



## Judge Trims Claims in Rothe In-sourcing Suit against DoD

By Derek Hawkins

Law360, New York (November 5, 2010) -- A judge has pared down a suit by contractor Rothe Development Inc. over the U.S. government's alleged failure to renew the company's services contract with the Air Force, cutting administrative claims and rejecting RDI's request for a preliminary injunction.

Judge Xavier Rodriguez of the U.S. District Court for the Western District of Texas ruled Wednesday that the court lacked subject matter jurisdiction over Administrative Dispute Resolution Act and Tucker Act claims in the suit, in which RDI alleges that the U.S. Department of Defense improperly discontinued a contract with the company in favor of insourcing.

According to the judge's order, RDI's Tucker Act and ADRA claims fell within the exclusive jurisdiction of the U.S. Court of Federal Claims because they involve procurement.

The judge also shot down RDI's attempt to secure an injunction requiring the DOD to turn over records related to its alleged insourcing decisions, which the company said it sought through a Freedom of Information Act request that the department partially denied.

RDI hadn't sufficiently demonstrated that the DOD's purported refusal to produce the records in full was unlawful, and offered no evidence that it would suffer irreparable harm without access to the documents, the judge said.

In what the judge called an apparent attempt to underscore the need for an immediate preliminary injunction, RDI claimed that the government's hiring of two civilians in place of one RDI employee proved the "irrationality" of the alleged insourcing. But Judge Rodriguez said the allegation was bogus.

"This assertion, unaccompanied by any cost comparison of the two staffing arrangements, is not persuasive," the judge wrote, adding that "the speed at which the government is transitioning to an insourced work force does not affect the question of this court's jurisdiction."

The order grants a partial motion to dismiss by the DOD and denies RDI's motion for preliminary injunction.

An attorney for RDI from the Gardner Law Firm wasn't immediately available to discuss the case on Friday.

RDI accused the department of violating its own internal procedures and insourcing rules, as well as federal law governing the use of civilian employees, when it declined to renew or re-complete a contract for information technology and other services the company had held at the Minneapolis-St. Paul Air Reserve Station in Minnesota since 1987.

In a complaint filed Sept. 7 — slightly less than a month before the contract expired — RDI alleged the government failed to consider the "full cost of manning" the work it had performed, and didn't select the lowest-cost provider.

The company also said the DOD had wrongfully withheld information about its insourcing decision.

The four-count complaint sought a temporary restraining order barring the DOD from carrying out the insourcing, as well as declaratory and injunctive relief and fees.

A call to the U.S. attorney's office in the Western District of Texas wasn't immediately returned on Friday.

RDI is represented by the Gardner Law Firm.

The case is Rothe Development Inc. v. U.S. Department of Defense et al., case number 5:10-cv-00743, in the U.S. District Court for the Western District of Texas.

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