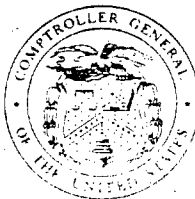


DECISION

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

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FILE:

B-198610

DATE: June 30, 1980

MATTER OF:

KHI, Inc.

DLG 04880

DIGEST:

Where oral rehydration salts were required to be delivered by end of May 1980 and only one supplier had capability of satisfying requirement from existing stocks so that delivery would be made in least time, sole-source award near end of May 1980 will not be questioned. Further, actual prejudice to protester is not apparent since its lowest unsolicited unit price was substantially higher than awardee's.

KHI, Inc., ^{including} [protests the sole-source award] of a contract to the United Nations Children's Fund (UNICEF) by the Agency for International Development (AID) for approximately 2 million one-ounce packages of oral rehydration salts in the approximate amount of \$140,000.

AID reports that (1) the salts were urgently needed to combat the peak period of a certain disease in the Arab Republic of Egypt, and (2) UNICEF's unit price of 7 cents was lower than KHI's initial quote of 13 cents and final quote of 10.9 cents. Both quotes were unsolicited. KHI contends that AID had the time to conduct a competitive procurement but did not do so in violation of applicable statutes and regulations and that AID will continue to award contracts on a sole-source basis unless corrective action is recommended. For the reasons discussed below, KHI's protest is denied.

AID advises that the salts were needed by the end of May 1980 and that it could not engage in direct competitive negotiation to procure a timely supply of salts because the time required for delivery would be at least 3 months. AID reports that KHI stated that at

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least 3 months would be needed to institute packaging procedures for this commodity since KHI presently furnishes it in bulk form only; more recently, KHI stated that it would need only 1-month preparation for shipment. AID concludes that given the time constraints (as of the middle of May) and the urgent need for expedited receipt of packaged salts, this time lag was unacceptable; UNICEF, on the other hand, confirmed that delivery can take place less than 1 month from the date of order placement.

Since the first salts requirement was identified, another 100,000 units have been requested for the same project. AID indicates that the additional quantity may have been part of the reason that KHI reduced its unit price to 10.9 cents.

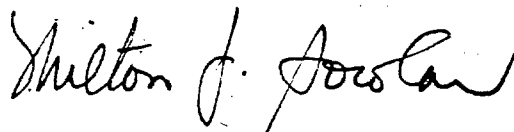
Finally, AID reports that it will endeavor, where possible, to establish longer leadtimes for procurements of packaged salts for future AID projects so that firms, such as KHI, may have an opportunity to compete. Because of the urgency of these procurements, AID was required to act on an expedited basis to place the orders.

At the outset, KHI recognizes that based on a cable recently received by AID from the Cairo Mission, an emergency may have existed requiring expeditious action. In KHI's view, that emergency was created by AID's flagrant violation of the Federal Procurement Regulations and if AID acted in conformity with those regulations, the salts would have been promptly supplied. KHI argues that if AID had acted in March, when KHI informed AID that it was ready and willing to supply the needed salts within 30 days, there would have been time to secure competition and meet the end of May date. KHI also argues that the exigency was created in part by AID's failure to act on the procurement request promptly. Citing our decision in Engineering Research, Incorporated, B-180893, September 12, 1974, 74-2 CPD 161, KHI notes that the existence of an emergency does not necessarily require sole-source procurement.

In sum, KHI states that it has no desire to interfere with the important services AID performs and if our Office determines that an emergency need for salts existed as a result of AID's actions over the recent months, the award to UNICEF without competition of any kind may be justified. In any case, KHI requests that AID be required to plan its procurements sufficiently in advance to permit competition and its proposed procurement actions made known to suppliers through publication.

In our view, the documented report submitted by AID appears to provide a reasonable basis to support AID's determination that the situation involved an "exigency" and in order to meet the required delivery period the award to UNICEF--which could provide the salts from stocks in the least time--seems reasonable. Moreover, while it appears that personnel responsible for this AID procurement may have allowed the procurement leadtime to slip, the actual prejudice to KHI is not apparent since KHI's revised unit price is substantially higher than UNICEF's. Further, we expect that AID will implement its recognition of the need for better procurement planning and the requirement for maximum practicable competition.

Protest denied.



Acting Comptroller General
of the United States