DOCUMENT RESUME

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[Request for Reconsideration of Protest Involving Evaluation Factors in Solicitation]. B-190142. December 7, 1978. 6 pp.

Decision re: General Telephone Co. of California; by Robert F. Keller, Acting Comptroller General.

Contact: Office of the General Counsel: Procurement Law II.
Organization Concerned: Federal Supply Service: Procurement Div., San Francisco, CA.
Authority: 57 Comp. Gen. 89. B-189450 (1977).

A company requested reconsideration of a decision denying its protest concerning evaluation factors in a solicitation, stating that the arguments it presented were not addressed. The prior decision did not discuss the agency's anticipated rejection of a lease with a contingent termination charge after ten years. Although the prior decision was sustained because the agency was reasonable in refusing to consider the value beyond the 10-year lease period of the free use of protester's equipment, the agency was requested to reexamine the soundness of the residual value factor in comparing costs of purchasing and leasing equipment. A request for a conference was denied since it would serve no useful purpose. (HTW)

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DECISION — **THE COMPTROLLER GENERAL OF THE UNITED STATES** WASHINGTON, D.C. 20548 8558

FILE: B-190142 **DATE:** December 7, 1978

MATTER OF: General Telephone Company of California-Reconsideration

DIGEST:

1. Even though prior decision is sustained because agency was reasonable in refusing to consider value beyond ten year lease period of free use of protester's equipment, prior decision does not preclude agency from evaluating such value if it should decide to do so. Nevertheless, agency is requested to re-examine the soundness of the residual value factor used in evaluating the cost of purchasing as compared to the cost of leasing equipment.

2. Request for conference in connection with reconsideration of prior decision is denied since no useful purpose would be served thereby.

General Telephone Company of California (GTC) requests reconsideration of our decision B-190142, February 22, 1978, 78-1 CPD 148 denying its protest of the evaluation factors in Request for Proposals (RFP) No. 9PN-126-A77/LC(NEG) issued by the Procurement Division, Federal Supply Service, General Services Administration (GSA), San Francisco, California.

GTC sought more favorable evaluation of its lease based proposal for providing telephone equipment, maintenance and related services in comparison with proposals for the Government's purchase of such equipment. GTC states its protest related to the following deficiencies in the solicitation and action intended by GSA in the evaluation of the proposals.

"1. GSA's use of a residual value factor having no effect on overall costs to the government in its cost evaluation.

"2. GSA's use of a residual value factor for purchase options only.

"3. GSA's arbitrary assignment of a 46 percent residual value factor to purchase options.

"4. GSA's failure to evaluate lease and purchase options on the same basis, by considering perceived benefits accruing to the government after the initial contract term for purchase options while failing to consider such benefits associated with lease options.

"5. GSA's stated intention to ignore clause 73 of the Solicitation by failing to evaluate all costs anticipated to be incurred by the government; in particular, the cost to the government of lost income tax revenues, the cost of self-insurance, the cost of equipment removal, and the costs associated with contract administration.

"6. GSA's refusal to evaluate the cost to the government associated with self-insurance of equipment, and costs associated with removal and disposition of equipment.

"7. GSA's stated intention to improperly evaluate GTC's proposed contingent termination charge."

GTC states that, in support of these points, it submitted several meritorious arguments which the decision totally ignored or overlooked. In our opinion, the decision addressed the essential arguments raised by the protester.

The decision did not discuss the anticipated rejection of GTC's anticipated submission of an offer of a lease with a contingent termination charge at the end of ten years. At the time of the decision, no such proposal had been submitted or rejected in connection with this procurement. GTC's anticipation was based on informal conversations with GSA officials during the protest conference in this Office at which time the matter was discussed on an hypothetical basis only. GTC's written conference comments discussed an intention to include in its best and final offer a contingent termination charge. As GSA had not formally presented its views on this possible approach, the matter was not properly at issue. It was believed that an expressed intention to make an offer which may or may not be implemented did not warrant further delay of the decision until a specific offer could be made and the comments of GSA obtained. In addition a protest submitted by the Anchorage Telephone Utility (ATU) under another GSA solicitation initially was combined with GTC's protest because it involved similar facts and the identical issues concerning the propriety of the 46 percent residual value for purchased equipment. That protest was withdrawn when an award was made to the protester. It was our understanding that the best and final offer of ATU included such a contingent termination charge.

The decision held that based on the information available to GSA, the agency's determination to use for evaluation purposes a residual value of 46 percent for purchased equipment was not without a reasonable basis. The decision precludes neither the use of other reasonable residual values based on the same information nor the possibility of new or better information dictating lower residual values in the future. GTC submitted no facts or arguments with its original protest or its request for reconsideration which are persuasive enough to warrant overturning GSA's determination. The 1977 study of the communications market which GTC submitted in connection with its request for reconsideration concludes that use of digital technology in PABXs is rapidly drawing to a close the days of 30 to 50 year old manual PABXs and will shorten lifetimes of PABXs from 20 to 25 years "toward" the 8 to 10 years typical of computer equipment. It predicts that by 1981, the average life of PABXs will be 16 years and that the manufactured cost per average PABX line will increase substantially. GTC points out that this average figure includes manual PABXs with service lives of over 20 years. It does not, however, provide the expected ratio of manual PABXs to those using digital technology in 1981 and there is no indication in that part of the study submitted to us that the projections include Government users. In any event, such prognosis is judgmental and procuring agencies must be afforded latitude in making such judgments. With due regard for the accuracy of predictions, especially as they pertain to timing, and for the constraints upon the Government in acquiring only its minimum needs, we believe this study provides no support for concluding that GSA's use of a 46 percent residual value based upon an expected useful life to the Government of 18.5 years was unreasonable.

GTC states that it has reason to believe that a GSA study conducted since the filing of the initial protest indicated the useful service life for similar equipment to be much less than 18.5 years. GSA has informally informed us that it is aware of no such study.

GTC's request clearly demonstrates its strong disagreement with the conclusions of the decision and expresses its concern as to its possible effect upon the ability of the regulated telephone industry to compete effectively with equipment vendors for Government business. While GTC concedes that the decision considered the propriety of the 46 percent residual value for purchased equipment, it contends that it did not compare the relative residual values of leased and purchased equipment at the end of a ten year lease period. In this regard, the decision stated:

> "In the case at hand, GSA has determined that purchased equipment has an actual useful life in excess of 10 years but must be evaluated on a 10 year basis only to facilitate the comparison of the total costs over the maximum lease period. At the end of 10 years, GSA will have no enforceable rights to leased equipment but with regard to purchased equipment, it will have complete control and title

and the reasonable value of such title and control should not be ignored in the cost comparison. In General Telephone Company of California, 57 Comp. Gen. 89 (1977), 77-2 CPD 376, we recognized the residual value of purchased equipment as a proper evaluation factor provided the solicitation gives proper notification thereof.

"The protester's suggestion that residual value be evaluated in the event of both the purchase and lease of equipment overlooks several factors. While cost considerations of moving and reinstalling equipment would reduce the value of purchased equipment, the equipment may remain in place for many years beyond the 10 year evaluation period. A regulated lessor may be obligated to continue maintenance after 10 years at rates based on service costs only as approved by a regulatory commission but this obligation is not controlled by GSA and would not exist with regard to lessors whose maintenance rates are not regulated. It is uncertain at this time what those rates will be. Further, regulated lessors do not permit maintenance of their equipment by Government personnel or by other contract personnel. Thus, GSA would be restricted in its maintenance options for leased equipment."

We did not find unreasonable GSA's refusal to consider the value of GTC's conditional offer of free use of equipment beyond 10 years at regulated maintenance rates because the offer was conditional and its value indeterminate. That is not to say, however, that the free use of equipment at regulated maintenance rates can have no recognizable value. To the contrary, we think it is obvious that the proposal is of some value to the Government. However, it is not our function to evaluate proposals for other Government agencies and our review is limited to determine whether the evaluation is reasonable. We concluded that it was reasonable and we cannot now conclude that it is legally objectionable. However, our Program Analysis Division, which reviewed the economic soundness of the 46 percent residual value, concluded that it may be too high and that a more comprehensive economic evaluation of the net residual value should be effected. By letter of today to the Administrator of GSA we have requested that this matter be reexamined.

Under the circumstances we see no useful purpose to be served by the conference which GTC has requested in this matter. M.C. & D. Capital Corporation--Reconsideration, B-189450, August 25, 1977, 77-2 CPD 148.

R.F.Keller

Acting Comptroller General
of the United States