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DECISION



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

FILE: B-195966

DATE: July 22, 1980

MATTER OF: Las Vegas Communications, Inc.

DIGEST:

[Protest of sole-source award] is sustained where agency justified sole-source award on basis that there was insufficient time to conduct competitive procurement while record shows that agency made no effort to determine existence of other sources and protester indicates it could have performed within agency's short time frame.

Las Vegas Communications, Inc. (LVCI) protests a sole-source contract award for the lease of a telephone system to the Central Telephone Company (Central) by the Veterans Administration (VA). LVCI states it is qualified to provide the system for an out-patient clinic and had informed the VA of its availability to compete through "constant and continued contact" with agency officials. The agency does not dispute LVCI's qualifications but contends that it did not have the time to conduct a competitive procurement. For reasons discussed below, this protest is sustained.

The determination for the sole-source award was based on the fact that the General Services Administration (GSA) could not provide the services and on VA's conclusion that there was insufficient time to permit a competitive procurement which normally takes more than two years. The agency's approval of the sole-source recommendation also indicated that since the veteran population in the area could change it was not practical to purchase a phone system for the building which VA is leasing for the clinic. It concluded that leasing the system from Central was the only viable alternative.

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The chronology of events submitted by the agency indicates that in July 1976, it became aware of the possible relocation of the out-patient clinic and in March 1978, it was informed of the precise future location of the clinic. On April 23, 1979, VA was informed orally in response to its April 20 request that GSA could not economically provide the telephone service and on the same date, VA instructed the clinic to determine what services Central could provide and at what cost. In May 1979, GSA formally delegated to the VA authority to procure the system, but the delegation specifically stated it was the agency's responsibility to seek competition to the maximum extent practicable. Also in May, the agency asked for and received a proposal from Central. That proposal indicated that an order must be placed by June 1, 1979 in order to meet the required service date in October. By letter of June 26, 1979, the Acting Regional Director, Western Region, Department of Medicine and Surgery, VA, authorized the contracting officer to sign an agreement with Central.

No formal request for proposals was issued by the agency and a five-year contract was executed by the VA on July 16, 1979.

The information submitted by the agency indicates its first contact with LVCI was on June 28, 1979 when LVCI asked why the agency's commitment of the previous year to permit LVCI to compete was not being honored. LVCI strongly insists its contacts with the agency regarding this procurement included numerous telephone calls beginning on July 28, 1978 and at least three meetings which resulted in assurances that a proposal from LVCI would be welcomed. LVCI further contends that on April 1, 1979, it was told by the agency that the system specification which it needed for preparation of its proposal had been lent to someone else. Although the agency denies that LVCI was in constant contact with the officials it does not deny that it knew of LVCI's existence. In any event, it is clear from the information submitted by the agency that the sole-source decision was made without any reasonable effort to determine if competitive alternatives to Central were available.

We have held that the general requirement that an agency obtain competition to the extent it is available is applicable to procurements such as this which involve public utilities. RCA Alaska Communications, Inc., B-178442, June 20, 1974, 74-1 CPD 336. We have, however, recognized that there are certain circumstances under which sole-source procurements may be justified, such as where time is of the essence and only one known source can meet the Government's needs within the required time frame. See Ampex Corporation, B-191132, June 16, 1978, 78-1 CPD 439 and cases cited therein.

In this case, the urgency itself was not sufficient to justify a sole-source award; LCVI asserts it could have met the VA's time frame by installing the proposed system within 60 days of receipt of an order and we believe the system, which appears to be relatively simple, could easily be installed by a number of companies within 3 months. The sole-source justification here makes no statement with respect to Central being the only known source and there is no indication of an effort to publicize the requirement in the Commerce Business Daily or otherwise, or to consider LCVI and other possible commercial sources.

Moreover, the urgency appears to have resulted from the agency's lack of responsiveness to a requirement known for at least a year and its own inability to proceed expeditiously. While the agency states it was not aware it would have to procure the telephone system for the clinic until May 1979, which did not allow sufficient time to conduct a competitive procurement and still meet the October 1979 needs of the clinic, the record shows the agency knew of the precise location of the clinic and was in the process of establishing its floor layouts in March 1978. It did not formally request GSA service until April 20, 1979 and was orally informed three days later that GSA would not provide the system.

There is no explanation why the statement of requirements submitted to GSA and its supporting documents could not have served as a basis for a competitive procurement of this relatively modest system. In addition, the record does not explain why the request to GSA was not made earlier or why alternative plans for a competitive procurement did not exist at the time of the GSA refusal. Furthermore, a schedule document which the agency has submitted which purports to show that procurements of this type take from 25 to 33 months deals with the replacement of an existing telephone system and allocates a significant amount of time for matters, such as the approval of the replacement request, which have no relation to the procurement of an initial system.

Regarding VA's position that the temporary nature of the clinic necessitated a lease of the system rather than a purchase, LVCI indicates it could offer either a purchase or lease arrangement. Also, the record indicates that the facility housing the clinic has been leased by VA for 10 years, thus suggesting that the location of the clinic may not be temporary.

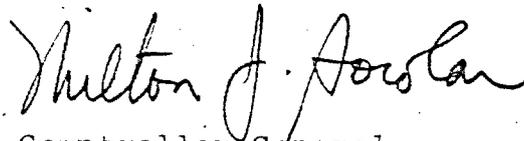
We therefore believe the sole-source award was improper in that it did not comply with Federal Procurement Regulations (FRP) § 1-3.101(d) (1964 ed. amend. 153) which requires that negotiated procurements be made on a competitive basis to the maximum extent practical and that the agency assure that a competitive procurement is not feasible before conducting a noncompetitive procurement.

In determining whether an improper award should be terminated for convenience, we consider factors such as the degree of prejudice to other offerors or the integrity of the competitive procurement system, the good faith of the parties, the extent of contract performance, the cost to the Government, the urgency of the procurement, and the impact on the procuring activity's mission. Datapoint Corporation, B-186979, May 18, 1977, 77-1 CPD 348.

Although we do not question the good faith of the parties, the procurement deficiency is serious and there is a good possibility that it resulted in prejudice to other potential offerors and to the integrity of the competitive procurement system. While there is no doubt that a change of contractors would cause inconvenience to the clinic, the degree of such inconvenience is uncertain and with careful planning, could be minimized. We recognize, however, that as the system is installed, Central might have an insurmountable competitive advantage and it may not be possible to assure complete equality of competition if a new procurement is conducted.

Therefore, we recommend that the VA assess the feasibility under current circumstances of conducting a new procurement which would be competitive in substance as well as in form. If this assessment should indicate that a competitive procurement is feasible, we recommend that the requirement be resolicited on that basis. If some offeror other than Central is determined to have submitted the offer most advantageous to the Government, the contract with Central should be terminated for the convenience of the Government and the new contractor's system installed.

The protest is sustained.



For The Comptroller General
of the United States