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**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

Decision

Matter of: Chapman Law Firm Company, LPA

File: B-296847

Date: September 28, 2005

James S. DelSordo, Esq., Cohen Mohr LLP, for the protester.
Margaret A. Dillenburg, Esq., for Michaelson, Conner and Boul, Inc., an intervenor.
R. Rene Dupuy, Esq., Department of Housing and Urban Development, for the agency.
Peter D. Verchinski, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency improperly awarded “bridge contract” on sole-source basis is denied where award of long-term contract for same services was delayed by litigation and agency reasonably determined that only incumbent contractor was in a position to perform the services.

DECISION

Chapman Law Firm Company, LPA protests the Department of Housing and Urban Development’s (HUD) sole-source award of a “bridge contract” to Michaelson, Conner and Boul, Inc. (MCB) under request for proposals (RFP) No. R-PHI-00947, for single family home management and marketing (M & M) services.¹ Chapman primarily alleges that the sole-source award was necessitated solely by a lack of advance planning by the agency, and therefore is improper.

We deny the protest.

On August 6, 2003, HUD issued an RFP for M & M services for single family homes throughout the United States. The RFP sought to award 24 indefinite-delivery,

¹ M & M services are an ongoing requirement for daily oversight of HUD-controlled housing, including inspections, security, and repairs, as well as sales, closings, and accounting activities.

indefinite-quantity contracts, each covering a different region of the country. The protest here concerns one of these contracts, for properties in Ohio and Michigan, which was awarded to Greenleaf Construction Company, Inc. on April 19, 2005. Chapman timely protested that award to our Office on May 2 (B-293105.15). In response to the protest, the agency issued a stay of contract performance. The stay resulted in continued performance by MCB, the incumbent, and prevented Greenleaf from beginning the transition period under its contract that was ultimately to lead to full contract performance. MCB, meanwhile, continued to perform in accordance with its contract, which provided for a transition period that was to end on June 29.

On June 14, HUD published a presolicitation notice on the FedBizOpps website stating that it intended to negotiate with only one source (or a limited number of sources) in order to award MCB a short-term contract for the M & M services at issue. This contract was to be a 4-month bridge contract, with two 4-month option periods and a 60-day transition period. In order to justify the lack of full and open competition, the notice cited Federal Acquisition Regulation (FAR) § 6.302-1, which allows an agency to limit competition when there is only one responsible source that will satisfy its requirements. The notice also stated that the government would consider all proposals received within 10 days of publication to determine whether a competitive procurement was called for. On the same day, the agency prepared a written justification and approval (J & A) justifying the sole-source award on the basis that the short time frame before MCB's transition period expired did not permit a competition, an immediate need existed for these services--due to the stay in place at the time--and MCB was the only company that could fully provide the services without a transition period. Agency Report, Tab 3, at 3-4.

By letter dated June 17, HUD announced that it would take corrective action in response to Chapman's GAO protest. The proposed corrective action would consist of terminating the contract awarded to Greenleaf, and awarding a contract to Chapman. We dismissed the protest as academic on June 22.

Also on June 17, Chapman responded to the presolicitation notice for the bridge contract with the same proposal it had submitted in response to the original RFP, together with a cover letter that acknowledged the time frame for the bridge contract. On June 30, HUD informed Chapman that it had determined that the proposal did not demonstrate a readiness to provide the required services without the need for a transition period, and that it had determined that only MCB was able to perform these services immediately.² On July 1, the agency awarded the bridge contract to MCB. Also on July 1, Greenleaf challenged the agency's proposed corrective action in a complaint filed in the U.S. Court of Federal Claims. That litigation has been resolved in Chapman's favor but, as of the date of this decision,

² Chapman does not challenge the determination that it lacks the readiness to perform.

the agency has not made award to Chapman--and contract performance has continued under MCB's bridge contract--pending its determination of Chapman's responsibility.

Chapman timely protested the award of the bridge contract to our Office. It alleges that the agency's poor planning led to the need for a sole-source award, and that the term of the contract exceeds the agency's minimum needs.³

Although the overriding mandate of the Competition in Contracting Act of 1984 (CICA) is for full and open competition in government procurements obtained through the use of competitive procedures, 10 U.S.C. § 2304(a)(1)(A) (2000), CICA permits noncompetitive acquisitions in certain circumstances, such as when the services needed are available from only one responsible source or when the agency's need for the services is of such an unusual and compelling urgency that the agency would be seriously injured unless permitted to limit the number of sources solicited. 41 U.S.C. §§ 253(c)(1), (c)(2) (2000). When an agency uses noncompetitive procedures under § 253(c)(1) or (c)(2), it is required to execute a written J & A with sufficient facts and rationale to support the use of the cited authority. See 41 U.S.C. § 253(f)(1)(A), (B); Federal Acquisition Regulation (FAR) §§ 6.302-1(d)(1), 6.302-2(c)(2), 6.303, 6.304. Our review of an agency's decision to conduct a sole-source procurement focuses on the adequacy of the rationale and conclusions set forth in the J & A; where the J & A sets forth a reasonable justification for the agency's actions, we will not object to the award. Global Solutions Network, Inc., B-290107, June 11, 2002, 2002 CPD ¶ 98 at 6. However, noncompetitive procedures are not justifiable where the agency created the need for the sole-source award through a lack of advance planning. 41 U.S.C. § 253(f)(5)(A).

The justification for the sole-source award here is reasonable, and there is no basis for finding a lack of advance planning.⁴ As described in the facts above, and as referenced in the J & A, Chapman's protest of the award led to the stay of contract performance. This stay prevented Greenleaf from transitioning into contract performance as MCB's contract approached the end of its transition period, as had been reasonably contemplated under the procurement scheme. Consequently, the

³ This protest filing triggered another automatic stay of the contract, which HUD subsequently overrode in accordance with FAR § 33.104(c)(2). Chapman unsuccessfully challenged this override at the Court of Federal Claims.

⁴ Chapman asserts that HUD should have awarded the original contract to Chapman during the several days between our dismissal of its protest as academic and Greenleaf's filing with the Court of Federal Claims. While the agency could have proceeded in this manner, however, there simply was no requirement that it expedite the award to Chapman in this manner. Chapman does not provide a rationale for its position to the contrary.

agency would shortly have no contractor performing the M & M services. These circumstances together with the agency's determination that Chapman lacked the readiness to perform the services, and not a lack of advance planning, led to the agency's decision to award the sole-source bridge contract.

Chapman also alleges that the term of the bridge contract exceeds the agency's minimum needs. The agency explains, however, that the 4-month term of the contract, with two 4-month option periods, was deemed necessary in light of the possibility that the litigation surrounding the requirement would become protracted. HUD notes in this regard that litigation surrounding the award of M & M services in other areas of the United States has lasted as long as 9 months. Given this history of litigation--and the absence of any evidence or substantive argument by Chapman refuting the agency's position--we find no basis for objecting to the term of the bridge contract; it did not exceed the agency's minimum needs at the time of the award.

The protest is denied.

Anthony H. Gamboa
General Counsel