



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

~~11768~~
120227

~~SD 7542~~

B-191654

MAY 30, 1979

The Honorable Jacob K. Javits
The Honorable Daniel P. Moynihan
United States Senate

CN 601405

At your request, we reviewed the U.S. Virgin Islands Comptroller's audit of the procurement actions for three desalination plants costing \$15 million to provide needed freshwater to the Islands. On May 8, 1979, the Virgin Islands Legislature passed a bill appropriating \$15.1 million to the Virgin Islands Water and Power Authority for the plants. The bill became law on May 18, 1979.

In his December 1978 report, the Virgin Islands Comptroller concluded that the Water and Power Authority, an agency of the Virgin Islands government, had not followed sound procurement procedures in awarding the contract to Israel Desalination Engineering, Ltd. He therefore recommended that the contract not be funded and that the procurement be rebid, using all appropriate procurement procedures and the assistance of a qualified independent engineering firm. The recommendation, however, was advisory and therefore was not binding. A representative of Israel Desalination Engineering, Ltd. alleged that the Virgin Islands Comptroller had violated his statutory audit authority and acted improperly in trying to upset a contract which had been lawfully concluded.

DLG 03175

DLG 03174

Our review, which was limited to the Virgin Islands Comptroller's audit, disclosed that he

- had not exceeded his statutory authority in conducting the audit;
- performed the audit according to GAO auditing standards; and
- supported his findings, conclusions, and advisory recommendation by an objective analysis of pertinent documents and records and by pertinent interviews with appropriate Virgin Islands and Department of the Interior officials.

AGC 070233



120227

120227

CED-79-96

BACKGROUND

In an effort to meet its perennial and critical water shortage, the government of the Virgin Islands had been seeking to purchase desalination plants for St. Thomas and St. Croix. Because it was originally anticipated that the Federal Government would finance these new plants with a federally guaranteed bond issue, Interior asked the Virgin Islands Comptroller, an Interior official, to inquire into the procurement, noting that an audit might be required.

In the summer of 1977, the Water and Power Authority decided that the Islands needed desalination plants to provide freshwater. Shortly thereafter, it hired an engineering consulting firm to prepare the bid solicitation and to evaluate bids. The January 20, 1978, specifications called for multistage flash distillation plants with titanium tubing. Bids were opened on March 7, 1978. On April 13, 1978, the consulting engineer recommended to the Water and Power Authority which firm it should select to build the plants.

Subsequently, however, the Water and Power Authority rejected all bids so that specifications could be rewritten to allow consideration of desalination plants other than multistage flash distillation that could reliably produce the desired quota of freshwater.

In the second round of bidding, the Water and Power Authority selected Israel Desalination Engineering, Ltd. However, based on his initial, brief review of the procurement, the Virgin Islands Comptroller on September 7, 1978, advised the Water and Power Authority not to enter into a contract with Israel Desalination Engineering, Ltd. until he conducted a full audit. That same day the contract was signed. However, the contract was made contingent upon the availability of funds, as follows:

"Notwithstanding anything to the contrary herein contained, this contract shall be subject to and conditioned upon the Legislature of the Virgin Islands appropriating and making available * * * the funds for this project."

The Comptroller, at Interior's request, proceeded to conduct a full audit of the procurement. His final report, issued on December 20, 1978, recommended that the contract not be funded and that it be rebid. (See enc.) Meanwhile, the government decided to buy the plants without Federal assistance or a Federal bond guarantee and funded the contract in mid-May 1979.

AUDIT AUTHORITY

The Virgin Islands Comptroller has broad statutory authority to examine expenditures of the Virgin Islands government; therefore, an audit of the Water and Power Authority's procurement activities would fall within the scope of that audit authority.

The Virgin Islands Comptroller is a Federal official, appointed by the Secretary of the Interior. His salary and expenses are paid from funds appropriated to the Department of the Interior. The Comptroller's responsibilities and duties are fairly broad, and the audit authority is set out in 48 U.S.C. 1599(b):

"The government comptroller shall audit all accounts and review and recommend adjudication of claims pertaining to the revenue and receipts of the government of the Virgin Islands and of funds derived from bond issues, and he shall audit, in accordance with law and administrative regulations, all expenditures of funds and property pertaining to the government of the Virgin Islands * * *."

In part, the focus of these audits must be toward improving the efficiency and economy of programs of the Virgin Islands government, (48 U.S.C. 1599(c)). Also, the Virgin Islands Comptroller has the duty to notify the Secretary of the Interior and the Governor of the Virgin Islands of expenditures of funds or uses of property that are irregular or illegal (48 U.S.C. 1599(c)). In addition, the Comptroller is required to make any other reports requested by the Secretary of the Interior (48 U.S.C. 1599(i)).

In this case, the procurement involved a substantial expenditure of Virgin Islands government funds. Also, there were indications that the Water and Power Authority was not conducting the procurement efficiently and that some of its practices were irregular. These issues are directly within the scope of the Virgin Islands Comptroller's duties and responsibilities.

ADHERENCE TO AUDITING STANDARDS

GAO's 1972 publication "Standards for Audit of Governmental Organizations, Programs, Activities, and Functions" sets forth standards to be followed by auditors in conducting audits of governmental entities at all levels. There are three types of standards:

- General standards relate to the qualifications, independence, and objectivity of auditors.
- Examination and evaluation standards relate to how an audit should be conducted.
- Reporting standards relate to how, to whom, and when findings, conclusions, and recommendations are to be reported.

General standards

The auditors assigned to perform the audit must collectively possess adequate professional proficiency for the tasks required. According to the Virgin Islands Comptroller, the assigned auditors were either certified public accountants or certified internal auditors with many years of auditing experience. The audit staff was also assisted by an engineer familiar with desalination and by a lawyer from Interior.

Examination and evaluation standards

The audit was well planned. Adjustments to the work plan were made and recorded during the audit, as appropriate. Our tests disclosed that sufficient, competent, and relevant evidence was obtained as a reasonable basis to support opinions, judgments, conclusions, and recommendations. We tested the findings and found them adequately supported. As required, workpapers reflected a systematic gathering and recording of information. Based on our test analysis, we consider the findings reasonable.

Reporting standards

The Virgin Islands Comptroller's audit report was clear and understandable. The findings, conclusions, and recommendations were presented objectively. Management comments were obtained and treated acceptably. The report was sent to those statutorily entitled to it and those responsible for taking action.

Timeliness is one of the reporting standards. Although the Comptroller had not completed a full audit by early September 1978, when the contract signing was imminent, he reported his tentative views derived from a brief review to the Virgin Islands Governor and the Water and Power Authority.

The recommendation not to fund the contract was supported by his findings that:

- Israel Desalination Engineering, Ltd. may not have adequately proven the reliability record required by the legislature.
- The bid from another company possibly should not have been rejected.
- The same rejected bid may have turned out to be the lowest as a result of a detailed evaluation of all factors.
- The bidding may have been too restrictive, thereby inhibiting full and free competition.

We have included in this report as an enclosure the Virgin Islands Comptroller's executive summary and his summary of findings as they appear in this report.

In our opinion, the Virgin Islands Comptroller adhered to GAO's standards in auditing the procurement action for the desalination plants.

CONCLUSION

In summary, based on our limited review, we believe that the Virgin Islands Comptroller had the authority to perform the audit; adhered to governmental audit standards; and supported adequately his findings, conclusions, and advisory recommendation.

- - - - -

We performed our review at the Virgin Islands Comptroller's office in St. Thomas, Virgin Islands, and at the Department of the Interior, Washington, D.C. We interviewed various Interior officials, including the Director of the Office of Territorial Affairs and the Virgin Islands Comptroller and his staff. We made a limited review of the workpapers supporting the Comptroller's audit report for adherence to GAO's published audit standards for government agencies. We also researched the appropriate laws governing the Virgin Islands Comptroller's audit authority.

As you requested, we did not obtain agency comments on the matters discussed in this report, although we did discuss its contents with the Director, Office of Territorial

B-191654

Affairs, Department of the Interior. Also, as arranged, we plan to distribute copies of this report 1 day after you receive it to the President of the Senate; the Speaker of the House of Representatives; the Secretary of the Interior; Senator William Proxmire; the Governor of the Virgin Islands; the Director, Office of Territorial Affairs; and the U.S. Comptroller for the Virgin Islands. Copies will also be available to other interested parties.

A handwritten signature in black ink, appearing to read "Loren A. Smith". The signature is written in a cursive, slightly slanted style.

Comptroller General
of the United States

Enclosure

EXECUTIVE

THE VIRGIN ISLANDS WATER AND POWER AUTHORITY RECENTLY CONTRACTED TO PURCHASE THREE DESALINATION PLANTS. THE OFFICE OF THE GOVERNMENT COMPTROLLER FOR THE VIRGIN ISLANDS REVIEWED THE PROCUREMENT ACTIONS LEADING TO THIS CONTRACT AT THE REQUEST OF THE DEPARTMENT OF THE INTERIOR. THE GOVERNMENT OF THE VIRGIN ISLANDS INTENDS TO REQUEST THE SECRETARY OF THE INTERIOR TO GUARANTEE THE BONDS FOR APPROXIMATELY \$15 MILLION WHICH WILL BE SOLD TO FINANCE THE PROCUREMENT OF THESE PLANTS. THE AUDIT WAS ALSO PERFORMED TO RESPOND TO RECENT U.S. CONGRESSIONAL INTERESTS; AND TO PROVIDE ADVICE TO THE GOVERNOR OF THE VIRGIN ISLANDS AND THE BOARD OF DIRECTORS.

THE OVERALL CONCLUSION OF OUR REVIEW IS THAT THE CONTRACT WAS AWARDED TO ONE BIDDER WITHOUT SUFFICIENT CONSIDERATION OF OTHER QUALIFIED BIDDERS. ALSO, THE SELECTED BIDDER DID NOT MEET ALL OF THE REQUIREMENTS OF THE BID SOLICITATION; NOR WAS THE BIDDER REQUIRED TO MEET THE SPECIFICATIONS OF THE LEGISLATION GOVERNING THE PROCUREMENT. THE CONTRACT SIGNING WAS APPROVED BY THE BOARD OF DIRECTORS. IN OUR OPINION, HOWEVER, THE BOARD HAD NOT BEEN FURNISHED ALL PERTINENT OR FACTUAL INFORMATION NECESSARY TO MAKE THAT DECISION. IN ADDITION, MANY MAJOR ASPECTS OF THE PROCUREMENT PROCEDURES USED WERE SERIOUSLY DEFICIENT.

We recommend that, in light of the information contained in this report, the Government of the Virgin Islands should be requested not to fund the recently signed contract. The procurement should be rebid using all appropriate procurement procedures and the assistance of a qualified independent engineering firm. Also action should be taken to establish uniform procurement policies and procedures to protect the interests of the government in future procurement.

S
U
M
M
A
R
Y

Source: Virgin Islands Comptroller's December 20, 1978 audit report - p. 5.

III. FINDINGS

A. SUMMARY OF FINDINGS

The recently signed contract for desalination plants was awarded based on bids solicited from only a limited number of potential bidders. This restriction in competitive bidding precluded the consideration of other bidders who may have been able to provide a better product or a cheaper price. (Finding No. 1).

Independent consultants were not engaged to assist in soliciting, screening, and evaluating bid proposals in the second bidding, or in negotiating the final contract. In addition, important items were not quantified nor included in the evaluation process including such items as the amounts of penalties imposed for nonperformance, delivery schedules, liquidated damages, and warranties for spare parts and service. (Finding No. 2).

The low bidder's alternate bid was rejected although the bid met the bid specifications. The bid should have been evaluated along with all other qualified bidders to determine the low evaluated bid. (Finding No. 3).

The Board of Directors of VIWAPA awarded the contract based on certain inaccurate and incomplete information provided to them in the decision-making process. (Finding No. 4).

The contract was awarded even though the contractor's bid did not contain the production, availability, and consumption guarantees required by the bid solicitation. Therefore, if the plants should not meet the required performance, VIWAPA could sustain substantial unnecessary costs. Also, the contractor was not required to provide the detailed proof of prior performance required by the V.I. Legislature. (Finding No. 5).

The signed contract did not contain certain significant provisions that are considered essential to safeguard VIWAPA's interests, i.e. performance bonds, potential contamination, chemical approval, etc. Also, some of the terms were vague and could undoubtedly cause problems in the future. (Finding No. 6).

A contract for the "balance of plant" work to complete the installation of the plants was awarded, without competition, to the successful contractor for the plants in an amount not to exceed \$3,000,000. This constituted a "sole-source" award, contrary to the provisions of V.I. law. (Finding No. 7).

Source: Virgin Islands Comptroller's December 20, 1978 audit report - p. 9.

Several major problems in the contracting for the desalination plants could have been avoided if uniform policies, practices, and procedures had been established and followed by VIWAPA. These guidelines are necessary to protect the interests of the Virgin Islands in future procurements. Also, the Virgin Islands Code (VIC) governing procurement and contracting procedures for the VIWAPA needs to be reviewed to clarify the type of procurements authorized. (Finding No. 8).

Source: Virgin Islands Comptroller's December 20, 1978 audit report - p. 10.

(140080)