

DOCUMENT RESUME

02973 - [A1932987]

[Sole Source Procurement]. B-188015; B-188152. July 7, 1977. 3 pp.

Decision re: Capital Recording Co.; by Robert F. Keller, Deputy Comptroller General.

Issue Area: Federal Procurement of Goods and Services (1900).

Contact: Office of the General Counsel: Procurement Law II.

Budget Function: General Government: Other General Government (806).

Organization Concerned: Advertising Council, Inc.; Department of Health, Education, and Welfare; Department of Defense: Defense Supply Service.

Authority: F.P.R. 1-3.101(d). A.S.P.R. 1-326. 54 Comp. Gen. 445. 54 Comp. Gen. 452. 55 Comp. Gen. 1019. 55 Comp. Gen. 1023.

The protester objected to the award of two contracts on a sole-source basis to the Advertising Council, Inc. Sole-source procurement of integrated national advertising campaigns from a nonprofit organization utilizing, in part, the volunteered services of member advertising firms, was reasonable where the desire for competition for only a portion of the Government's requirements was expressed by the protester. The protester did not show the agencies' desire for integrated campaigns with a single manager/coordinator to be unreasonable. (Author/SC)

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DECISION



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

FILE: B-188015, B-188152

DATE: July 7, 1977

MATTER OF: Capital Recording Company

DIRECT:

Sole-source procurements of integrated national advertising campaigns from non-profit organization utilizing, in part, volunteered services of member advertising firms was reasonable where desire for competition for only portion of Government's requirements is expressed by protester. Protester has not shown to be unreasonable agencies desire for integrated campaigns with single manager/coordinator.

Capital Recording Company (Capital) protests the award of two contracts on a sole-source basis to the Advertising Council, Inc. The contracts were awarded by the Department of Defense, Defense Supply Service, and by the Department of Health, Education and Welfare (HEW).

The Defense Supply Service procurement sought to obtain a contract to devise and implement programs to educate and inform the public, particularly the business community, of the importance of a well-trained, fully-manned National Guard and Reserve. The Advertising Council, Inc. was the contractor selected to prepare information and materials for distribution to the public, or segments of the public, to prepare educational advertisements and secure their placement in national and other publications media. The HEW contract provides for the development, production and distribution of a new generation of advertisements to revitalize, on a national level, its Food, Nutrition and Health Campaign.

Although protester objects generally to the sole-source award of the Defense Supply Service procurement because it believes there is sufficient competition for the required services, the agency reports that the protester is not in a position and does not desire to compete with the Advertising Council for the totality of required services. Rather, the protester desires to bid on the radio production and distribution work which was subcontracted by the Advertising Council to another firm. Similarly, in the case of the HEW procurement the protester agrees that the sole-source procurement cannot be justified because the procurement consists essentially of a number of

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separate types of services for which there is competition and that applicable procurement regulations require the avoidance of noncompetitive procurements particularly as to the possible breakout of components for competitive procurements. Cf. Federal Procurement Regulations § 1-3.101(d) and Armed Services Procurement Regulation § 1-326 (1968 ed.). Moreover, the protester states that the Advertising Council has no facilities for performing all of the required services.

The two reports indicate that the Advertising Council is a non-profit, national public service advertising organization which has the capability, through its volunteer board and committee members, to encourage national and local media to contribute free time in radio and television and free space in the written media. It uses the volunteered services of its member advertising agencies for the planning, writing and designing of campaign materials. The Defense Supply Service states that its advertising campaign involves the creation, planning and preparation of advertising concepts and programs for implementation at the national level. This includes the translation of concepts into advertising messages, preparing rough forms of all illustrations, preparing lay outs, and assembling the various approved mechanical units into complete advertisements. In the case of the National Guard and Reserve campaign, these efforts are subject to constant change and improvement and the whole direction of the campaign is subject to change because it is regularly reviewed by the National Committee for Employer Support of the Guard and Reserve. The Defense Supply Service further states that the Advertising Council is reimbursed for actual costs of subcontractor's out-of-pocket expenses incurred in producing campaign materials, such as films, tapes, recordings, plates, electros, mats, proofs et cetera, and an 8.5 percent indirect cost for operational expenses. Accordingly, even though the Advertising Council does not possess the facilities for performing all of the required services, it is able to enlist volunteers and subcontract portions of the work for which it has no facilities.

As to the protester's desire to compete with the Advertising Council, both agencies desire a manager and coordinator for all aspects of their respective campaigns. H&W reports that even though other firms perform these services, the Advertising Council is the only known source with the experience and ability to coordinate and manage a national campaign while securing the benefits of donations by the media and advertising agencies. The Defense Supply Services reports that Government personnel are not available to conduct its campaign or to manage and coordinate

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the efforts of several contractors. It reports that as in most large Government advertising campaigns, fragmentation of the requirement is not desirable. Rather, it seeks to integrate its campaign by securing a single firm to be responsible for managing the entire campaign.

Generally, it is for the contracting agency to determine whether to procure by means of a total package approach rather than by separate procurements for divisible portions of the total requirement. In the absence of clear evidence that such determinations lack a reasonable basis, they will not be disturbed by this Office. Allen and Vickers, Inc., et al., 54 Comp. Gen. 445, 452 (1974), 74-2 CPD 303 and Control Data Corp., 55 Comp. Gen. 1019, 1023 (1976), 76-1 CPD 276.

To the extent that Capital seeks to have the Government break out portions of the work required under these contracts, we believe the agencies have acted reasonably in requiring fully integrated advertising campaigns. Even though fragmentation may be possible, as claimed by the protester, the benefits of fully integrated national advertising campaigns cannot be denied. Notwithstanding the protester's objections to the sole-source nature of these procurements for integrated national advertising campaigns, there appears to be no interest expressed in competing against a nonprofit organization for the management and coordination of a national public service campaign. In this connection, we understand that many of the commercial firms who might compete for the Government's requirements volunteer their services to the Advertising Council. In the absence of an expression of interest in competing with the Advertising Council for the integrated services required, we cannot object to the noncompetitive nature of these procurements.

We recommend, however, that prior to the award of any further sole-source contract to the Advertising Council, procuring activities attempt to ascertain in a more definite fashion whether there are other organizations capable of and interested in competing for their needs in competition with the Advertising Council. HEW, for example, has decided to use a sources-sought synopsis published in the Commerce Business Daily. By this decision, we are advising the Defense Supply Service and HEW to avoid prejudging the availability and interest of firms to compete for similar, future advertising campaigns.


Deputy Comptroller General
of the United States