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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**

WASHINGTON, D.C. 20548

80-2 CPD-329

FILE: B-197010

DATE: October 30, 1980

MATTER OF: Anchorage Telephone Utility

DIGEST:

Protest concerning applicability of state tariff provisions to procurement of telephone services is not for consideration by GAO where matter is currently pending before Federal Communications Commission and resolution of protest issue (propriety of RFP's evaluation provisions) requires determination of applicability of tariff to services by appropriate regulatory body.

Anchorage Telephone Utility (ATU) protests the evaluation provisions of Request for Proposals (RFP) No. CDPA-79-3, issued by the Automated Data and Telecommunications Service, General Services Administration (GSA). The RFP requested offers to lease, as an integral part of the Federal Telecommunications Service (FTS), "end to end" telephone services consisting of voice grade private line circuits between Federal installations in Alaska and Seattle, Washington.

ATU, the certified local common carrier for the Anchorage, Alaska telephone area, has on file with the Alaska Public Utilities Commission (APUC) a tariff for FTS circuit channel arrangements which provides for an installation charge of \$21.35 and a monthly rate of \$373.00 for each FTS circuit channel arrangement in its operating area. Further, ATU is the current contractor providing telephone services to GSA's Region 10 Anchorage Federal Building under a Private Branch Exchange (PBX) contract. The circuitry which will be obtained under the RFP is to be connected to ATU's PBX system.

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The disputed provision of the RFP, as amended, provides:

" Evaluation and Award Factors

- " 6. In the evaluation of offers, proposals will not be assessed tariffed charges for tariffed services or facilities which are not utilized, i.e., if an offeror configures a system which avoids or minimizes tariffed services, the avoided tariff will not be included in the evaluation of the offer."

Briefly, ATU's initial position was that its state approved tariff confers an exclusive license which entitles ATU to be paid at its specified tariff rates for every FTS system channel arrangement operating in the ATU service area. ATU's entitlement is allegedly derived from the existence of the circuit in its operating area and bears no relation to the services provided to operate the circuit. Further, the charge is allegedly applicable to each and every voice grade FTS circuit, regardless of the location of the terminus of the circuit or ownership of the facilities. Thus, according to ATU, a contractor which uses its own transmission facilities to bring the FTS circuits directly to the Anchorage Federal Building will not be able to avoid the tariff charge and will have incurred a needless expense.

In subsequent submissions to our Office, however, ATU conceded that some "utilization, some contact" with its system must occur for ATU to be entitled to its specified tariff rates. In this regard, ATU argues that the requisite "contact" is present since the RFP would require extension from the PBX system of "wire pairs from the distribution frame to connecting blocks * * * mounted on the PBX room wall." ATU also maintains that it is impossible for any

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offeror to configure any of the proposed FTS circuits so as to avoid utilization of its facilities or services as a common carrier. ATU therefore concludes that the RFP misleads offerors by implying that it is possible to configure the FTS system so as to avoid the ATU tariff charges. Consequently, ATU maintains that the contract may well be awarded to other than the lowest offeror by GSA's exclusion, during evaluation of proposals, of ATU's mandatory tariff charge which the Government is fully obligated to pay under all circumstances.

GSA, however, believes that it is possible for a vendor to configure its system to completely avoid ATU tariff facilities and services. Further, GSA argues that contract charges, not tariff charges, are in any event applicable since current services by ATU at the Anchorage Federal Building are provided under contract and any "connection between the FTS circuit contractor and ATU as the PBX contractor is within the scope of the PBX contract."

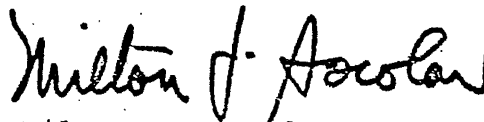
We decline to consider this matter. ATU states that "the ATU tariff is a key issue in resolving this protest and must be considered and construed by GAO." We agree that resolution of the issue concerning the propriety of the RFP provision excluding ATU's tariff charge from the evaluation of proposals necessarily requires a determination of the applicability and validity of the tariff to the services in question. However, our Office is not the appropriate forum to consider the tariff's applicability. That is a matter for the appropriate regulatory bodies. In this regard, ATU, during the pendency of this protest, requested and received a ruling from APUC which appears to affirm ATU's position concerning the applicability of its tariff to these services. Subsequently, the Administrator of GSA filed a petition for a declaratory order with the Federal Communications Commission (FCC) requesting a ruling precluding application of ATU's APUC approved tariff to these facilities. In its petition, GSA requested the FCC to assert jurisdiction over this matter to preclude regulation by APUC of these

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facilities and to void the tariff charge because in GSA's view it is premised on a rationale previously rejected by the FCC. ATU is currently contesting this petition and the matter is pending before the FCC.

We have long held that the determinations and opinions of the Federal regulatory agencies issued in accordance with their statutory responsibilities are not subject to review by our Office. American Satellite Corporation, B-189551 March 6, 1978, 78-1 CPD 171. Since the FCC is presently considering the matter and since the question of the tariff's applicability requires resolution by the appropriate regulatory body, we decline to consider the protest on the merits.



Milton J. Socolar
General Counsel