

GOVERNMENT OF THE DISTRICT OF COLUMBIA
CONTRACT APPEALS BOARD

PROTEST OF:

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|---------------------------------------|---|----------------|
| ACS STATE AND LOCAL SOLUTIONS, INC. |) | |
| |) | CAB No. P-0691 |
| OFFICE OF THE CHIEF FINANCIAL OFFICER |) | |
| RFP No. CDOPD-04-R-002 |) | |

For the Protester, ACS State and Local Solutions, Inc.,: William W. Thompson, Jr., Esq. and Michael A. Branca, Esq., Thompson and Waldron. For the Intervenor, J.P. Morgan Electronic Financial Service, Inc.: Stephen S. Kaye, Esq., Daniel C. Schwartz, Esq. and Elizabeth L. Martin, Esq., Bryan Cave LLP. For the District: Richard O. Duvall, Esq., Kristen E. Ittig, Esq., Catlin K. Cloonan, Esq. and Stuart W. Turner, Esq., Holland & Knight, LLP (Eric W. Payne, Esq., Office of the Chief Financial Officer).

Order by Administrative Judge Matthew S. Watson with Chief Administrative Judge Jonathan D. Zischkau and Administrative Judge Warren J. Nash, concurring.

ORDER

(LexisNexis Filing ID 4135004)

ACS State and Local Solutions, Inc. (“ACS”) protested against award by the Office of the Chief Financial Officer (“OCFO”) of RFP No. CFOPD-04-R-002 to J.P. Morgan Electronic Financial Service, Inc. (J.P. Morgan) for electronic benefit transfer (“EBT”) services. The contract provides for the transmission on behalf of the District of food stamp and temporary assistance to needy families (“TANF”) benefits for a period of 5 years with an option for an additional two years.

ACS asserted that (1) the contracting agency awarded the contract in violation of applicable statutes requiring that solicitations for competitive negotiated procurements state the relative importance of the factors to be applied in evaluating proposals; (2) the contracting agency awarded the contract in violation of applicable statutes requiring that solicitations for competitive negotiated procurements state the specific needs of the contracting agency that are to be used as the basis for the evaluation of proposals; (3) the contracting agency’s evaluation of ACS’s proposal was not in accordance with the evaluation criteria set forth in the solicitation; and (4) the contracting agency’s evaluation of ACS’s proposal was unreasonable, arbitrary, capricious and irrational. (Protest, 1-2). In its response to the Agency Report, ACS additionally asserted that the contracting officer failed to make a deliberative and informed decision to award the contract. (Opposition, 28).

The District moved to dismiss the protest for lack of jurisdiction on three grounds. First, that OCFO’s procurement authority is not subject to the Procurement Practices Act, and, consequently, the jurisdiction of the Board. D.C. Code § 2-301.04(c). J.P. Morgan joined in this objection to the Board’s jurisdiction. Second, that the RFP is for making Federal financial assistance over which the Board similarly does not have jurisdiction. *Id.* § 2-301.04(b). And

third, that ACS lacks standing to protest, alleging that the ACS proposal was nonresponsive making ACS not in line for award, a requirement to give the Board jurisdiction over its protest. The Board denied the motions to dismiss holding that the Board properly exercises jurisdiction over OCFO contracts consistent with the Court of Appeals' recent opinion in *Abadie v. D.C.C.A.B.*, 843 A.2d 738 (2004); that the RFP seeks a contract for services required to be provided by the District, not the granting of financial assistance, and, that ACS has standing to protest because its proposal was not clearly nonresponsive and was treated as responsive by the contracting officer.

On August 27, 2004, the Board held a hearing at which it received evidence and argument on the protest. Food stamps and TANF benefits are the principal source of income and nutrition to the recipients. Any interruption of the availability of EBT services would cause irreparable harm to a substantial number of District residents. The existing contract will expire at the end of this week. It is imperative that there be no gap in delivery of these benefits and no cloud on the continuation of these services. Although it is the Board's normal practice to fully explain its orders at the time of issuance, it is releasing this order immediately, to be followed by a full opinion at a later date.

The Board finds that the contracting officer properly exercised his authority in accordance with the RFP and did not abuse his discretion to determine which proposal offered the best value to the District based on the Final Proposal Revisions and the information the contracting officer received as to previous experience and performance by the offerors. Because ACS has not demonstrated a violation of applicable law, regulation, or the terms of the solicitation in connection with the award to J.P. Morgan, we deny the protest.

SO ORDERED.

August 31, 2004

/s/ Matthew S. Watson
MATTHEW S. WATSON
Administrative Judge

Concur:

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

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