup> letters informed Judges Shockley and Powell that Respondent has developed a post-termination plan for *existing* cases to minimize disruption for the children and to provide continuity of representation. The plan was for MLSP to enter into emergency contracts with attorneys who provided representation to their current clients under the same terms and conditions of their current contracts with MLSP until May 31, 2019. Respondent further recommended that children represented by Mr. Wright be reassigned to attorneys under CAAP. Attachment 1 to the April 2<sup>nd</sup> letters listed the recommended case assignments for

currently open cases in Somerset County as “Christina Feehan” and in Worcester County as “cases need to be reassigned.”<sup>7</sup> Attachment 2 listed attorneys who had agreed to accept CAAP cases in Worcester County and it included Appellant. Attachment 2 also listed attorneys who were available to accept new cases in Worcester County until the emergency solicitation was completed, but did not include Appellant. However, testimony at the hearing on the merits indicates that Appellant continued and continues to receive *new* CINA/TPR cases in Somerset and Worcester Counties pursuant to its Contract.

On April 2, 2018, Judge Margaret Kent from Worcester County sent an email to Ms. Davis acknowledging receipt of Respondent’s April 2, 2018 letter to Judge Shockley regarding the termination of CAPES’ contract for *existing* cases in Worcester County. Judge Kent noted that Ms. Feehan had a “bond” with many of the children who appeared before her in Worcester County, and she urged MLSP to quickly reappoint Ms. Feehan to the cases she originally had.

On April 4, 2018, Appellant sent a letter to Judge Powell in Somerset County and Judge Margaret Kent in Worcester County. The April 4<sup>th</sup> letter advised that Appellant was ready to provide representation in CINA/TPR cases given the pending termination of CAPES’ contracts for *existing* cases in the two jurisdictions. Appellant requested that it be appointed to existing cases pursuant to § 3-813(d) of the Courts Article. Appellant’s letter cites the award of its Contract for *new* cases as the “#1 ranked bidder...for your jurisdictions.” The April 4<sup>th</sup> letter further states that, “[Respondent’s] RFP allowed for the incumbent provider, CAPES, to continue to represent ‘existing cases’ so as to provide continuity of representation.”

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<sup>7</sup> Audre G. Davis, Esquire, Director, MLSP, sent an email on April 3, 2018, to Magistrate Robert Laird, Esquire in Somerset County correcting Attachment 2’s recommended case assignments for currently open cases in Somerset County to “cases need to be reassigned.”

On April 5, 2018, Respondent terminated CAPES' contract in full ending its representation in all *new* and *existing* cases in the remaining jurisdictions. That same day a series of emails were sent between Ms. Davis and Master Laird regarding the appointment of Ms. Feehan, who had previously worked for CAPES, under CAAP in *existing* CINA/TPR cases in Somerset County, at a rate of \$75 per hour. Magistrate Laird mentioned he was familiar with the cases in Somerset County handled by CAPES, and that Appellant may have conflicts. Master Laird said that he had spoken with Judge Powell regarding the matter and they wondered if they could appoint Ms. Feehan to handle these cases in Somerset County. There were also a series of emails between Master Laird and Ms. Feehan concerning her willingness to accept CINA/TPR cases in Somerset County for *existing* cases previously handled by CAPES.

On April 5, 2018, Respondent awarded emergency sole source contracts to individual attorneys who represented children in *existing* CINA/TPR cases as current or former employees of CAPES in the jurisdictions other than Cecil County. One of those emergency sole source contracts, OS/MLSP-18-007, was for the representation of children in existing CINA/TPR cases in Wicomico, Worcester and Somerset Counties and was awarded to The Feehan Law Group. Respondent stated that the nature of the emergency in all four contracts was that it had to act immediately to ensure that all children represented by CAPES continued to be represented by counsel as required by statute. The basis for selection was focused on continuity of representation, so Respondent selected attorneys who worked for CAPES to continue to represent their current clients. The rationale was that those attorneys were not responsible for CAPES' failure to perform its current contract, and that changing attorneys in existing cases would result in a detrimental impact on the stability of the children, and that stability and continuity of representation was Respondent's overwhelming goal. The terms of the four emergency sole source contracts were

from April 5, 2018, to May 31, 2019, with two one-year renewal options. The award of the emergency sole source contracts was reported to and accepted by the Board of Public Works (“BPW”) at its June 20, 2018 meeting. Evidence in the record and testimony of the procurement officer (“PO”) for the emergency sole source contract awarded to The Feehan Law Group shows that Respondent decided to formalize the appointment of Ms. Feehan under CAAP by means of the emergency contract because Ms. Feehan would be paid a fixed fee per case thereunder, instead of an hourly fee of \$75 per hour, thereby saving money.

On April 17, 2018, Appellant sent a letter to Judges Kent and Powell following up on her April 4, 2018 letter. In its April 17<sup>th</sup> letter Appellant informed the judges that it had learned that upon termination of CAPES’ contract in Cecil County that its *existing* cases were transferred to the number-one ranked bidder who had, up until that time, had only been receiving *new* CINA/TPR cases. Appellant stated that this was consistent with its interpretation of what should occur under its Contract.

On April 20, 2018, Judge Powell send a letter responding to Appellant’s April 17<sup>th</sup> letter. In his April 20<sup>th</sup> letter, Judge Powell stated that the Court, pursuant to the Courts Article, has the final determination regarding who represents children in CINA/TPR cases in Somerset County. Judge Powell further stated that he was aware of the termination of CAPES’ contract and that he decided to appoint Ms. Feehan to handle CAPES’ cases for several reasons. First, for judicial economy, Judge Powell said he wanted to assign cases to one person or organization. Second, Judge Powell said he wanted a local attorney who could visit the children in a timely fashion and avoid weather-related continuances. Judge Powell noted this issue to be a problem with Appellant in the past. Third, Judge Powell noted that Appellant had conflicts of interest because Appellant

was representing, or had already represented, a parent of nine of the fifteen children currently represented by CAPES, and that Ms. Feehan has no such conflicts.

Judge Powell further noted that Ms. Feehan had represented, as a former employee of CAPES, the children in some respect in all of the cases which were being reassigned to her, and as such the children enjoyed continuity of representation. Judge Powell also noted that Ms. Feehan had appeared before the Court on many occasions and that she was competent to provide the representation. Judge Powell stated that the Court contacted Ms. Davis at MLSP regarding appointing attorneys to replace CAPES and that she informed the Court that there was no reason that would prohibit the Court from appointing anyone the Court wished to replace CAPES. Judge Powell addressed Appellant's Contract, stating that he had not seen any of the contracts concerning CINA/TPR representation, but that the April 2, 2018 letter Respondent sent to him informing him of the pending termination of CAPES' contract stated that attorneys would be appointed under CAAP until an emergency procurement could be issued. Judge Powell remarked that Appellant's Contract had nothing to do with the appointments of attorneys for existing cases formerly handled by CAPES, and that Appellant's Contract applied to cases after Appellant's Contract went into effect.

On April 26, 2018, Respondent issued an Emergency Request for Proposals Contract OS/MLSP-18-200-S ("Emergency RFP OS/MLSP-18-200-S") pursuant to COMAR 21.05.06 for representation of children in *new* CINA/TPR cases filed in Caroline, Dorchester, Kent, Queen Anne's, Talbot, and Wicomico Counties, and for *existing* representation in CINA/TPR cases only in Washington County. The duration of the contracts awarded was from June 1, 2018, until May 31, 2019, to align the termination dates with Respondent's current contracts for representation in new CINA/TPR cases that had effective start dates of June 1, 2016. Somerset and Wicomico

Counties were not included in the Emergency RFP. Appellant filed a bid protest with the PO in the Emergency RFP procurement on the basis that the Emergency RFP was defective and not complete because it did not seek proposals for all jurisdictions where CAPES had contracts to represent children in CINA/TPR cases, including Worcester, Wicomico and Somerset Counties, and that cases not covered by the Emergency RFP were distributed without the benefit of the procurement process. The PO denied Appellant's bid protest and Appellant filed an appeal with the Board which was denied.<sup>8</sup> *See, The Law Office of Deborah Ullmann, LLC, MSBCA No. 3096 (2018).*

On May 2, 2018, Appellant sent a letter with the subject line, "Notice of Claims" to Sandy Johnson, Director, Office of Procurement Division at Respondent. In its May 2<sup>nd</sup> letter, Appellant stated that it constituted its, "formal Notice of Claims, pursuant to Section 12" of its Contract with Respondent for representation in CINA and TPR cases in Somerset and Worcester Counties. As the explanation and bases for its claims required by COMAR 21.10.04.02B(1), Appellant alleged in its May 2<sup>nd</sup> letter that Respondent violated its Contract by (1) falsely representing to the judiciary in Somerset and Worcester Counties the terms of its Contract and the applicable law, and (2) not uniformly interpreting contracts for representation in CINA/TPR cases in all jurisdictions.

Appellant's allegations in support of its "false representation" basis for its claim were that agents of Respondent told members of the judiciary in Somerset and Worcester Counties that : (a) there was no reason why the courts in those jurisdictions could not appoint anyone they wished to replace CAPES in CINA/TPR cases; (b) Appellant's Contract only applied to new cases after it

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<sup>8</sup> Appellant, in the appeal of its bid protest before the Board, raised the issue of the award of *existing* cases to Feehan under emergency sole source contract OS/MLSP-18-007 as breaching her Contract with Respondent on the same lack of uniform interpretation Appellant cites as one of the bases of its claim before the Board in this Appeal. The Board held that it could not consider Appellant's contract claim that was raised for the first time on appeal. *Id.* at 8-9.

went into effect; and (c) appointment of counsel in CINA/TPR cases would only last until an emergency procurement was issued. Appellant then alleged that the RFP issued by Respondent did not solicit legal representation in CINA/TPR in Somerset and Worcester Counties.

Appellant's allegation in support of Respondent not uniformly interpreting its Contract with those in other jurisdictions is that, in Cecil County, when CAPES was terminated, the number-one ranked provider of legal representation in CINA/TPR cases with a contract for new cases was also transferred all of CAPES' existing cases. Appellant contrasts that to Somerset and Worcester Counties, where it was the number-one ranked provider of legal representation in CINA/TPR cases with a contract for new cases, but it was not transferred CAPES' existing cases upon termination of CAPES' contract.

The claim content requirements of COMAR 21.10.04.02B(1), (3) and (4) referencing all contract provisions upon which the claim is based, the facts upon which the claim is based, and all pertinent data and correspondence that the Appellant relies upon to substantiate its claim appear to be included in Attachment Nos. 1-6 thereto.

Appellant's letter did not include the amount of the claim because it stated it could not determine the number of cases transferred to a legal provider not under contract because of the confidential nature of CINA/TPR cases. Appellant further stated that when it did determine the number of cases transferred that it would seek \$399 for every case for every year the case remained open. Appellant's May 2, 2018 letter contained the certification of claim language required by COMAR 21.10.04.02B(5).

On June 13, 2018, Appellant sent a letter to Ms. Johnson with the subject line, "Addendum to Notice Claims." In the June 13<sup>th</sup> letter, Appellant set forth the basis in support of the allegation Respondent breached its Contract with Appellant that the Board refused to address in denial of its

bid protest, namely, that Respondent breached its Contract with Appellant via the award of *existing* CINA/TPR cases in Somerset and Worcester Counties to The Feehan Law Group under the emergency sole source procurement contract OS/MLSP-18-007. In the June 13<sup>th</sup> letter, Appellant alleged that it did not learn that The Feehan Law Group had been awarded *existing* CINA/TPR cases in Somerset and Worcester Counties until it received a letter dated May 9, 2018, from Dominic Edet, purchaser for Respondent for the Emergency RFP OS/MLSP-18-200-S.

On September 20, 2018, the PO issued its final action of the agency (the "Final Decision") denying Appellant's contract claim. The PO's Final Decision acknowledged receipt of Appellant's May 2, 2018, "Notice of Claims" letter on May 4, 2018, and treated the letter as Notice of Claim and Claim for purposes of COMAR 21.10.04.02. The Final Decision also acknowledged receipt of Appellant's June 13, 2018 "Addendum to Notice of Claims" on June 15, 2018.

In its Final Decision, the PO addressed the allegations made by Appellant in its May 2<sup>nd</sup> and June 13<sup>th</sup> letters. First, the PO concluded that Respondent did not misrepresent the terms of Appellant's Contract to the judiciary in Somerset and Worcester Counties, that is, Respondent correctly informed the courts that § 3-813(d) of the Courts Article mandates courts to appoint an attorney with whom Respondent has a contract to represent children in CINA/TPR cases unless the court finds it is in the best interest of the child not to do so, and that the statement by Respondent that the courts were not precluded from appointing counsel pursuant to the statute was accurate. Second, the PO concluded that there was nothing in Appellant's Contract or the RFP OS/MLSP-15-001-S that mandates, in the event of a transition, all *existing* CINA/TPR cases be transferred to Appellant. The PO ran through the award scenarios under RFP OS/MLSP-15-001-S, and concluded that thereunder, in Somerset and Worcester, the incumbent was awarded its existing cases, but since Appellant was ranked number one overall, it would receive *new* cases only.

Second, the PO then addressed Appellant's contention that Respondent made inaccurate or negative statements to the judiciary in Somerset and Worcester Counties that influenced the decisions to appoint counsel other than Appellant for existing CINA/TPR cases. The PO concluded that the MLSP Director provided Appellant's name as a viable option to replace terminated counsel in the two jurisdictions. The PO concluded that Appellant exchanged correspondence with the judiciary in both Somerset and Worcester Counties regarding Appellant's availability to handle existing CINA/TPR cases under the terminated CAPES contract. The PO concluded that the administrative judge in Somerset County, Judge Powell, responded to Appellant that Appellant was not appointed to *existing* cases in Somerset County due to conflicts of interest on the part of Appellant and what was in the best interests of the children. The PO concluded that Respondent has not breached its Contract with Appellant, and the Appellant will continue to be appointed to new cases in the two jurisdiction so long as no conflicts exist, or it is in the best interest of the child not to appoint it.

Third, the PO concluded that Respondent did interpret Appellant's Contract awarded pursuant to RFP OS/MLSP-15-001-S consistently, and that the main difference in the handling of the situation in Cecil versus Somerset and Worcester Counties was that the judiciary in Cecil County declined to make any appointments versus the judiciary in Somerset and Worcester Counties which specifically requested and appointed Ms. Feehan.

Last, the PO concluded that Appellant's claim was untimely. The PO concluded that Appellant knew or should have known that as early as March 21, 2018, the day Appellant emailed the MLSP Director stating Respondent had breached Appellant's Contract by allowing Feehan to take over a case in Worcester County. The PO therefore concluded that Appellant had thirty (30)

days therefrom to file its Notice of Claim, that is April 20, 2018. The PO concluded that the Appellant filed its Notice of Claim and Claim on May 4, 2018.

Appellant filed its timely Notice of Appeal of the PO's Final Decision with the Board and election under COMAR 21.10.06.12 to have its appeal be processed under "Accelerated" Procedures on October 11, 2018. On November 19, 2018, Appellant filed a written withdrawal of its election of "Accelerated" Procedures. A hearing on the merits was held on April 10, 2019. The parties agreed on the record at the beginning of the hearing on the merits to proceed with only two members of the Board in the absence of Chairman Beam.

### **BURDEN OF PROOF IN BREACH OF CONTRACT CLAIMS**

The party making an allegation of breach of contract initially has the burden of making a prima facie case. *TDI Corp.*, MSBCA No. 1474, 3 MICPEL ¶ 244 (1990),

### **DECISION**

Since Respondent did not raise the issue of timeliness of Appellant's claim on appeal before this Board, we shall resolve this Appeal on the merits. Appellant has failed to meet its burden to show that Respondent's actions breached its Contract with Appellant to provide legal representation in new CINA/TPR cases in Somerset and Wicomico Counties. Furthermore, the Board concludes that Appellant's interpretation of its Contract is incorrect.

Key to the resolution of this Appeal on the merits is the Board's finding and conclusion that Appellant is mistaken in attempting to force its interpretation of the Award Basis and Award Determination of RFP No. OS/MLSP-15-001-S, upon which her Contract was awarded, as governing how *existing* cases previously handled by CAPES in Somerset and Worcester Counties were to be reassigned.

The award scenario under RFP No. OS/MLSP-15-001-S contemplated that in jurisdictions with a single provider such as Somerset and Worcester Counties, the offeror with the highest overall ranking would be awarded that jurisdiction's *new* cases and *existing* cases, if applicable. The evidence in the record does show that Appellant proposed to handle both *new* and *existing* cases in those jurisdictions. However, the Award Basis and Award Determination provisions of RFP No. OS/MLSP-15-001-S contemplated that contractors that currently had contracts with the Respondent to provide CINA/TPR services would have the opportunity to keep their current cases. Further the Award Basis and Award Determination provisions of RFP No. OS/MLSP-15-001-S specifically stated that new contracts awarded to providers that currently had *existing* caseloads under contracts with Respondent to provide CINA/TPR services, but who did not intend to seek *new* cases and only wished to continue providing services for their currently assigned caseload, would not count towards the number of providers needed for each jurisdiction.

The record before the Board shows that Appellant was ranked the number one provider under RFP No. OS/MLSP-15-001-S for Somerset and Worcester Counties, and was therefore eligible to be awarded both *new* and *existing* CINA/TPR cases in those jurisdictions, but that she only was awarded *new* cases because of the preference given to CAPES as the current provider of CINA/TPR cases in those two jurisdictions. Appellant conceded that she only received *new* CINA/TPR cases in Somerset and Worcester Counties pursuant to her Contract with Respondent. The Board finds no provision in Appellant's Contract or in RFP No. OS/MLSP-15-001-S that mandates how *existing* cases in Somerset or Worcester Counties are required to be reassigned. The Board concurs with Judge Powell's assessment in his April 20, 2018 letter that Appellant's Contract had nothing to do with the appointments of attorneys for existing cases formerly handled by CAPES in Somerset (and in Worcester Counties).

The Board also concurs with Judge Powell's assessment of who has the final word under § 3-813(d) of the Courts Article regarding the appointment of counsel in CINA/TPR cases. The evidence before the Board shows that Appellant was being appointed to *new* CINA/TPR cases in Somerset and Worcester Counties in accordance with the terms of her Contract with Respondent which complies with the dictates of § 3-813(d). The evidence before the Board shows that Appellant's Contract was not for *existing* cases when CAPES' contract covering the two jurisdictions was terminated, and the courts in those two jurisdictions were not mandated to reassign those cases to Appellant under § 3-813(d). Even if Appellant was correct in the interpretation of its Contract, that it required existing cases in the two jurisdictions be reassigned to it unless "the court finds that it would not be in the best interests of the child," the Board concludes that neither it, nor Respondent, has the authority to compel the judiciary to appoint counsel in a CINA/TPR case. The Board also declines to opine on Appellant's contention, that pursuant to § 3-813(d), a judge must make an individual finding on the record in each CINA/TPR case or proceeding that appointment of counsel who has a current contract to provide such representation with Respondent is not in the best interest of the child.

Given that the Board does not agree with Appellant's interpretation of its Contract, the Board finds Appellant's allegation that Respondent misrepresented its Contract to the judiciary in Somerset and Worcester Counties without merit. The Board also therefore finds and concludes that Respondent's statements made to the judges in Somerset and Worcester Counties were accurate. Judge Powell's April 20, 2018 letter clearly shows he understood the dictates of § 3-813 of the Courts Article, and that the April 2, 2018 letter Respondent sent to him informing him of the pending termination of CAPES' contract stated that attorneys would be appointed under CAAP until an emergency procurement could be issued.

Appellant's next contention that Respondent made negative statements to the judiciary in Somerset and Worcester Counties that influenced the decisions to appoint counsel other than Appellant for existing CINA/TPR cases is not supported by the evidence. The only negative statements regarding Appellant's performance in CINA/TPR cases in communications between Respondent and the judiciary come not from Respondent, but from Judge Powell in his April 20, 2018 letter to Respondent. The evidence before the Board shows that it was Master Laird and Judge Kent that communicated to Respondent the preference of the judiciary in Somerset and Worcester Counties that Ms. Feehan be appointed to the existing cases formerly handled by CAPES.

The Board now addresses Appellant's final allegation that Respondent breached its Contract by awarding an emergency sole source contract, OS/MLSP-18-007, to The Feehan Law Group for *existing* cases in Somerset and Worcester Counties instead of reassigning those cases to Appellant, the number-one ranked provider in those jurisdictions. Appellant offers what Respondent did in Cecil County after termination of CAPES' contract for *existing* cases in that jurisdiction as evidence that Respondent inconsistently applied the terms of its Contract versus the similarly-situated provider in Cecil County.

Testimony by the PO, Sandra Johnson, clearly indicates that since the judges in Somerset and Worcester Counties were going to appoint Ms. Feehan, then Respondent should issue her a emergency sole source procurement contract to cap her representation to a flat, fixed fee per case versus the hourly fee she would receive if appointed under CAAP, and thereby save taxpayer money. Ms. Johnson also testified that in Cecil County, the judges expressed no preference for an attorney to be appointed in *existing* cases previously handled by CAPES, so those cases were added

to the number-one ranked provider for *new* cases in Cecil County. The PO did not know if there was a formal modification of that provider's contract to reflect the change.

There is no evidence before the Board that Respondent interpreted the provider's contract in Cecil County as mandating it to assign existing cases previously handled by CAPES to that provider. The propriety of what Respondent did in Cecil County is not before the Board. However, the Board notes that Respondent's reassignment of *existing* cases in Cecil County may have constituted a "cardinal change" to that provider's contract which may have resulted in it being a *de facto* sole source procurement. *See, Ullman & Wakefield, P.A.*, MSBCA No. 2137 (1999). The Board in *Ullman & Wakefield* noted that there are statutory and regulatory requirements that must be met when the State seeks to justify a sole source procurement. *Id.* at 4. In Somerset and Worcester Counties, however, the evidence shows that Respondent did follow the requirements of procuring representation services in CINA/TPR in *existing* cases previously handled by CAPES via an emergency sole source procurement, including reporting it to BPW.

Given that the evidence before the Board shows that Appellant received and continues to receive *new* CINA cases in Somerset and Worcester Counties in accordance with its Contract, we find no breach. As the Board noted in rendering its decision on Appellant's bid protest, we have no doubt that Appellant is a competent and zealous advocate for abused and neglected children who furnishes valuable services to those children and the State at a very low cost. Unfortunately, the power and discretion to reassign the cases at issue lies with the judiciary in Somerset and Worcester Counties.

### **ORDER**

Based on the foregoing, it is this 12th day of April 2019, hereby:

ORDERED that the above-captioned appeal is DENIED; and it is further

ORDERED that a copy of any papers filed by any party in a subsequent action for judicial review shall be provided to the Board, together with a copy of any court orders issued by the reviewing court.

/s/

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Michael J. Stewart Jr., Esq., Member

I concur:

/s/

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Ann Marie Doory, Esq., Member

**Certification**

**COMAR 21.10.01.02 Judicial Review.**

A decision of the Appeals Board is subject to judicial review in accordance with the provisions of the Administrative Procedure Act governing contested cases.

**Annotated Code of MD Rule 7-203 Time for Filing Action.**

**(a) Generally.** - Except as otherwise provided in this Rule or by statute, a petition for judicial review shall be filed within 30 days after the latest of:

- (1) the date of the order or action of which review is sought;
- (2) the date the administrative agency sent notice of the order or action to the petitioner, if notice was required by law to be sent to the petitioner;  
or
- (3) the date the petitioner received notice of the agency's order or action, if notice was required by law to be received by the petitioner.

**(b) Petition by Other Party.** - If one party files a timely petition, any other person may file a petition within 10 days after the date the agency mailed notice of the filing of the first petition, or within the period set forth in section (a), whichever is later.

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I certify that the foregoing is a true copy of the Maryland State Board of Contract Appeals decision in MSBCA No. 3101, The Law Office of Deborah Ullmann, LLC, under Maryland Department of Human Resources Contract No. OS/MLSP-16-007.

Dated: April 12, 2019

\_\_\_\_\_  
/s/  
Ruth W. Foy  
Deputy Clerk