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**DECISION**



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

**FILE:** B-220512.2 **DATE:** March 7, 1986  
**MATTER OF:** Chesapeake and Potomac Telephone Company

**DIGEST:**

1. Protest against technical requirement for telephone system to provide for voice digitization in the telephone is denied where protester states it could address requirement and there is no evidence that it impaired protester's ability to compete.
2. Requirement in request for technical proposals for offers to be submitted on a 5-year lease-to-ownership basis is improper. Satisfaction of objective of acquiring least cost alternative between lease or lease-to-ownership arrangements cannot properly be accomplished without considering alternatives actually submitted in competition, particularly where failure to do so excludes from the competition the local telephone company, able to offer only on a lease basis, without affording it an opportunity to present its best price.

The Chesapeake and Potomac Telephone Company (C&P) protests two specifications in request for technical proposals (RFTP) No. W-10-34654/HWD issued by the National Aeronautics and Space Administration (NASA). The protest is sustained in part and denied in part.

The RFTP was the first step in a two-step formally advertised procurement of a telephone system for NASA headquarters, including installation, operation, maintenance and training. The RFTP requires that proposals be submitted on a 5-year lease-to-ownership basis and also requires that the system support digitization of the voice signal at the telephone rather than at the switch. (Digitization is the conversion of the analog, or wave-like voice signals that we hear into the digital signals, 1's & 0's, on which the computer (the "switch") controlling modern telephone systems operates; digitizing may be done either at the telephone or within the switch.) C&P currently provides to NASA telephone service known as "Centrex."

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NASA justified the ownership requirement in the RFTP on the basis of a 10-year system life cost study which NASA performed, with the support of the Mitre Corporation, a not-for-profit consulting organization, during planning for this procurement. During this study, C&P provided NASA with information on C&P's current tariffs and projected increases. NASA contends that this study shows that lease-to-ownership is the least costly alternative available. NASA also states that it obtained a delegation of procurement authority (DPA) from the General Services Administration which approved the acquisition on this basis.

As a local telephone company, C&P may only provide services and is precluded from selling its equipment. C&P is therefore only able to participate in these acquisitions on a "lease" basis, which C&P does by proposing customized individual tariffs. (As a local telephone company, C&P services are subject to regulation and approval as tariffs.) C&P states that it advised NASA during the cost study that it could provide its best pricing only in response to a competition. C&P also states that it was assured that it would be allowed to participate in this competition.

C&P contests the validity of NASA's 10-year cost evaluation in view of the 5-year evaluation provided for in the RFTP, challenges the assumptions underlying the evaluation, and asserts that the selection of contract type, e.g., lease or purchase, must be made in a competition. C&P states that the evaluation was based on existing tariffs and did not consider that C&P can offer better pricing arrangements only in response to a competitive solicitation. C&P also contests the requirement for digitization in the telephones on the basis that it precludes alternate technical solutions, but states that it could address this requirement.

Initially, since C&P concedes that it can address NASA's requirement for voice digitization in the telephone and provides no evidence that this requirement impaired its ability to compete, we can find no basis upon which we might conclude it prejudiced C&P. This aspect of C&P's protest is therefore denied.

On the other hand, we find that NASA's lease-to-ownership requirement was improper. In this respect, the Federal Information Resources Management Regulation (FIRMR), § 201-24.304 (Temporary Regulation 4 (TR 4), 50 Fed. Reg. 4406, et seq., January 30, 1985) states, in part, that "Where applicable,

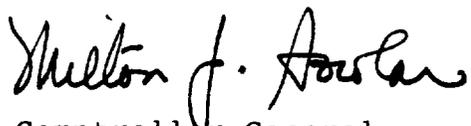
requirements shall be set forth in a manner that will afford both tariff and nontariff suppliers opportunities to compete." And, FIRMR § 201-40.006 (TR 4) provides that:

"The method of contracting for telecommunications alternatives shall be determined after consideration of the relative merits of the alternative methods available; i.e., purchase, lease, or lease-with-option-to-purchase. A comparative cost analysis of the alternative methods shall be performed to determine which method provides the Government with the lowest overall cost over the total systems life."

In System Development Corporation and International Business Machines, B-204672, Mar. 9, 1982, 82-1 CPD ¶ 218, we considered the propriety of the Air Force addressing the lease vs. purchase question during procurement planning, but not in the evaluation of proposals, under a regulation (then Federal Property Management Regulation § 101-35.206(d)) which required that the the government make a determination of least cost alternative. We held that, consistent with the objective of achieving the lowest cost alternative, the Air Force was required to consider the alternative methods of acquisition its evaluation of the proposals actually received. Ibid., p. 21.

C&P's challenge in the present case similarly involves purely financial comparisons with the same objective--achieving the lowest overall system cost. We do not think this objective can properly be accomplished without comparing alternative proposals actually received in the competition, particularly when the effect of imposing the purchase requirement is to exclude the local telephone company without affording it an opportunity to present its best pricing. Moreover, we do not think the record supports NASA's suggestion that its DPA approved this method of acquisition since the DPA specifically requires NASA to comply with the FIRMR, presumably including the requirement to achieve the lowest overall cost, and fails to provide any specific approval for NASA's method of evaluation which might be construed as a waiver of this requirement. In these circumstances, it is our judgment that NASA's inclusion of only the ownership alternative in the RFTP was improper.

The protest is sustained in part. By separate letter we are advising the Administrator of NASA to cancel the current procurement and reissue the solicitation allowing for the submission of offers on alternate bases.



Acting Comptroller General  
of the United States