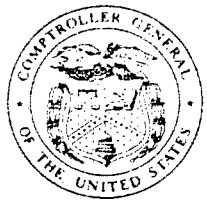
Ms. Martin

15282 PGH

DECISION



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

FILE: B-195966.2 DATE: October 28, 1980

MATTER OF: Las Vegas Communications, Inc. -- Reconsideration

DIGEST:

Prior decision sustaining protest on grounds agency failed to comply with FPR requirement to negotiate procurements on competitive basis to maximum extent practical because it did not attempt to ascertain existence of alternate sources is affirmed since agency in its request for reconsideration has not shown that prior decision is factually or legally erroneous.

The Veterans Administration (VA) has requested reconsideration of our decision, Las Vegas Communications, Inc., B-195966, July 22, 1980, 80-2 CPD 57. In that decision, we found that the sole-source award for lease of a telephone system for an outpatient clinic to the Central Telephone Company (Central) was improper because VA justified the sole-source award on the basis that there was insufficient time to conduct a competitive procurement while the record indicated the agency made no effort to determine the existence of other sources and the protester stated it could perform within the agency's required time frame. VA argues that our decision is erroneous as it is based on "facts not fully presented" or misunderstood.

VA implies that since we set forth Las Vegas Communications, Inc.'s (LVCI) version of the facts as well as VA's version, the protester's view was accepted and formed the basis of our decision. The decision, however, clearly indicates that a resolution of the conflicting factual presentations was unnecessary because the information submitted by VA showed that no reasonable effort

[Reconsideration Request]

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was made to determine if competitive sources were available before the sole-source award was made to Central.

Further, VA strongly objects to the statement in our decision that the urgency appeared to a great extent to have been created by the agency's inaction. It is clear from the decision which states that "the urgency itself was not sufficient to justify a sole-source award" that our conclusion the sole-source award was improper was not based on whether the short time frame was the fault of VA but on the agency's failure to consider whether sources other than Central could perform within the time frame. In any event, we find VA's arguments in support of its position that it responded in a reasonable and timely fashion to its requirements to be unconvincing. VA states it was orally informed by the General Services Administration (GSA) "staff" on July 28, 1976 that GSA would supply telephone services for the clinic and that it was surprised when its written request of April 20, 1979, was rejected by GSA. In view of the informality of the advice from GSA, it does not seem reasonable for VA to permit nearly three years to elapse without checking with GSA to insure that the passage of time and changing circumstances had not altered GSA's willingness to provide the telephone system.

While disputing LVCI's claim of early and continuous contact with VA in an effort to obtain an opportunity to compete, VA concedes that the director of the clinic had one contact with LVCI in 1978. The VA stresses, however, that no VA personnel with responsibility for telephone services had any contact with LVCI or knowledge of its existence prior to June 28, 1979. In this regard, we point out that a failure of communications between the requiring office and the procurement officials provides no justification for sole-source procurement. National Health Service, Inc., B-187399, January 7, 1977, 77-1 CPD 14. VA's argument in this matter reflects a misunderstanding of our decision, which did not turn on whether any contact or continuous contact took place, but, rather, on the absence of any showing of efforts by VA to determine the existence of sources other than Central which might perform the services within the required period.

We are concerned with VA's insistence, both in its original protest and its submission in support of its request for reconsideration, that whenever its needs for telephone services will not permit sufficient time to conduct its "regularly established" competitive procurement procedure which requires at least 22 months to complete, (in its original report to this Office VA submitted a chart which showed that past procurements for these services took from 25 to 33 months), it may procure such services on a sole-source basis whether or not other sources could meet VA's needs. This position is inconsistent with our views expressed in the original decision in this matter and in many prior decisions where we held that urgency can only be used as a justification for sole-source procurement where the agency finds that only one known source can meet the Government's needs within the required time. See Amdahl Corporation, B-191133, October 18, 1978, 78-2 CPD 284 and Systems Group Associates, Inc., B-195392, January 17, 1980, 80-1 CPD 56, in addition to the case cited in our original decision. An agency's established practice must be subordinated to the legal requirement for competition whenever such competition is feasible. It is well established that administrative expediency or convenience provides by itself no basis for restricting competition. See Department of Agriculture's Use of Master Agreements, 54 Comp. Gen. 606 (1975), 75-1 CPD 40; Kent Watkins & Associates, Inc., B-191078, May 17, 1978, 78-1 CPD 377; Burton Myers Company, B-190723, B-190817, April 13, 1978, 78-1 CPD 280.

This is not to say an agency may not accommodate its urgent needs and still satisfy the statutory and regulatory obligation to obtain competition to the maximum extent practical within the time available. Where time constraints prevent the preparation of definitive specifications, designs and drawings or the conduct of a regular competition, urgency may justify an expedited negotiated procurement with as complete a statement of requirements as practical submitted to each competitor, shortened response times, telegraphic or oral offers and negotiations, and such other short-cuts as may be reasonably necessary under the circumstances. In each such case, it is essential that efforts be made to achieve competition and to treat each competitor as fairly as the circumstances will permit.

In short, we find no basis for modifying the prior decision. We point out, however, that this does not mean, as the VA seems to believe, that we somehow have concluded that bad faith was involved in VA's actions. To the contrary, we have no doubt that VA acted in good faith throughout this procurement. Our conclusion is simply that the VA did not understand the legal requirements applicable to this situation and ran afoul of them by conducting a sole-source procurement without making any attempt to ascertain the existence of alternative sources to provide the needed services.

We further note that VA, in response to our recommendation that it assess the feasibility of conducting a new, competitive procurement, states that a reprocurement would result in disruption and additional costs, but that it nevertheless is prepared to make a study to comply with our recommendation. Under these circumstances, we believe VA should make such a study, to include consideration not only of the possibility of obtaining competition, but also of the precise costs and disruptive effects that would be associated with a termination of the present contract, and then determine whether it would be in the Government's best interest to proceed with a new procurement. In no event, however, should the existing contract be renewed or extended beyond the initial performance period.

Milton J. Socolar

Acting Comptroller General
of the United States