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*Paul Liberman*  
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**DECISION**



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

FILE: B-191577

DATE: August 29, 1978

MATTER OF: RCA Global Communications, Inc.

**DIGEST:**

Validity of low "guaranteed" rate proposed by offeror is matter between offeror and regulatory agency, and need not be considered by contracting officer in awarding contract for lease of cable circuits.

RCA Global Communications, Inc. (RCAG) protests the award by the Defense Commercial Communications Office (DECCO), Defense Communications Agency, to ITT Worldcom (ITTW), of a contract for the lease of two undersea cable circuits between Guam and the Philippines.

Prior to the award to ITTW, DECCO had leased the two cable circuits from RCAG on a monthly basis, effective in November 1977, based on a quotation of \$8,424, consisting of \$3,500 for service at the Guam terminal and \$4,924 for service at the Philippine terminal. However, the Philippine terminal rate had been quoted contingent on a rate reduction subject to approval by the Philippine Board of Communications (BOC). Until this rate was approved, the Philippine terminal rate in effect was \$6,000 per month, and this is the rate at which RCAG billed DECCO.

RCAG notified DECCO on December 23, 1977, that its application for the \$4,924 rate had been rejected by BOC and that it would apply for approval of a \$5,725 Philippine terminal rate as well as FCC

approval of a reduction in the Guam terminal rate from \$3,500 to \$3,350, for a total monthly rate of \$9,975 per circuit. On January 24, 1978, RCAG advised DECCO that the scheduled BOC rate hearing had been postponed until February 21, 1978. In view of this, DECCO decided to resolicit for the lease of the two circuits.

Because of the problems which had developed under the contract with RCAG relating to the rate regulation proceedings, DECCO decided to require offerors to either assure DECCO that it would be billed quoted rates as of the start of service, or provide the contracting officer with sufficient documentation and enable him to determine when the quoted rate would be approved. Accordingly, the DECCO solicitation included the following:

"Any quotation which offers a rate reduction over the existing approved rate \* \* \* must include:

"A. A statement as to which rate will apply (i.e., for billing purposes) effective on the date of service. No further documentation is required if the reduced rate will be billed on the service date. If, however, the reduced rate cannot be billed until after regulatory authority approval, the quote should state:

"(i) By what date would the USIC expect to obtain regulatory approval (and commensurate billings can begin) and

"(ii) What guarantees can be provided to suggest the validity of that projected date."

Three proposals were received in response to the solicitation. RCAG proposed the lowest total rate of \$8,945 per circuit, contingent upon approval by the

BOC, expected on or about February 20, 1978, of a \$5,725 rate for the Philippine terminal, and by the Federal Communications Commission (FCC) of a \$3,220 rate for the Guam terminal. ITTW proposed the next low total rate of \$9,075 per month, per circuit, based on charges of \$3,350 for the Guam terminal and \$5,725 for the Philippine terminal. The ITTW proposal stated that: "the rate \* \* \* will be effective on the date of service."

DECCO notified the third offeror that its proposal was outside the competitive range, and notified ITTW and RCAG that the award would be held in abeyance until February 24, 1978. RCAG was requested to provide a written response, by that date, concerning its ability to provide service at the \$5,725 Philippine terminal rate.

On February 24, 1978, RCAG advised DECCO that the BOC rate hearing had been postponed, and stated that: "under the circumstances we fail to see how any carrier can guarantee effective as of now a rate of [\$]5,725." On March 1, 1978, RCAG again contacted DECCO stating that it did not believe any carrier could guarantee the \$5,725 Philippine rate, and requesting DECCO to defer action until after the BOC had acted.

DECCO then determined that the RCAG rate proposal was, in fact, \$9,220, based on the \$6,000 BOC approved Philippine rate, which RCAG was presently billing, plus the \$3,220 Guam rate. On March 2, 1978, DECCO awarded the contract to ITTW, advising it to begin cable service on March 15, 1978, based on its "lowest cost to Government" guaranteed quote of \$9,075 per circuit, per month. DECCO then advised RCAG of the award to ITTW, and instructed RCAG to disconnect existing cable service.

RCAG requested clarification of the basis for the award, contending that it was the low offeror. DECCO replied that ITTW's offer was low, based on the guaranteed rate effective on the date service began. RCAG then filed a protest with our Office. It states:

"The basic issue \* \* \* is whether [DECCO] is permitted to apply a Philippine terminal rate of \$5,725 in its evaluation of ITT Worldcom's proposal for service between Guam and the Philippines solely because ITT Worldcom 'guaranteed' this rate, a rate which has not been approved by the Philippine Board of Communications, and is permitted to disallow RCA Globcom's quoted rate of \$5,725 because it was not a 'guaranteed' rate and instead apply the existing authorized rate of \$6,000 to RCA Globcom's proposal \* \* \*."

Essentially, RCAG maintains that it should have been awarded the contract, since \$6,000 is the only lawful rate that any carrier may charge for the Philippine circuit in question.

On the other hand, DECCO maintains that ITTW's guaranteed rate, including the \$5,725 Philippine component, was the low proposal, and notes that ITTW has, in fact, billed at this rate since service has been instituted.

We need not consider the question of the effect of BOC's rate ruling, or lack of ruling. As stated above, the RFP requested firm rate proposals, based on either a price guarantee from the outset of service, or a description of the timetable under which a contingent rate would become approved, along with guarantees of the dates. The solicitation, on its face, did not require BOC rate approval. ITTW's quotation was responsive to the terms of the RFP, and was the lowest rate proposal. As RCAG states:

" \* \* \* it must be recognized that rates quoted by a common carrier for tariffed services are considered to be prices set by regulation, even if the tariff will not be established until after execution of the contract \* \* \*. Accordingly, it has been held

that the need for regulatory approval of services and rates to be charged is similar to the requirement contained in other types of solicitations that a bidder or offeror possess a certain license or permit. \* \* \* a license is a requirement concerning the responsibility of a prospective contractor, and not related to the evaluation or responsiveness of a bid \* \* \*."

We have considered cases in which a bidder failed to obtain prior approval for a bid rate, in the face of the apparent local governmental regulatory requirements to do so as analogous to a failure to meet a state licensing requirement. We have taken the view, in this situation, that:

"compliance with the requirement for approval of the bid rate \* \* \* is a matter which must be settled between the local authorities and [the contractor] either by agreement or by judicial determination." Aetna Ambulance Service, Inc., G&L Ambulance Service. B-190187, March 31, 1978, 78-1 CPD 258.

In the absence of specific language in the solicitation, such as a requirement to possess a specific license, "a bidder's failure to possess a particular license or operating authority need not be a bar to award to that bidder because the question of whether a bidder needs a license to perform the contract may be treated as a matter between the bidder and the licensing authority," Id., and need not be a consideration in determining the prospective awardee's responsibility.

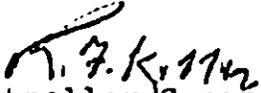
In view of the foregoing, we have no reason to make any judgment with respect to the validity of ITTW's rate quotation under Philippine law. Similarly, RCAG's allegation that ITTW's rate may come under question by the FCC is contingent on speculation concerning the state of affairs that

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might exist if BOC denies ITTW's rate reduction. While this question may arise at some time in the administration of the contract, it is not relevant to this protest.

The protest is denied.

  
Deputy Comptroller General  
of the United States