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Robert Little
Proc. II

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

FILE: B-187369

DATE: February 28, 1977

MATTER OF: Olivetti Corporation of America

DIGEST:

Agency improperly procured typewriters on a sole source basis because contracting officer's conclusion that one supplier had a large price advance is not a valid ground for determining that no competition was available.

Olivetti Corporation of America (Olivetti) has protested the award of a contract by the U.S. Civil Service Commission (CSC) to International Business Machines (IBM) for 60 IBM model "Selectric II" typewriters. Olivetti contends that CSC's award of a sole source contract to IBM violates Federal procurement law in that such award was made without adequate justification.

Background

The procurement arose out of the needs of CSC's Bureau of Training for replacement typewriters and training films (video tapes) in its government-wide typing training program. To that end, in late 1974 the bureau, after surveying the market, began negotiating informally with the manufacturers of IBM, Olympia, and Olivetti typewriters. According to CSC, the selected manufacturers also were advised that the cost of procuring a video tape training film to replace the one being used in the course would be a principal consideration in the procurement action.

By May 2, 1975 CSC had settled on the IBM Selectric II as "the best machine" to meet all of its training needs and on May 22, 1975, CSC forwarded a requisition for 55 machines to the General Services Administration (GSA). GSA by letter of December 3, 1975 denied CSC's request for a "sole source" purchase of IBM machines on the grounds, inter alia, (1) that IBM's "element" machine was not necessary for classroom instruction; (2) "Training Aids and Services" were available on Federal Supply Schedule; and (3) "non-element" (those using standard bar type as opposed to IBM's interchangeable ball, "element" machine) typewriters were equally capable of "transferring learning." Subsequent telephone conversations and personal meetings were held between GSA and CSC regarding

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further justification for purchasing IBM equipment, and GSA on April 14, 1976 again denied CSC's request to purchase an IBM "element" machine on two alternate bases. First, GSA noted that there were by that time several new "element" machines on the market that would prohibit a sole source award to IBM (assuming that CSC's training requirements could only be met with "element" machines). Secondly, GSA noted that allowing preparation of the video tapes to be tied to the purchase of the machines would put CSC in the position of perpetuating non-competitive procurements. (This was apparently because those tapes could justify some other agency's obtaining a copy of CSC's film and then using that as a justification for buying IBM typewriters for its training course.)

On June 14, 1976 CSC replied to GSA's letter of April 14, 1976 by noting that GSA should proceed with competitive solicitation of all manufacturers provided that six additional requirements were included in the solicitation. Item 6 of the additional material to be included in the solicitation referred to "the video tape recording * * * compatible with the new typewriters." Also included in CSC's notice to proceed was a detailed requirement for the video tape program including number, size, and capacity of cartridges and tape segment titles and times; and general information a vendor would need in order to produce the tapes.

On July 23, 1976 GSA, citing the "peculiarities involved with this procurement", granted CSC a waiver to procure the typewriters needed for its training course "in accordance with the rules and regulations governing the expenditure of Federal Funds."

On August 16, 1976 CSC's contracting officer issued findings and determinations to support a sole source award of a contract to IBM. The justification was based primarily on an alleged \$15,000 cost savings to be generated because CSC intended to buy the IBM typewriters in conjunction with its purchase of copies of the existing, "compatible" video tape training film.

Decision

Olivetti's primary contention is that CSC acted improperly in determining that only totally compatible video tapes would meet its minimum needs. We can assume that CSC reached a reasonable conclusion in this regard and not cure what we believe to be the procurement's basic infirmity: CSC's failure to publicize (and thereby encourage competition for meeting) its minimum needs.

The record clearly shows CSC's needs were two-fold, the typewriters and the training film. Yet, CSC presumably concluded that, because IBM would have a price advantage of approximately \$15,000,

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no other firms would offer competitive prices for meeting those needs. Consequently, only IBM was considered for award.

Whatever the contracting officer's conclusion as to potential price competition, however, it may not be the grounds for sole source award of a contract. 41 Comp. Gen. 484, 490 (1962). The contracting officer may not speculate as to potential bidders' willingness to compete in the face of a particular firm's apparent competitive advantage. That willingness may only be tested in the crucible of competition. See, 16 Comp. Gen. 395, 398 (1943). Even where the contracting officer perceives little or no willingness in the market to supply competitive offers or bids, the administrative costs of preparing and issuing a solicitation are outweighed by the potential costs of losing bidders' confidence in the competitive system.

Regarding the appropriate action to be taken in this matter, CSC has accepted delivery of and is currently using both the typewriters and the training film, thus there is no contractual remedy available. By this decision, however, we are advising the CSC, to avoid prejudging the willingness of bidders to compete for future procurements.

Acting


Comptroller General
of the United States