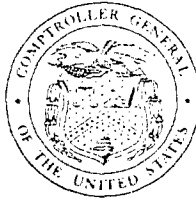


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THE COMPY
Hochstetler

DECISION



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

FILE: B-196221

DATE: March 3, 1980

MATTER OF: Federal Data Corporation *CPG 01210*

DIGEST:

1. Decision to lease automatic data processing equipment is not justified where agency has not demonstrated reasonable basis for sole-source decision after receipt of affirmative responses to Commerce Business Daily notice of intention to procure published pursuant to FPR Temporary Regulation No. 46 notwithstanding agency's prior expectation that no alternate sources were available.
2. No meaningful relief can be provided in best interest of Government because of inadequately justified FY 80 sole source lease where only abbreviated lease period is available for possible competitive procurement. Recommendation is made that agency plan FY 81 needs sufficiently in advance to allow competition for needed ADPE.

[Protest INVOLVING]

Federal Data Corporation (FDC) protests the Office of Civilian Health and Medical Program of the Uniformed Service's (OCHAMPUS) renewal of a lease and maintenance contract with International Business Machine Corporation (IBM) for automatic data processing equipment (ADPE). For the reasons indicated below, the protest is sustained. *AGC00913* *CPG00961*

The protest concerns the OCHAMPUS decision to renew its contract with IBM for the fiscal year 1980 for ADPE leased from IBM for the past 10 years. The specific equipment consists of six items:

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IBM Model	1051	Mod 1	Control Unit
"	"	1052	Mod 8 Printer Keyboard
"	"	1404	Mod 2 Printer
"	"	2030	Mod F CPU
"	"	2921	Print/Read Control Unit
"	"	2540	Card Read Punch

As authority to renew its lease with IBM, OCHAMPUS cites Temporary Regulation No. 46, 40 Fed. Reg. 40015-40018, September 8, 1978, which does not require delegation of procurement authority from the General Services Administration (GSA), where, as here, the acquisition price was under \$300,000 and a synopsis was published in the Commerce Business Daily (CBD). OCHAMPUS published the CBD announcement for informational purposes only, without establishment of a solicitation package because of its belief that alternate sources of supply were not expected to be available. Temporary Regulation 46, supra, § 1-4.1107-6(c)(i). Thus even though the CBD notice elicited six inquiries concerning the synopsis including one by FDC, OCHAMPUS proceeded with the sole source lease renewal because of its prior decision not to seek competition. OCHAMPUS' belief that no alternate sources of supply were expected to be available was apparently based on its intention to acquire certain excess Government owned ADPE to replace the equipment leased from IBM.

In this respect, OCHAMPUS asserts that the IBM lease extension was merely an interim measure pending installation of certain Government owned excess equipment; that partial installation was expected to commence within 4 months of the expiration of the FY 79 IBM lease; and that therefore it would be impractical, within the required time frames, to solicit competitive bids.

FDC objects to the decision to sole source the lease and believes OCHAMPUS violated the temporary regulations by refusing to consider the affirmative responses to the CBD notice. FDC argues that the dates for delivery of the Government replacements are uncertain and there is no indication that the remaining leased items will be replaced during the term of the renewed IBM lease. Therefore, it does not believe renewal of the lease without competition is adequately justified.

Initially we note that the lease renewal with IBM is not for an interim period, but is for 1 year. Furthermore, at the time the decision was made to extend the lease on a sole source basis, the record indicates that no Government excess equipment was requested to replace the leased equipment. About 3 weeks after the publication of the CBD notice, a request for an excess Government owned CPU (valued at about 50 percent of the total IBM lease) was initiated. The CPU was the item to be installed on January 31, 1980. In addition, it appears that OCHAMPUS was not aware of the availability of a Government owned printer keyboard, control unit or card read punch until sometime in December. The printer keyboard and the control unit are each worth about 1 percent of the lease cost, and they will not be available until June 1980 or later. The card read punch, worth about 10 percent, has no availability date shown on the record. The remaining two equipment items for which no replacements are apparently available are valued at about 37 percent of the total lease.

We also note that OCHAMPUS justified the sole source renewal of the prior fiscal year IBM lease after the receipt of inquiries in response to a similar CBD notice essentially on the same basis, i.e., the impracticality of obtaining competition within the required time frames. That justification, however, alluded to the agency's intent to acquire new equipment on a competitive basis rather than the acquisition of Government owned excess equipment, and noted that it had "already initiated action [presumably through GSA] to obtain new ADPE." Insofar as we are able to discern, GSA has not yet acted on that request.

Sole source awards are authorized in circumstances when needed supplies or services can be obtained from only one person or firm. Because of the general requirement for competition to the maximum extent practical, the determination to sole source is subject to close scrutiny by this

Office. Precision Dynamics Corporation, 54 Comp. Gen. 1114 (1975), 75-1 CPD 402. The standard to be applied in determining the propriety of a sole source procurement is one of reasonableness, i.e., unless it can be shown that the contracting agency acted without a reasonable basis, our Office will not question the decision to procure on a sole source basis. See Metal Art, Inc., B-192901, February 9, 1979, 79-1 CPD 91.

We have recognized the propriety of sole source awards where the minimum needs of the Government can be satisfied only by items or services which are unique; where time is of the essence and only one known source can meet the Government's needs within the required time frames; where data is unavailable for competitive procurement; or where only a single source can provide an item which must be compatible and interchangeable with existing equipment; but not where the circumstances do not justify noncompetitive awards. Precision Dynamics Corporation, supra. We think this case falls within the latter category.

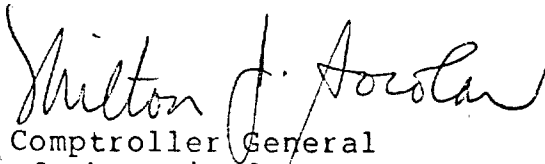
Here, while hindsight may now dictate a short term need for equipment which will be replaced by Government owned equipment, no compelling reason appears to exist for a continuing sole source lease renewal for the two items where such is not the case. In this respect, we take note of the fact that third party lessors often are able to furnish identical equipment at rental rates which are competitive with those of the original equipment manufacturer, and we see no reason why these firms should not be given the opportunity to bid.

Under these circumstances, OCHAMPUS has not persuaded us that only renewal of the IBM lease could satisfy its needs, Precision Dynamics Corporation, supra, and OCHAMPUS' failure to consider the responses it received to the CBD notice makes it impossible to ascertain whether another company could have supplied the ADPE.

In this connection, it is our view that OCHAMPUS did not comply with the Temporary Regulation 46, supra. For example, section 1-4.1107-6(a) provides that "if affirmative response is received, . . . [to the CBD synopsis], the procurement file shall be documented with evidence that use of the . . . schedule contract including method of acquisition; e.g., lease or purchase, is the lowest overall cost alternative available to the agency, price and other factors considered." In this case, although the synopsis was for informational purposes only due to the Agency's expectation that no alternate sources of supply would be available, affirmative responses were elicited and thus, the temporary regulations required OCHAMPUS to demonstrate the lease renewal was the lowest cost alternative.

Notwithstanding the foregoing, we do not believe that there is any practical way we can recommend any meaningful relief which would be in the best interest of the Government. Cohu, Inc., 57 Comp. Gen. 759, 78-2 CPD 175. For example, only slightly more than half of the 1980 fiscal year remains, the IBM lease requires 30 days notice for termination, and thus any competitive procurement at this time would result in only an extremely abbreviated lease period. We do not believe that either the cost of such competition or the disruption to OCHAMPUS operations that would necessarily result if IBM's equipment were replaced, can be justified for the remainder of FY 80. We do, however, recommend that OCHAMPUS plan its needs for FY 81 sufficiently in advance of the expiration of the current lease so that competitive bids can be obtained if the equipment will be required to meet the agency's needs.

The protest is sustained.


For the Comptroller General
of the United States