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DECISION



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

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Tramp*

FILE: B-190246

DATE: June 26, 1978

MATTER OF: R. C. Van Lines, Inc.

DIGEST:

Where determinations and finding indicate that time was of the essence we will not question Department of the Air Force determination to negotiate a contract pursuant to 10 U.S.C. 2304(a)(2), which authorizes procurement by negotiation where the public exigency will not permit delay incident to advertising.

R. C. Van Lines, Inc. (R.C.), protests the award by the Department of the Air Force of contract No. F236087790193 to United Van Lines, Inc. (United), for the transportation of office furniture, equipment and supplies, estimated to weigh 1,400,000 pounds, from Richards-Gebaur Air Force Base, Missouri, to Scott Air Force Base, Illinois.

This is the background of the protest.

R. C. had on file at Richards-Gebaur its Rate Tender ICC #150, Supplement #2 (Tender 150), issued in November 1976. Tender 150 is a continuing offer to the Government to transport at stated truckload rates and minimum weights, shipments of radar and electronic equipment, office furniture and fixtures and other articles usually hauled by household goods carriers. It applies between points in most of the states and it provides additional charges for accessorial services including waiting time, excessive distances, elevators, loading and unloading, extra drivers and hand-to-hand signature service. We assume that other household goods carriers had similar tenders on file at Richards-Gebaur which were used in meeting the daily transportation needs of the base. R. C. states that under its Tender 150 it had been chosen as low cost carrier and had been tendered several shipments which it transported with complete satisfaction.

The Air Force reports that on May 24, 1977, the Air Staff announced the decision to relocate the Headquarters, Air Force Communication Service (AFCS), from Richards-Gebaur to Scott

Air Force Base, Illinois. By letter dated June 29, 1977, in response to a request from Richards-Gebaur, the Military Traffic Management and Terminal Service agreed with Richards-Gebaur that because of certain operational requirements and time restraints the best course of action would be to advertise for a transportation contract under the Armed Services Procurement Regulation (ASPR) to relocate AFCS.

On July 6, 1977, the procurement office received a request to obtain a contract for the transportation. On July 7, 1977, negotiations were entered into with the Small Business Administration to award the contract under the provisions of Section 8(a) of the Small Business Act, 15 U.S.C. 637(a) (1976). However, on July 21, 1977, and prior to the completion of the contract negotiations, the Small Business Administration declared a moratorium on all new Section 8(a) contracting.

Because the first increment of the transportation was scheduled to move on August 13, 1977, the Department believed that the remaining short period of time would not permit the use of formal advertising to procure the needed transportation. The Department determined therefore to negotiate a contract pursuant to 10 U.S.C. 2304(a)(2)(1976), as implemented by ASPR 3-202.2.

From a list of about 60 prospective contractors or contractor's agents in the local area (Kansas City and St. Louis), nine local contractors, or their agents, were solicited for bids and requested to respond by July 28, 1977. On that date, however, the United States District Court for the Western District of Missouri, granted a temporary restraining order relating to the closing of Richards-Gebaur which continued until lifted on August 19, 1977.

In addition to United, three other carriers responded to the request for proposals. United learned of the RFP from its local agent, Seaton Van Lines. The contract for the transportation services was awarded to United on September 15, 1977. Under the contract that carrier agreed to perform all services necessary to remove office furniture, equipment and supplies from the buildings at Richards-Gebaur Air Force Base, to load them on vehicles, to transport them to Scott Air Force Base, Illinois, and there unload and place the articles in the buildings. For those services, United was to be paid a price of \$10.94 per net hundred pounds.

The record shows that R. C. was chosen and did transport the advance party move of AFCS under the rates and charges in its Tender 150.

The protester contends that no public exigency existed, that it was not solicited for the procurement and that it could have performed the same transportation services at lower cost under its Tender 150.

The protester's first contention has no merit.

The findings and determination read:

"AUTHORITY TO NEGOTIATE AN INDIVIDUAL CONTRACT

Upon the basis of the following findings and determination, the proposed contract described below may be negotiated without formal advertising pursuant to the authority of 10 U.S.C. 2304(a)(2), as implemented by ASPR, paragraph 3-202.2.

Findings:

1. Due to the critical compressed time frame for movement of government furniture from Richards-Gebaur AFB, MO, to Scott AFB, IL, it was impractical to synopsize the procurement with the Commerce Business Daily. A cooperative effort to coordinate the procurement with the Small Business Administration 8(a) Program was attempted.
2. Delays began to develop shortly thereafter, and continued until it was too late to consider formal advertising. On 21 July, a teletype was received at SBA from Mr. Weaver, SBA in Washington, stating that all SBA 8(a) actions had been placed on a hold status. With the SBA 8(a) Program broken down completely, we were forced to decisive action to effect a timely contract.
3. The urgency of the situation required immediate action to meet required deadlines and ensure that contractual coverage be provided in time to avoid serious mission impact.

Determination:

The proposed purchase is for services for which the public exigency will not permit the delay incident to formal advertising."

Pursuant to the authority in 10 U.S.C. 2304(a)(2)(1976) purchases and contracts may be negotiated if "the public exigency will not permit the delay incident to advertising." Paragraph 3-202.2 of ASPR states:

"In order for the authority of this paragraph 3-202 [Public Exigency] to be used, the need must be compelling and of unusual urgency, as when the Government would be seriously injured, financially or otherwise, if the supplies or services were not furnished by a certain date, and when they could not be procured by that date by means of formal advertising * * *."

The Determination and Findings dated July 25, 1977, indicate that time was of the essence. Our Office is bound by these "findings" (see 51 Comp. Gen. 658 (1972)) and we feel that they justify the conclusion here that the public exigency would not permit the delay incident to formal advertising. Also, as a general rule, a noncompetitive award is justified where time is of the essence. See Technical Services Corporation, B-190942, April 13, 1978; Hughes Aircraft Company, 53 Comp. Gen. 670 (1974), 74-1 CPD 137.


While it is regrettable that R. C. was not contacted for a quote, we feel that the solicitation of quotations from nine firms, with a response from four, is consistent with the provisions of ASPR 3-202.2. B-178693, September 14, 1973; Microcom Corporation, B-186057, November 8, 1976, 76-2 CPD 385; cf. 49 Comp. Gen. 707 (1970).

Whether R. C. could have performed the same transportation services at lower cost under Tender 150 is immaterial and seems doubtful. However, we agree with the assessment of the Air Force:

"The services obtained under the two agreements were essentially the same. The differences were in the

pricing provisions. The rate tender provides a fixed price only for the transportation plus hourly rates for persons to load and unload the equipment. The total charges are variable. The contract rate is fixed at \$10.94 per net hundred weight and makes no provisions for additional payments due to unreasonable detention. Detentions under the rate tender presumably would increase the accessorial costs at the stipulated rates."

Accordingly, the protest is denied.


Deputy Comptroller General
of the United States