



UNITED STATES GENERAL ACCOUNTING OFFICE

WASHINGTON, D C. 20548

092736

CIVIL DIVISION

JUN 30 1970

Dear Mr. Jobe:

The General Accounting Office has reviewed the procurement policies and practices relating to procurements from non-Government sources by the Maritime Administration. The accompanying report summarizes the results of our review.

Our review showed that the policies and procedures prescribed by the Federal Procurement Regulations with regard to the type of contract used, selection of contractor, and documentation required to support procurement actions were not always followed. Our review also showed that one contract was awarded for 2 years although statutes generally prohibit contracts extending for more than 1 year and that the method whereby this contract could be renewed was improper.

We are bringing these matters to your attention at this time so that the results of our review and our recommendations can be considered during the implementation of the consolidation of Department of Commerce procurement activities in the Washington, D. C. area which was announced by the Secretary of Commerce on August 7, 1969.

We acknowledge the cooperation extended to our representatives during our review and we would appreciate being advised of the actions you propose to take on our recommendations. Should you wish to discuss these matters further, we would be pleased to meet with you or members of your staff at your convenience. Copies of this report are being sent to the Maritime Administrator and to the Director, Office of Audits, for their information.

Sincerely yours,

Henry Eschwege

Henry Eschwege  
Associate Director

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Enclosure 01040

The Honorable Larry A. Jobe  
Assistant Secretary for Administration  
Department of Commerce

7/14/86 092736

REVIEW OF PROCUREMENT POLICIES AND PRACTICESMARITIME ADMINISTRATIONDEPARTMENT OF COMMERCEINTRODUCTION

The General Accounting Office has reviewed the procurement policies and practices of the Maritime Administration, Department of Commerce.

Our review was directed primarily toward an examination of the procedures and controls over the procurement of supplies and services from non-Government sources and was performed at Maritime headquarters. The review did not include an examination of the determination of the source or need for the supplies and services.

The review covered selected purchases made in fiscal years 1967, 1968, and 1969. Thirty-seven of the more significant purchase orders, in terms of costs, totaling about \$2.4 million, were selected for review.

REVIEW OF U. S. MERCHANT MARINE ACADEMY FOOD SERVICE CONTRACTS

Our review of the U. S. Merchant Marine Academy food service contract for the school years ended June 30, 1968 and 1969, showed that

- the contract was not awarded to the low responsible bidder because of Maritime's belief that its specifications were inadequate and that award should be made on the basis of bids for one line item rather than the total contract bid,
- award of the contract for a 2-year period was improper since funds for the contract were available only from 1-year appropriations,
- the procedure specified in the contract for extending it was improper since the extension required mutual agreement between Maritime and the contractor.

Our review showed also that in the previous food service contract, awarded on September 20, 1966, competitive bids were not obtained, the negotiated procurement was not based upon multiple proposals, prices for some items in the contract were accepted without negotiations, and Maritime did not adequately evaluate the cost data submitted by the contractor.

Advertised procurement not awarded to low bidder

Maritime formulated certain award criteria which were not contained in the invitation for bid. As a result, the contract for food services at the Academy for the school years ended June 30, 1968, and 1969, was not awarded to the low bidder. Our analysis of the bids showed that the award was made to a bidder whose initial bid was about \$5,100 higher than the lowest bid. Revised proposals subsequently solicited and accepted by Maritime from the successful bidder had the effect of reducing his bid and making him the low bidder by about \$16.

Paragraph 1-2.407-1 of the Federal Procurement Regulations states, in part, that contract " \* \* \* award shall be made \* \* \* to that responsible bidder whose bid, conforming to the invitation for bids, will be most advantageous to the Government, price and other factors considered."

Maritime requested bids for four different categories of meals. regular cadet meals, night lunches for cadet watch standers, meals for participants in the Civil Service Commission Seminar, and meals where payment was to be made by the individual. The invitation showed that an estimated 33,000 weekly regular cadet meal units and 2,520 night lunches would be required in each contract year. No estimated

requirements were given for either Seminar or individual payment meals. The invitation also specified that the award was to be made to cover a 2 school-year period, to be financed from annual appropriations, and that the contract could be extended, by mutual agreement, for three additional 1-year periods.

Eleven bids were received and were opened on May 24, 1967. Terminal Food Services, Inc. and Slater School and College Services (now known as ARA Service of the District of Columbia), the incumbent contractor, submitted the lowest and second lowest bids, respectively. Slater was the low bidder for one item, regular cadet meals, while Terminal submitted the low bid on the remaining three items.

Based upon the estimated number of units for regular cadet meals, night lunches, and Seminar meals for the 2-year period of the contract, as shown either in the invitation for bids or Maritime records, we estimate that Terminal's bid was about \$5,100 lower than Slater's initial bid. Not included in this estimate are the individual payment meals since these meals are provided at no cost to the Government.

On June 8, 1967, the regular cadet portion of the contract was awarded to Slater. Award of the remaining items was withheld pending development of additional information. The Chief, Division of Purchases and Sales (now Division of Procurement), justified this course of action on the basis that it had been Maritime's fundamental intention to award the contract to the low bidder for regular cadet meals because of the major significance of this item but that a clause to this effect had been inadvertently omitted from the invitation. He stated also that the

specifications for night lunches were not in sufficient detail to place all bidders on an equally competitive basis and that an accurate estimate of the number of Seminar meals had not been provided.

After the award of the regular cadet meals portion of the contract, Slater submitted, pursuant to Maritime's request, a detailed description of the type and quantity of food in night lunches served under the provisions of the previous contract at the Academy. Maritime then solicited quotations from Slater for night lunches based on these specifications. A revised quotation for Seminar meals based upon the same specifications that were included in the initial invitation to bid was solicited concurrently.

On July 27, 1967, Slater submitted a proposal of \$ .79 per night lunch and \$ .90 per Seminar meal, compared to its original bids of \$ .90 and \$1.00, respectively. On August 4, 1967, Maritime notified Slater of acceptance of these proposals. The individual payment meals portion of the contract was awarded to Slater on July 28, 1967. The total amount of the contract for the 2-year period was estimated to be about \$1,000,000.

We found that, although the estimated number of meals in all meal categories was not given in the invitation for bids, such information was available and was, in fact, subsequently used by Maritime to show that Slater, after considering Slater's revised bids, was the low bidder by about \$16. In addition, we found that despite the fact that the specifications for night lunches were unclear, which according to Maritime was part of the reason for not initially awarding the entire contract to Terminal, data was available to Maritime at the time of the award of the

initial portion of the invitation showing that the lunches which Terminal intended to provide were comparable to the lunches being served under the provisions of the existing contract.

The Chief, Division of Procurement, informed us that he believed it was proper to have awarded the section of the contract relating to regular cadet meals to the low bidder on this item and to negotiate prices exclusively with this same contractor for the remaining items inasmuch as the regular cadet meal category was the most important item in the invitation and it would have been impractical to have awarded separate contracts to the low bidder on each item. He stated further that another consideration was the cost to the Government related to contractor changeover. He advised us that the major changeover cost would be incurred in taking a physical inventory of all Government equipment charged to Slater, the incumbent contractor, to determine the appropriate charge for equipment to the new contractor. He was unable, however, to estimate the total changeover costs. We noted, moreover, that no reference was made to changeover costs in the invitation.

We believe that if the contract was intended to be awarded to the lowest bidder on regular cadet meals, the invitation should have so stated so that all competitors would be on an equal basis. In the absence of such a provision, however, and since no determination was made of what contractor changeover costs might have been and the information was not made available to all bidders, we believe that the award to Slater was not justified. Since the invitation for bids did not specify any criteria other than price to be considered in determining contract award,

we believe that the policy prescribed by the Federal Procurement Regulations relating to contract award was not followed in this instance.

Two-year term of contract improper

We believe that the food service contract for school years 1967-68 and 1968-69 was improper in view of the statutory prohibition against multiple-year contracts. The contract provided that it "shall be in force for two school years" beginning in July 1967 and ending in June 1969. Sections 3679 and 3732, Revised Statutes of the United States (31 U.S.C. 665 and 41 U.S.C. 11, respectively), however, generally prohibit contracts for a longer period than the period for which appropriations are available.

The contract provided further that "Payments hereunder shall be contingent upon the availability of appropriations for that portion of the contract extending into the following Fiscal Year. Nothing herein contained shall obligate the Government for a period for which the Congress shall not have made appropriation adequate for the fulfillment of the obligation \* \* \*."

Section 3679 of the Revised Statutes generally prohibits any executive department or other Government establishment from involving the Government in any contract or other obligation for the future payment of money in excess of appropriations for the then current fiscal year, unless such contract or other obligation is authorized by law.

Section 3732 of the Revised Statutes prohibits the making of contracts "unless the same is authorized by law or is under an appropriation adequate to its fulfillment." Under this statute, contracts cannot be entered into

which will continue as binding obligations beyond the lifetime of the appropriation under which they are made. Funds for the food service contract are contained in the annual Maritime training appropriation.

The Chief, Division of Procurement, advised us that the purpose of the 2-year term was to eliminate the cost of readvertising. The cited statutes, however, do not permit multiple-year contracts in order to avoid costs which may be incurred in readvertising 1-year contracts

This Office has held that contracts executed and supported under authority of fiscal year appropriations can only be made within the period of their obligation availability and must concern a bona fide need arising within such fiscal year availability. (See 42 Comp Gen 272.)

We believe, therefore, that the contract contravened the provisions of the cited statutes because the subject matter of the contract concerned needs for 2 fiscal years whereas the appropriations for such needs are on a 1-year basis.

Method of contract renewal improper

We believe that the provision in the specifications for the food service contract for school years 1967-68 and 1968-69 requiring mutual agreement in order to extend or renew the contract, instead of affording the Government the sole option for extension, was improper. Consequently, any contract existing as a result of such extension was not entered into in accordance with policies established by the Federal Procurement Regulations.

The specifications provided that the contract could be extended beyond the initial contract period for three 1-year periods "by mutual agreement between the parties " According to the Chief, Division of Procurement, the contract was extended for school year 1969-70. He advised us, however, that a tentative decision had been made to terminate the present contract and to negotiate a new contract with a minority-owned small business concern

In our opinion, the extension of the contract for school year 1969-70 was improper. We believe that, inasmuch as the contract could be extended only by mutual agreement, any such extension would constitute a new negotiated procurement and would not be an exercise of a renewal option.

The Chief of Maritime's Division of Construction Contracts, Office of General Counsel, agreed that the mutuality of the renewal clause indicated absence of an option. He stated that, in his opinion, the specifications should have been worded so as to provide the Government with the unilateral authority to extend the contract if a renewal option had been determined to be advantageous to the Government.

We believe, therefore, that since the contract resulting from the extension provision was not made on a competitive basis, the award was not consistent with provisions of the Federal Procurement Regulations which require, with exceptions not pertinent here, that negotiated procurements be on a competitive basis.

Deficiencies in previous food service contract

Because of the deficiencies noted in the food service contract for the 2-year period ending June 30, 1969, we also reviewed the previous

food service contract which was for the school year ended June 30, 1967. We found that Maritime had (a) negotiated this contract rather than obtaining competitive bids, (b) accepted prices for some items in the contract without negotiations, and (c) not adequately reviewed the cost data provided by the contractor.

The Federal Procurement Regulations provide that procurement should be on a competitive basis to the maximum extent feasible. Maritime, however, in awarding the food service contract for the 1966-67 school year did not solicit competitive bids. In addition, Maritime limited its negotiation to the incumbent contractor instead of obtaining proposals from other qualified contractors. According to Maritime officials, the decision to negotiate the contract rather than obtain competitive bids was based on the development of a revised menu for regular cadet meals and Maritime's desire to award the contract for an experimental 1-year period. The procurement records do not indicate, however, why a revised menu precluded competitive advertising nor do they indicate why proposals were not solicited from other than the incumbent contractor.

Of the four categories of meals in the 1966-67 food service contract, the price for only one, regular cadet meals, was determined by negotiation. Prices for the other items were determined by continuing prices for these items in effect at the time of expiration of the previous contract.

We estimate that about \$6,600 in excess costs were incurred because Maritime did not adequately evaluate cost data submitted by the contractor. The data submitted by Slater and used by Maritime to negotiate the price for regular cadet meals included \$146,800 in labor and direct expenses

for all categories of meals. We estimate that costs of only \$141,000 should have been included for regular cadet meals and that the balance of \$5,800 was applicable to other meal categories. Excess costs of about \$800 were also incurred for administrative expenses and a management fee since these amounts were computed as a percentage of the total amount of the contract.

Recommendation

Since the present contract will probably be terminated and a new contract negotiated with a small business concern, we are not making any specific recommendations concerning the present contract. We recommend, however, that the Assistant Secretary for Administration emphasize to procurement officials the need in future procurements to follow the policies and procedures prescribed by the Federal Procurement Regulations with regard to contracting, including the necessity of formulating clear and complete specifications in invitations to bid.

NEED FOR ADEQUATE DOCUMENTATION  
OF PROCUREMENT ACTIONS

Our review showed that there were several instances where the procurement records lacked data justifying certain procurement actions and where data required by the invitation for bids had not been obtained in a documented form. Paragraph 1-1.313 of the Federal Procurement Regulations states, in part, that:

"Each contract file should contain documentation of actions taken with respect to each contract, \* \* \*. To the extent that retained copies of documents do not represent all actions taken, suitable memoranda or a summary statement of such undocumented actions should be prepared promptly and be retained in the contract file."

The following cases are illustrative of the lack of documentation which we noted during our review.

1 On August 2, 1968, Maritime issued a purchase order for two desalination units at a price of \$13,876 each. The purchase order indicated that formal advertising procedures were not used for this procurement. There was no justification in the records, however, as to why formal advertising was not used or any data regarding whether proposals had been solicited from more than one supplier.

2. On June 5, 1968, Maritime issued an invitation for bids for electric cable to be used in connection with the preservation of ships in the National Defense Reserve Fleet. The invitation requested bids on a total of 32,000 feet of cable for three reserve fleet sites. A low bid of \$5,088 was submitted for this quantity.

On June 28, 1968, Maritime issued a purchase order to the low bidder but the quantity to be purchased was 48,000 feet of cable at a total price of \$7,632, which amounted to a 50 percent increase in quantity and total price submitted by the low bidder. The procurement records contained no information explaining the significant variation between the invitation and actual procurement nor was the invitation amended to reflect the increased quantity. It is possible that an invitation for the greater quantity could have resulted in a lower unit bid.

The Chief, Purchasing Branch, agreed that the procurement records did not contain sufficient data that would explain the purchasing of quantities in excess of that specified in the invitation. He was of the

opinion, however, that, in view of the small amount of the increase, \$2,544, the procedure used for obtaining the additional cable was justified.

3. Two contracts totaling \$27,000 for providing shipbuilding cost data were awarded in July 1967 on a negotiated basis. The procurement records, however, did not show the basis used to determine the prices or whether multiple proposals had been solicited for the procurements.

The Chief, Purchasing Branch, informed us that the tasks covered by these contracts are highly specialized in nature and that in such instances the Purchasing Branch relies solely on the statements from the requisitioning office relative to prices and vendors and merely issues the purchase order when the requisition is received. He agreed with our conclusion, however, that the procurement records should contain sufficient documentation to justify procurement practices and that he would endeavor to obtain such documentation from the requisitioning office in future procurements of this nature.

#### Recommendation

We recommend that the Assistant Secretary for Administration emphasize to procurement officials the need to:

1. provide in the individual procurement records showing purchases from non-Government sources, written justification for not using competitive advertising with specific references to the section of the Federal Procurement Regulations authorizing such action,
2. include in the records for such purchases a detailed account of the negotiations and written justification, where applicable, for negotiating with only one supplier; and
3. amend an invitation for bids when procurement is anticipated for quantities substantially different from those specified in the initial invitation.