

**DECISION**



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

*J. Vickers  
Proc I*

*7833*

FILE: B-189319

DATE: September 25, 1978

MATTER OF: Capital Recording Company, Inc. -  
Reconsideration

**DIGEST:**

Prior decision, which held sole-source award to be proper, is affirmed upon reconsideration because while protester contends certain facts disclosed at bid protest conference were not considered in original decision, such facts either were considered or have no effect on prior holding.

Capital Recording Company, Inc. (Capital), has requested reconsideration of our decision, Capital Recording Company, Inc., B-189319, February 15, 1978, 78-1 CPD 126, in which our Office did not object to the Department of Transportation's (DOT) sole-source award of a contract to the Advertising Council, Inc. (A.C.).

The contract is for the management and coordination of a nationwide advertising campaign to encourage adherence to the 55 mile per hour speed limit and promote energy conservation through the use of carpools and public transportation.

Capital's request for reconsideration is based on the allegation that while a conference was held by our Office with all the interested parties to the protest, the information revealed at the conference was not utilized by our Office in reaching the decision. Capital contends that the following four points were not considered in the decision:

- (1) DOT did not survey the market;
- (2) The only thing unique about the A.C. is that it could obtain the services of

advertising firms, for-out-of-pocket expenses but the critical question is the total cost involved, not out-of-pocket expenses;

- (3) that Capital had performed prior subcontracts for the A.C., which Capital states it has not; and
- (4) that Capital wished to bid on the entire contract, not just the production and distribution phases.

Regarding the first contention, Capital has submitted a tape recording of that portion of the conference dealing with DOT's efforts to survey the market. DOT admitted that it did not formally survey the market through a competitive solicitation, but that it relied on its in-house experts' analysis of the market which concluded that no firm could compete with the A.C. However, there were no written documents relating to this analysis.

We believe the following statement from our prior decision shows that these facts were considered:

"DOT, on the other hand, states that the approval for the sole-source awards was granted only after a careful review by its Sole Source Board in accordance with DOT internal procedural regulations, and that although it did not 'test the market' through a competitive solicitation resulting in the receipt of proposed prices, it did undertake an 'informal review of the market' through relying upon the advice of expert cognizant agency personnel who determined that only the A.C. possessed the capabilities needed. Accordingly, DOT maintains

that it took all necessary actions to reasonably determine whether fruitful competition could be obtained."

Therefore, we find nothing in the material submitted by Capital to require altering our prior decision on this point.

Concerning Capital's contention that total cost and not out-of-pocket expenses should have been considered in determining whether it was advantageous to procure the services from the A.C. on a sole-source basis, we note that cost was not the decisive factor in the sole source determination. Moreover, in a negotiated procurement, as compared to an advertised procurement, low cost is not the sole criterion for award. Following is the reason DOT decided to procure on a sole-source basis from the A.C., as stated in our prior decision:

"DOT's position basically is that the sole-source awards were proper because the services provided by the A.C. are 'unique.' In this regard, DOT stated that it is absolutely essential to the success of the campaigns which it is conducting that the campaign message receive maximum exposure from all media during a fairly limited but specified time period, and that in its opinion no other single national organization has the capability and/or will to obtain and coordinate the needed management services and media exposure on a volunteer basis."

Therefore, whether total cost or out-of-pocket expenses were the yardstick employed does not appear to have been determinative in DOT's decision.

Thirdly, whether Capital had performed prior subcontracts for the A.C., had no bearing on our previous decision and the decision only noted that

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the A.C. would subcontract portions of the project, implying that Capital could compete for these if it so desired.

Finally, Capital argues that it desired to compete for the entire contract, not just the production and distribution phases of the contract, as was stated in our prior decision. Whether Capital wished to compete for the entire contract, or only a portion thereof, does not effect the holding of the prior decision that the sole-source award to the A.C. was not improper. Furthermore, if Capital wanted to compete for the entire contract, we do not see why it raised the issue that certain portions of the contract should have been broken out for competitive procurements.

Accordingly, there being no showing that our decision of February 15, 1978, was in error as a matter of fact or law, it is affirmed.

  
Acting Comptroller General  
of the United States