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Weiskopf
Assoc. Inc.

DECISION



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

FILE: B-203462

DATE: December 3, 1981

MATTER OF: Suba II, Inc.

DIGEST:

Federal Procurement Regulation § 1-4.1109-6 requirement that agency publish Commerce Business Daily announcement of agency's intent to convert Automated Data Processing Equipment from lease to purchase under General Services Administration schedule contract is a necessary prerequisite to the exercise of a purchase option for such equipment.

Suba II, Inc. protests the Army's exercise of an option to purchase certain installed computer equipment which the Army had been leasing from IBM under its General Services Administration (GSA) schedule contract No. GS-00C-02542. Suba asserts that the Army failed to publish a synopsis of the intended purchase in the Commerce Business Daily (CBD) before the purchase in sufficient time for potential suppliers to respond. Suba contends that identical equipment was readily available from other sources and that a competitive procurement would have saved the Government \$20,000. We sustain the protest.

Federal Procurement Regulations (FPR) § 1-4.1109-6, 46 Fed. Reg. 1205 (1981), provides:

"(d) * * *

Orders placed against ADP schedule contracts for the conversion from lease to purchase of installed ADPE are subject to the following:

"(1) The intent to place a purchase order, with a net value * * * in excess of \$50,000, is synopsised in the CBD at least 15 calendar days before placing the order * * *.

* * * * *

"(g) * * *

"(2) When a response(s) to the CBD notice is received from a nonschedule vendor for an item(s) that meets the user's requirement, the contracting officer shall * * *;

(i) Document the procurement file with an evaluation which indicates the nonschedule item(s) would not meet the requirement, or that the schedule provided the lowest overall cost, or

(ii) When the evaluation indicates that a competitive acquisition would be more advantageous to the Government, the Contracting Officer normally should issue a formal solicitation. * * *

The Army admits that the contracting activity -- Fort Richardson, Alaska -- did not comply with the regulation since the synopsis in this case was mailed on May 12, 1981, and published on May 27, 1981, only two days before the purchase order was issued to IBM.* The Army advises us that the need to comply with the regulation has been brought to the activity's attention, but no corrective action is possible since payment has already been made.

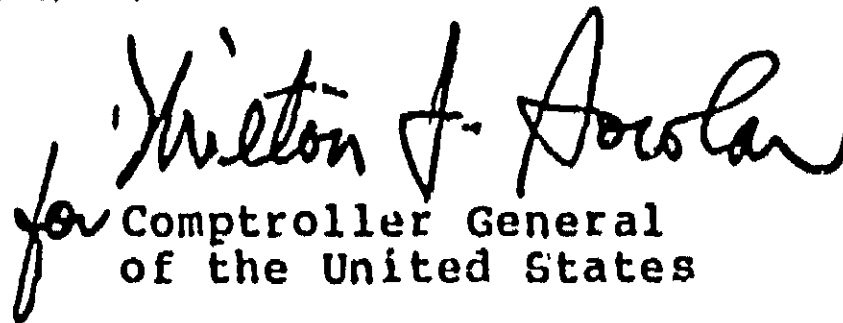
* The regulation became effective January 15, 1981. The contracting activity reports it only became aware of the regulation on May 12, at which time the contracting officer immediately prepared and mailed a synopsis to the CBD. FPR Temporary Regulation 46, 40 Fed. Reg. 40015, September 8, 1979 provided that the use of ADP schedule contracts for the conversion from lease to purchase of installed ADPE must be synopsized in the CBD "sufficiently in advance of placing the order to permit potential suppliers to demonstrate their ability to satisfy the Government's requirement * * *." Thus, even the prior regulation required the activity to synopsize the intended purchase, and the activity should have sent a synopsis to the CBD sufficiently before June 1 to permit its publication at a reasonable time for potential suppliers to respond.

Nonetheless, the Army suggests that no substantial impropriety occurred in this case because the purchase option was evaluated in the original competition for the lease of the equipment. The Army cites our decision KET, Incorporated, 58 Comp. Gen. 38 (1978), 78-2 CPD 305, to support its proposition. The KET case is inapposite to the present situation because KET concerned the exercise of an option for non-schedule items or services, for which there is no express CBD notification requirement specified by regulation.

In this case, the option exercise without the prescribed CBD notice and the attendant contracting officer's evaluation of the responses received as a result of the notice was clearly improper. Cf. Federal Data Corporation, 59 Comp. Gen. 283 (1980), 80-1 CPD 167 (a case dealing with the requirements of Temporary Regulation 46.)

Since payment has already been made, we agree with the Army that no corrective action is feasible in this case.

The protest is sustained.


for Comptroller General
of the United States