

GOVERNMENT OF THE DISTRICT OF COLUMBIA
CONTRACT APPEALS BOARD

| | | |
|-----------------------|---|---------------|
| PROTEST OF: |) | |
| |) | |
| RAM MOBILE DATA, L.P. |) | CAB No. P-509 |
| |) | |
| Under RFP 97-500 |) | |

For the Protester: Alan M. Grayson, Esq. For the District of Columbia Metropolitan Police Department: Howard Schwartz and Warren Nash, Assistants Corporation Counsel.

Opinion by Chief Administrative Judge Lorilyn E. Simkins, with Administrative Judge Phyllis W. Jackson, concurring.

OPINION AND ORDER ON MOTION TO DISMISS

RAM Mobile Data, L.P. filed the instant protest of the Metropolitan Police Department's ("MPD") Request for Proposals No. 97-500 ("RFP") for wireless mobile data services.¹ The RFP solicited two-way data telecommunications services for MPD. RAM contests the ten-day period between the solicitation issuance and proposal submission, and MPD's refusal to extend the time. Section C.2.2.2. of the RFP required the submission of "contour maps," showing 100% coverage with modem received signal strength equal to or greater than -90dB, expressed in increments of 5dB. RAM did not have maps prepared in the required contour and required about two weeks to produce them. RAM argued that less-than-30-day deadline unduly limited competition by permitting insufficient time for qualified potential offerors like RAM to prepare proposals. RAM also challenged the RFP evaluation scheme as unduly restrictive for placing more emphasis on one out of the many factors relevant to performance--network throughput-- rather than on performance itself. MPD received one timely proposal from Bell Atlantic NYNEX. RAM submitted a proposal two weeks after the closing date. MPD refused to consider RAM's proposal. RAM requested that the Board order MPD to consider its proposal.

On September 23, 1997, MPD filed a Motion to Dismiss RAM's proposal as untimely. By order dated October 29, 1997, the Board denied MPD's motion and ordered that MPD file its Agency Report by November 14, 1997. Following receipt of the Agency Report, the Board ordered MPD to provide further information on the nature of the wireless data technology, the reason for the shortened solicitation advertising period, and a presentation of arguments setting forth why it was reasonable for MPD to elevate the performance factor of "network throughput" above the overall performance.

¹Wireless mobile data services permit MPD to receive and transmit time critical files between patrol cars and agency databases and enable mail/message communications. These services provide a direct, and efficient connection between MPD officers on the street and information databases, dispatches and other officers.

On December 10, 1997, pursuant to D.C. Code § 1-1189.8(c)(2), MPD filed a "Determination and Findings to Proceed with Award and Performance of Contracts While a Protest is Pending Before the D.C. Contract Appeals Board" ("D&F"), executed by Richard Fite, the Chief Procurement Officer of the District of Columbia. On December 17, 1997, RAM filed a Motion Challenging Override of Stay.

On December 19, 1997, the District responded to the Board's request for additional information and further argument. On December 19, the District also filed a motion to Dismiss the Protest for lack of subject matter jurisdiction. The District contends that the Board cannot exercise jurisdiction over this MPD procurement because Congress delegated directly to MPD small purchase authority up to \$500,000 and exempted MPD small purchases from any review by any official or employee of the District of Columbia government. The estimated cost of this contract as set forth in the D&F is \$90,000.

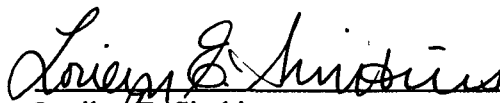
The District of Columbia Appropriations Act for FY 1997 (Public Law 104-194, 110 Stat. 2356, Sept. 9, 1996) and for FY 1998 (Public Law 105-100, 111 Stat. 2160, Nov. 19, 1997) provides in pertinent part:

That notwithstanding any other provision of law, or Mayor's Order 86-45, issued March 18, 1986, the Metropolitan Police Department's deleted small purchase authority shall be \$500,000: *Provided further*, That the District of Columbia government may not require the Metropolitan Police Department to submit to any other procurement review process, or to obtain the approval of or be restricted in any manner by any official or employee of the District of Columbia government, for purchases that do not exceed \$500,000.

Despite RAM's arguments to the contrary, the language found in the FY 1997 and 1998 Appropriations Acts plainly exempt purchases of less than \$500,000 by MPD from procurement review by any District official or employee. The Board lacks subject matter jurisdiction over this protest and is compelled to grant the District's motion to dismiss. Accordingly, the protest is dismissed.

SO ORDERED.

DATE: December 31, 1997


Lorilyn E. Simkins
Chief Administrative Judge

Concurring:


Phyllis W. Jackson
Administrative Judge