

DECISION

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

FILE: B-197259

DATE: May 7, 1982

MATTER OF: U.S. Financial Services, Inc.

DIGEST:

Protest is sustained since audit report of agency's Inspector General's office confirmed some of protester's allegations as well as other deficiencies in procurement. Remedial action in addition to corrective steps already undertaken by agency appears to be unnecessary.

U.S. Financial Services, Inc. protests noncompetitive procurements conducted by the U. S. Geological Survey, Department of the Interior (the Survey) on grounds that they violated applicable regulations and the prices paid exceeded those obtainable from available competitive sources. The procurements involved the purchase from the ITEL Corporation of 20 Model 7330 dual density disk drive features to upgrade 20 single density disk drives and maintenance services for the disk drives. U.S. Financial also protests a previous procurement of upgrade features for 40 other disk drives.

We will not consider the protest of the previous procurement because it is untimely under our Bid Protest Procedures, 4 C.F.R. Part 21 (1981). Under these procedures, protests based on alleged improprieties in any type of solicitation which are apparent prior to bid opening or the closing date for receipt of initial proposals must be filed prior to such date and protests based on other grounds must be filed within 10 working days after the basis of protest was known or should have been known, whichever is earlier. The protest of this earlier procurement does not meet these requirements. For the reasons which follow, however, we sustain the protest with respect to the purchase of the 20 upgrade features and the maintenance services.

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The single density disk drives were leased by the Survey several years ago under a then-mandatory General Services Administration (GSA) requirements contract (GS-00C-50022) which was later converted to a non-mandatory contract. When the purchase credits on the leases built up sufficiently to make purchase economically sound, the leases were converted to purchases. Over several years, some of the single density disk drives were upgraded to dual density drives to increase storage capacity and in November 1979 the Survey decided that an additional 20 units also should be upgraded. It mailed to the Commerce Business Daily (CBD) an announcement of its intended non-competitive purchase of the upgrade features from Itel Corporation. Because it did not anticipate any response to the announcement, it awarded a delivery order the next day to Itel for the 20 upgrade features at a price of \$180,000. The Survey later announced in the CBD its intention to make a non-competitive award to Itel for maintenance services.

By letter of November 20, 1979, U.S. Financial responded to the CBD announcement with a letter offering to provide twenty "ITEL/ISS 7330-11 (Dual Density)" drives for \$120,000. The Survey then suspended performance on the delivery order issued to Itel and reviewed and discussed with U.S. Financial its offer, which the Survey found to be deficient because it contained insufficient information to permit a technical evaluation. The Survey then rejected the offer and pointed out that since U.S. Financial did not have a current GSA Schedule contract, the Survey could not buy from U.S. Financial unless it conducted a fully competitive procurement for which there was not enough time. U.S. Financial sent another letter stating there were no technical issues since it was offering the identical capability the Survey was receiving, under the same terms and conditions, except that the price would be one third less than the Survey was paying to Itel. After further consideration, the Survey again rejected the offer because, among other things, it could not determine 1) whether the offered equipment was new or used, 2) the revision level of the equipment, and 3) whether U.S. Financial proposed to perform the upgrade on the installed equipment at the site or replace the equipment and if the latter, whether the Government would receive a credit for any hardware removed. The Survey then ordered Itel to proceed with performance.

U.S. Financial also responded to a CBD announcement with respect to the maintenance services with a letter to the Survey offering to perform such services at "10% Less Than Current Costs." When this offer was also rejected on grounds that it was too vague to be capable of evaluation, U.S. Financial protested the rejections of its hardware and maintenance offers to our Office.

During the development of this protest, the Office of Inspector General (IG), Department of the Interior, initiated a review of all procurement activities between the Geological Survey and Itel from October 1977 through August 1980, a period which includes the activities protested here. Upon agreement by all parties, this decision was held in abeyance until issuance of the IG's audit report, which has been made a part of the record.

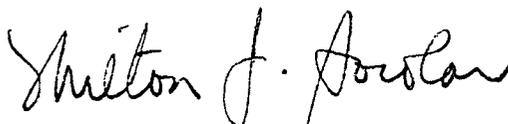
Although the Survey rejected the offer of U.S. Financial because, among other reasons, it could not determine whether U.S. Financial intended to upgrade the installed disk drives or replace them, the IG found the Survey permitted Itel to replace the disk drives. This was done without notification to GSA, and therefore violated the Federal Property Management Regulations (FPMR); 41 C.F.R. § 101-36.4702 (1981), which prohibit the sale or exchange of such equipment prior to GSA approval. By this failure to comply with the regulations, the Survey denied GSA any opportunity to question the sole source procurement of the upgrade features from Itel. The Survey also exceeded its authority since under the regulations it could not purchase the new disk drives without prior GSA approval. We sustain the protest on this basis.

In addition, we note the IG's finding that the Survey issued single delivery orders when which should have been combined in one order, which enabled the Survey to avoid the requirement in Federal Procurement Regulations (FPR) § 1-1.403 for obtaining approval of the GSA when the total purchase price exceeds \$300,000 or \$50,000 if the procurement is sole source or for a specific make or model of equipment. We further note the IG's finding that in many cases the Survey did not synopsise its procurements in the CBD as required by FPR § 1-1.1006-4; that four of eight synopses published provided insufficient time for vendors to respond; and that two of the four synopses, including

the one pertaining to the hardware procurement protested here, were published after the delivery orders had been issued to IteI. Both of these findings, of course, indicate that the Survey's actions reduced the possibility of effective competition.

In response to the IG report, the agency has undertaken corrective actions, which include steps to insure that future exchanges of equipment are not permitted without GSA approval, disciplinary action for employees who knowingly circumvented the regulations, the assignment of a responsible employee to insure compliance with all applicable regulations including those requiring timely issuance of purchase and delivery orders, and the timely synopsis of procurements in the CBD. The agency has also instructed its Computer Center Division to establish a system to perform and properly document lease/purchase analyses and to insure that invoices for purchases and rental of equipment are accurate prior to certification for payment.

The corrective actions taken appear appropriate and we find no need for further recommendations.



Acting Comptroller General
of the United States