



Decision

Matter of: Minotaur Engineering

File: B-258367

Date: January 11, 1995

Kevin Recker for the protester.

William E. Thomas, Jr., Esq., Department of Veterans Affairs, for the agency.

Jacqueline Maeder, Esq., and John Van Schaik, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest against the issuance of a purchase order under small purchase procedures is sustained where agency did not publicly display notice of the procurement or solicit quotations from a reasonable number of sources as required by applicable regulations.

DECISION

Minotaur Engineering protests the issuance of purchase order No. 321J45999 by the Department of Veterans Affairs (VA) to Televoice, Inc. for a property information telephone line for the VA Medical Center, New Orleans. Minotaur alleges that the VA did not advertise or competitively bid the procurement.

On October 1, 1993, the VA issued the purchase order to Televoice for \$15,600 without having publicized the procurement or contacting any other potential source. The VA explains that it simply utilized the small purchase procedures set forth in Federal Acquisition Regulation (FAR) part 13. Because the VA did not comply with the requirements for small purchases, we sustain the protest.

While small purchases are not governed by normal competitive procedures, all procurements, including small purchases, must be conducted consistent with the concern for a fair and

¹The property information telephone line allows callers using touchtone telephones to access recorded messages concerning properties managed by the VA's Loan Guaranty Division.

equitable competition that is inherent in any procurement. National Robotics Co., B-252059, May 27, 1993, 93-1 CPD ¶ 413; Cellular One, B-250854, Feb. 23, 1993, 93-1 CPD ¶ 169. In this regard, in conducting a small purchase procurement, an agency need only solicit quotations from a reasonable number of potential sources. FAR § 13.106(b); National Robotics Co., *supra*. Generally, solicitation of at least three sources may be considered adequate. FAR § 13.106(b)(5). Additionally, while agencies are not required to publicize small purchase procurements in the Commerce Business Daily (CBD), FAR § 5.101(a)(2) requires that for small purchases which are expected to exceed \$10,000, agencies should display notice of the solicitation or a copy of the solicitation in a public place at the contracting office.

Here, the agency reports that it solicited a quotation from only Televoice and that it therefore failed to solicit quotations from a reasonable number of sources as required by FAR § 13.106(b). The agency also states that it failed to post notice of the procurement as required by FAR § 5.101(a)(2). Although the contract is completed, the VA explains that for the follow-on procurement of these services, the agency will publish notice in the CBD and ensure that the protester receives a copy of the solicitation. The agency also reports that it has counseled and provided training to the purchasing agent and suspended the purchasing agent's contracting authority for 30 days.

²The VA also argues that we should dismiss the protest as untimely since it was filed on September 1, 1994, 11 months after the contract was awarded and 1 month before the contract was to expire. We have declined to dismiss the protest as untimely because the protester explains that it only became aware in July of 1994, that a purchase order may have been issued by the VA and it was required to conduct an extensive and time-consuming investigation to verify that the system had been purchased and to obtain the purchase order number. Because the VA failed to post any notice of the procurement or solicit potential offerors other than Televoice, the protester did not have earlier access to the information that formed the basis of its protest and could not have protested earlier.

³In a second protest concerning the new procurement, Minotaur argues that Televoice enjoys an unfair competitive advantage as a result of the improper award of the initial contract. We will address this allegation in a later decision.

We agree that the VA acted improperly by failing to display notice of the solicitation and by failing to solicit a reasonable number of sources. Also, we generally agree with the VA that it has taken the appropriate corrective actions and, as the work has been completed, we agree that termination and recompetition of the improperly awarded contract--the remedy Minotaur seeks--is not possible. In addition to the corrective action already undertaken by the VA, however, we find that Minotaur is entitled to reimbursement of its protest costs. 4 C.F.R. § 21.6(d) (1994). In accordance with 4 C.F.R. § 21.6(f), Minotaur's certified claim for such costs, detailing the time expended and costs incurred, must be submitted directly to the VA within 60 days after receipt of this decision.

The protest is sustained.

\s\ James F. Hinchman
for Comptroller General
of the United States