



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Precise Copier Services
File: B-232660
Date: January 10, 1989

DIGEST

1. Agency may in its discretion, order a non-mandatory item from a Federal Supply Schedule contract even though other suppliers exist where the agency determines that it would cost \$8,000 to \$10,000 to conduct a competitive procurement which would negate any savings from the use of a competitive solicitation.
2. Since a Federal Supply Schedule (FSS) contract is a requirements type contract the agency need not publish a notice in the Commerce Business Daily of its intent to place an order under the FSS.

DECISION

Precise Copier Services protests the decision of the Bureau of Reclamation, Department of the Interior, to purchase full service maintenance for a Xerox Model 9900 copier from the Xerox Corporation under that firm's General Services Administration (GSA) Federal Supply Schedule (FSS) contract. Precise, the incumbent contractor for these services, contends that it can perform at a lower price and should be permitted to compete.

We deny the protest.

The Bureau decided to order these services from Xerox off the multiple-award FSS contract covering copying equipment supplies. Although maintenance services were listed as an exception to the mandatory use of this particular FSS contract, the agency concluded that because of \$8,000 to \$10,000 in administrative costs that would have to be incurred to conduct a competitive procurement it was in the government's best interest to order the services off the FSS. We agree.

044382/137722

GSA enters into requirements contracts for items commonly used by the government and lists the contractors on the FSS. Federal Property Management Regulations (FPMR) § 26.402, 41 C.F.R. § 101-26.402 (1985). The contracts and schedules specify which agencies must issue delivery orders to contractors listed on a particular schedule--mandatory user agencies--and which agencies may do so--non-mandatory users. AMRAY Inc., B-210490, Feb. 7, 1983, 83-1 CPD ¶ 135.

Here, while the Bureau is a mandatory user agency under this particular schedule, the item we are concerned with--maintenance services--is listed as an exception to the mandatory use of the schedule. In this regard, the regulations state that agencies not required to use the schedule are encouraged to do so as a primary source of supply, except where the agency has "actual knowledge" that it can procure the item at a price more advantageous to the government, after allowing for the burden and cost of a new procurement. FPMR § 101-26.401-5.

The decision whether to place an order with a non-mandatory schedule contractor--or in this case to order a non-mandatory item--or to conduct a competitive procurement, is a business judgment which we will not question absent a clear showing of abuse of discretion, see AMRAY, Inc., B-210490, supra.

In this case, the agency has estimated that the administrative expense of conducting a competitive procurement to be approximately \$8,000 to \$10,000. When it solicited for these services last year it received a price of \$25,908 for 6 months from Xerox and \$21,918 from Precise. Based on this estimate and the prior prices, the contracting officer concluded that it would not be more advantageous to the government to conduct a competitive procurement for the services. While the protester believes that the cost estimate is excessive, it has provided us with nothing other than its opinion in this regard.^{1/} We do not find the agency cost estimate to be inherently unreasonable and therefore we have no basis upon which to question the agency's judgment in deciding to use the FSS for these services.

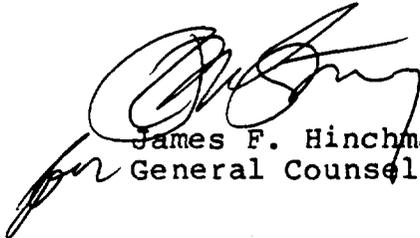
^{1/} It appears from the protester's submission that it believes that the only expense involved in conducting a competitive procurement is that concerned with synopsisizing it in the Commerce Business Daily (CBD). However, there are other costs involved, such as those involved in issuing a solicitation and processing and evaluating the responses.

Precise also complains that the FSS order was not in accordance with the Competition in Contracting Act (CICA) requirement for full and open competition and maintains that the Bureau was obligated to publish a notice of its FSS order in the CBD.

We disagree. CICA specifically provides that GSA's multiple awards schedule program, of which FSS is a part, is considered to be a competitive procedure. 41 U.S.C. § 259(3) (Supp. IV 1986); Federal Acquisition Regulation (FAR) § 6.102(d)(3). Further, since the FSS is a requirements type contract, a CBD notice of the order is not required. 41 U.S.C. § 416(c)(1)(C); 15 U.S.C. § 637(1)(C); FAR § 5.202(a)(6).

Finally, Precise notes that the Bureau issued a delivery order to Xerox and then canceled it after Precise protested. Precise believes that this proves that the order was improper. This is not the case. The agency reports that it erroneously placed the order after the protest was filed. Since the Bureau was prohibited from placing such an order in the face of the pending protest in the absence of a finding that urgent and compelling circumstances necessitated the award, it properly canceled the order. 31 U.S.C. § 3553(c). Thus, the order was canceled because the protest was filed not because the agency viewed it as otherwise improper.

The protest is denied.



James F. Hinchman
General Counsel