

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

In the Appeal of T-Netix, Inc.)
)
) Docket No. MSBCA 2193
Under DBM-2001 & DBM-2002)
)
)

APPEARANCE FOR APPELLANT: **Mr. Thomas Meriam**
 Vice President
 T-Netix, Inc.
 Englewood, Colorado

APPEARANCE FOR RESPONDENT: **Geoffrey J. C. Boyd**
 Assistant Attorney General
 Baltimore, Maryland

OPINION BY CHAIRMAN ROSENCRANTZ

This matter comes to the Board on appeal by T-NETIX of the final decision of the Procurement Officer for the Maryland Department of Budget and Management, dated June 9, 2000, concerning two Requests for Proposals for telephone long distance service and certain other telephone equipment and service.

Findings of Fact

1. The Maryland Department of Budget and Management (DBM) issued two Requests for Proposals (RFP) relating to telephone long distance service (DBM 2001) and certain other telephone equipment, (DBM 2002) on April 11, and April 12, 2000 and later issued amendments to each RFP. Four vendors submitted proposals in response to DBM 2001 RFP and three vendors submitted proposals to DBM 2002 RFP.

2. T-NETIX submitted proposals for both RFP's. Their proposals were limited solely for the DPSCS Inmate Functional Area in each of the two RFP's.

3. T-NETIX sent a letter dated June 1, 2000 to Secretary of Budget and Management that was interpreted as a Bid Protest. Specifically, the issues raised by T-NETIX were stated as follows:

The bifurcation of the public telephone service into separate local and long distance bids unfairly constrains the opportunity of most potential bidders and provides too great of an advantage to the incumbent local services provider.

All equipment costs are unfairly allocated to the local service provider, including the costs for the inmate call processing system, with no mechanism built in for cost recovery from the long distance carrier.

The separation of the local and long distance service unfairly favors the incumbent local service provider, Bell Atlantic, without any benefit or efficiency to the State of Maryland.

4. The Procurement Officer for Department of Budget & Management (DBM) responded by letter dated June 9, 2000 advising T-NETIX that "DBM has taken these issues into consideration and has decided that it is in the best interest of the State to proceed with the procurements as they are currently structured." Final responses to the RFP's were required to be sub-mitted several days after June 9, 2000.
5. T-NETIX filed an appeal to this Board by letter dated June 22, 2000.
6. By letter dated June 23, 2000, T-NETIX was notified their appeal had been received and assigned a docket number.
7. The required Agency Report was filed with this Board by DBM on July 21, 2000.
8. The Agency Report states that: "The decision of the procurement Officer was based upon the fact that the separate structures of these two procurement projects had been deliberately chosen by the Telecommunications Division of the Department of Budget and

Management because they would result in the maximum amount of competition and their structure was in the best interest of the State of Maryland."

9. This Board requested that Geoffrey Boyd, Assistant Attorney General for DBM convey to T-NETIX basic information about the procedures(s) involved in this appeal.
10. More than 30 days have passed since the filing of the Agency Report and the conversation between Assistant Attorney General Boyd with a representative of T-NETIX.
11. There has been no response from T-NETIX to the Agency Report. T-NETIX has not notified the Board of the name of their legal counsel and has not requested a hearing before the Board.

Decision

Based upon the record presently on file with this Board, the DBM Procurement Officer acted properly in denying the protest of T-NETIX. The RFPs were specifically constructed in the existing manner in order to foster competition. In Admiral Services, Inc., MSBCA 1341, 2 MSBCA 159 at 2-3, the Board stated:

The primary issue is whether the specifications as written unreasonably restrict competition. Under Maryland procurement law, the Procurement Officer has broad discretion in drafting specifications to meet the State's minimum requirements when weighted against the State policy of fostering the maximum practicable competition. And we (the Board) will not substitute our judgement for that of the procuring agency in the absence of a clear showing that it acted unreasonably or otherwise abused its discretion. . . . We have also stated that the drafting of specifications is primarily a function of the State's procurement agencies who are uniquely knowledgeable as to what will solve the State's minimum needs. . . . this Board is limited to a determination as to whether the specifications unreasonably restrict competition and can not substitute its judgement as to technical requirements for that procuring agency.

Accordingly, this appeal is denied based upon the record presently

on file with this Board.

Dated:

Randolph B.. Rosencrantz
Board Chairman

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 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.

* * *

I certify that the foregoing is a true copy of the Maryland State Board of Contract Appeals decision in MSBCA 2193, appeal of T-Netix,

Inc. under DBM-2001 & DBM-2002.

Dated:

Mary F. Priscilla
Recorder