

DECISION

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

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FILE: B-166506

DATE: July 26, 1974

MATTER OF: Environmental Protection Agency sole-source procurements.

DIGEST: Factors used to justify sole-source procurement of public education and information programs such as: non-profit organization's makeup; fact that organization would utilize volunteers in performance; organization's rapport and understanding of State and local Government, key memberships, respected position, community support and coalition approach do not represent proper justification for noncompetitive procurements irrespective of fact that nonprofit organization could quote lower price since statutes require full and free competitive consistent with what is being procured.

This decision relates to our Office's review of certain [awards made under the Transportation Control Plan Public Affairs Program] of the Environmental Protection Agency (EPA).

The solicitation in question all involve procurement of similar services and will, therefore, be discussed as a whole rather than individually. The services desired were public education and informational programs dealing with transportation control strategies needed to achieve ambient air standards in 38 major metropolitan areas throughout the United States. In all the questioned procurement, awards were made on a noncompetitive negotiated basis.

Each of the awards, save one, was justified on the basis that the services would be performed by nonprofit, tax exempt, volunteer citizens organizations, each having an objective to work for clean air through education. It was determined that the organizations selected were the ideal cross section of the communities involved to publicize the clean air educational program. Moreover, these organizations were selected because the majority of their efforts were to be performed on a volunteer basis by community leaders, university personnel, civil servants, state legislators, businessmen

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and representatives of area environmental and civic organizations. Further justifications for the noncompetitive procurements were as follows: rapport and understanding of state and local Government, key memberships, respected position, community support, and a coalition approach.

We do not, however, believe that the above-stated reasons represent proper justifications for obtaining the services on a noncompetitive basis.

In the conduct of its procurements, EPA is subject to the Federal Procurement Regulations (FPR), 41 Code of Federal Regulations, chapter 1, as well as its own procurement regulations, EPPR, published at 41 Code of Federal Regulations, chapter 15. FPR 1-1.301-1 states specifically that "All purchases and contracts, whether by formal advertising or by negotiation, shall be made on a competitive basis to the maximum practicable extent." FPR 1-1.302-1(b) provides that "Irrespective of whether the procurement of supplies or services from sources outside the Government is to be effected by formal advertising or by negotiation, competitive proposals * * * shall be solicited from all such qualified sources as are deemed necessary by the contracting officer to assure such full and free competition as is consistent with the procurement of types of supplies and services necessary to meet the requirements of the agency concerned."

In the past, our Office has recognized that noncompetitive awards may be made where the item or services are unique (B-175953, July 21, 1972); where time is of the essence and only one known source can meet the Government's needs within the required timeframe (52 Comp. Gen. 987 (1973)); where data is unavailable for competitive procurement (B-161031, June 1, 1967); or where it is necessary that the desired item manufactured by one source be compatible and interchangeable with existing equipment (B-152158, November 18, 1963). See, also, 50 Comp. Gen. 209 (1970). To the extent that a nonprofit, tax exempt, volunteer citizens group falls within one of the preceding examples, a noncompetitive procurement may be justified.

However, we find no authority justifying a noncompetitive award solely on the basis of a firm's status as either a nonprofit organization, a tax exempt entity, or a volunteer citizens group. Moreover, we can find no authority to support any of the further justifications for making noncompetitive awards.

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Additionally, the justifications for award contained in the record indicate that there are other firms or organizations available to provide the services, but that these other entities, if awarded a contract, might, in EPA's view, have a more difficult time putting forth EPA's message for one reason or another. The fact that a particular group can perform the services with greater ease than any other group or firm does not, in our opinion, justify a noncompetitive procurement to the exclusion of others. We note, in this regard, that these reasons seem contrary to the specific bases stated for making award to a private firm in the New York City area.

While it may not be in the best interests of the Government at this point in time to disturb the awards in question, we do have serious reservations concerning future sole-source procurements for these types of services. In our opinion, there is no overriding uniqueness in the fact that a firm is either a consortium, tax exempt, or a nonprofit organization. It is clear that several organizations throughout the United States have the ability to disseminate the EPA message. Therefore, while nonprofit organizations may be able to quote a lower price for these services, other organizations should be afforded an equal opportunity to compete.

We, therefore, recommend that EPA eliminate any noncompetitive restrictions in future procurement for this type of service.


Deputy Comptroller General
of the United States

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