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

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B-177691

June 28, 1973

The Honorable James T. Lynn
The Secretary of Housing and Urban
Development

Dear Mr. Secretary:

We have considered your departmental reports of January 30, March 2, March 26 and April 18, 1973, on the protest of the Consad Corporation against the noncompetitive award of contract H-2040 to ABT Associates, Inc., for phase II of the demand experiment of the Housing Allowance Experimental Program in the estimated amount of \$17.9 million. From our review of the procurement, which is set out in detail below, we recommend that severable portions of the contract be terminated and resolicited competitively, if feasible.

After publication of an advance solicitation of interest on September 9, 1971, in the Commerce Business Daily, request for proposals (RFP) H-11-72 was issued November 5, 1971, for the conduct of experiments to test and evaluate a Housing Allowance Experimental Program (HAEP). As defined in the RFP, a Housing Allowance is " * * * a direct subsidy payment to a low or moderate income family to be used primarily for housing." The goal of HAEP as stated in the RFP is " * * * to provide reliable information to help policy-makers decide whether the potential advantages of such an approach would justify its full implementation as an operating program and to define the most effective means to operate the program." HAEP has been divided into three separate experiments: demand, supply and administrative agency. The demand experiment concerns the manner in which a household receiving different kinds of housing allowances spends it. The supply experiment concerns the behavior of suppliers of housing and housing services in a market in which the demand is increased by the introduction of housing allowances. The administrative agency experiment involves the manner in which existing Governmental agencies, Federal, state and local, or nonprofit organizations may best be utilized to administer the actual payment procedures.

The scope of work was defined generally in attachment C to the RFP:

* * * furnish the necessary professional, technical and clerical services, equipment, and facilities to perform all the work required under the contract.

The conduct of the field operations covers the administration of the experiments at various sites including selecting

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households, maintaining contact with them, conducting interviews, collecting and processing data from the experiments, and reporting results. * * *

The specific requirements of the demand experiment were divided into two phases: phase I, design, and phase II, implementation. Phase I required the contractor to provide assistance and advice in the design of the experiments being developed by the Urban Institute and definition of material required for program implementation. Phase II covered the implementation of the experiments developed as a result of the phase I effort. Phase II provided: "To test various administrative structures, part of the final design may incorporate use of local housing authorities and/or state housing agencies. Where these organizations are used, the requirements of tasks 1 through 4 will be altered accordingly to fit the operating procedures of these organizations."

The RFP further provided:

The contract(s) resulting from this Request for Proposal will cover both phases, although approval for work will initially include only Phase I.

Negotiation for Phase II work, including estimated costs and fixed fee, if any, and the details of the work, will begin only after HUD has accepted the final design of the experiment and identified the experimental location. * * * The proposals covering accomplishment of Phases I and II will be evaluated in accordance with the Factors for Award * * *. If after the award of the contract, HUD determines that the Contractor is not competent to perform the required work in Phase II, * * * then the Contractor will not be authorized to undertake Phase II work * * *.

In recognition that diverse talents were necessary to successfully conduct the experiments, the RFP indicated that proposals from consortia would be considered so long as clear program and management responsibility and authority were defined and authenticated.

Seven proposals were received on December 13, 1971, and presented to a Proposal Evaluation Board for review. Oral interviews were conducted with the proposers by the Board on December 20 through 29. Competitive range determinations were made after technical discussions with four of the offerors on February 14 and 15, 1972. Revised proposals were invited from such offerors and revisions were received on February 25, 1972. Thereafter, the Board presented its recommendations to the Source Selection Official, the Assistant Secretary for Research and Technology (ASRT).

The Board recommended that the consortium of the Stanford Research Institute (SRI), as prime contractor, and the National Opinion Research Center and National Urban League, as approved subcontractors, be the contractor for the entire demand experiment. By memorandum of March 14, 1972, to the Director, Contracts and Agreements Division, ASRT determined the SRI consortium to have the best capability for, and highest probability of, successful performance, and requested that negotiations be conducted with SRI for the conduct of the demand experiment. Also contained in the memo was the following:

Because of limitations upon the Stanford Research Institute's consortium's capability to handle the other elements (Administrative Agency Demonstrations and Supply Experiment) of the Housing Assistance Research Program, I also request that you assist us in discussions with the firm of ABT Associates, Inc., to determine their possible participation in other parts of the Program.

As a result of discussions held during the week of March 27, 1972, contract H-1773 was awarded to SRI on March 31, 1972, for the demand experiment.

The file contains a memorandum from ASRT dated April 7, 1972, to the Director, Contracts and Agreements Division, requesting that a contract be negotiated with ABT Associates, Inc., for the administrative agency experiment (AAE). Thereafter, the contracting officer issued a determination and findings (D&F) for the negotiation of a cost-reimbursement contract with ABT. Negotiations were held with ABT which led to award of contract H-1782 dated April 5, 1972.

The third part of HAEP, the supply experiment, was awarded noncompetitively to the Rand Corporation based on a memorandum dated April 18, 1972, from ASRT:

Rand Corporation has the expertise and the capability to move ahead at the earliest possible moment. It is the only firm we know of that has the ability and capability to undertake this experiment with the time constraint to move this project ahead compatibly with the other program elements already under contract with SRI and ABT Associates.

Time does not permit attempting to develop other sources through the competitive process as this program must move forward at the earliest possible time.

My staff knows of no other source at the level of expertise and experience presently available in the Rand Corporation

to accomplish the objectives of this effort without excessive program start-up costs and serious schedular delay.

Ultimately, HUD decided not to continue with SRI for phase II because of its serious performance deficiencies and delays. Of the specific milestones established in contract H-1773 and modifications, SRI missed most. The first milestone was the beginning of pilot enrollment by July 5, in order to allow for regular enrollment in HAEP by September 1. SRI requested and received an extension to July 21, which was later extended to July 31. Due to extended negotiations to modify the contract to conform with SRI's performance, further extensions for the completion of phase I milestones were granted to August 14, September 11, September 25, and November 16, 1972.

Although SRI was seriously deficient in its performance of phase I, it was contractually required to submit a phase II proposal. However, it is evident that ABT was the sole choice for the phase II effort. Therefore, on November 15, 1972, ABT was given all the work reports that SRI was obligated to furnish HUD and was requested to submit a proposal for the phase II effort by December 1, 1972. It is noted that ABT had access to some of SRI's reports during the preceding months as part of an overall plan to insure compatibility between the AAE and the phase I demand experiment. On December 2, 1972, ASRT recommended to the Secretary that a contract be awarded to ABT. A memorandum of December 4, 1972, justified the sole-source negotiation of the phase II contract with ABT in the following manner:

We have further concluded that ABT Associates, * * * has the expertise and experience available to accomplish the objectives of this effort. Of critical importance to the EHAP is the capability to continue the Demand Experiment without any serious schedular delays. Because of ABT's familiarity with the EHAP and because ABT has the necessary prerequisite total capability, it is the only known source that can perform this effort without very serious schedular delays and excessive costs.

Award of a letter contract to ABT was made on December 4, 1972. This contract was definitized on March 2, 1973, on a cost-plus-a-fixed-fee basis in the total estimated amount of \$17.9 million for a contract period from December 1972 to March 31, 1977.

Counsel for Consad asserts that this sole-source award to ABT violated Federal Procurement Regulations (FPR) 1-3.101(c), which requires that proposals be solicited from the maximum number of qualified sources, consistent with the nature of the services. Counsel contends that the

services required under phase II of the demand experiment are not unique to ABT. Consad was to play a significant role in assisting in the design of the payments procedure for phase I and in the operation of the payment tasks in phase II, as outlined in ABT's response to the initial RFP. In this regard, counsel suggests that since ABT's experience acquired under the AAE was primarily evaluative, rather than supervisory or administrative as contemplated by phase II of the demand experiment, negotiations for a phase II contractor should have included the original ABT consortium.

In the alternative, counsel contends that HUD had sufficient time to competitively negotiate the phase II procurement. In support of this, counsel points to the fact that the proposals in response to RFP H-11-72 indicate that many firms were familiar with the requirements of phase II. It is asserted that since HUD had received periodic progress reports on SRI's phase I activities, it should have been able to describe phase II requirements in sufficient detail to permit competition. Finally it is suggested that the urgency of the phase II procurement was created by HUD's delay even though it had clear indications as early as August 1972 that it would not continue with SRI for the phase II effort.

The decision to award noncompetitively to ABT appears to have been based upon the opinion of ASRT, adopted by the contracting officer, that ABT was the only known firm that could effect an orderly and swift takeover of the phase II tasks in sufficient time to avoid any schedular disruption of the overall HAEP. While the record shows that HUD felt that ABT was the only firm that could accomplish the necessary tasks within the time constraints, HUD has not, in our opinion, demonstrated that ABT possessed unique capabilities to the exclusion of all other interested firms.

The record evidences HUD's concern with SRI's performance under phase I and the modified phase I. However, it appears that HUD's efforts in this regard were directed towards improving SRI's performance. There is no specific time that we are able to point to before November 15 when it was, or should have been, apparent to HUD that SRI would not submit an acceptable proposal for phase II or cure its past unsatisfactory performance of phase I. Contract H-1773 recognized the possibility that HUD would not continue with the phase I contractor into phase II. However, while recognizing this possibility, HUD made no contingency plans for the selection of a replacement phase II contractor. Even at the time the initial RFP was issued, HUD was aware of the need for phase II of the demand experiment to be implemented immediately following the conclusion of phase I. While SRI's phase I performance from August to November 1972 may not have required termination action, a distinct possibility existed that HUD would not continue with SRI as its phase II contractor. Even in this light, no steps were taken to establish any other firm's interest or capability for the phase II effort.

The record shows that there were other firms which had already expressed interest in participating in the experiment, i.e., the firms responding to RFP H-11-72. While ASRT places great reliance on the Board's evaluation report which found only SRI and ABT capable of performing, that evaluation was concerned with a wider scope of tasks than were necessary for the accomplishment of phase II alone. Specifically, the Board stated that the proposals were evaluated in light of the entire demand experiment, not just phase II. Moreover, the determination concerning the capability of an offeror with regard to a particular procurement should be limited to the particular task to be covered by contract. ASRT also relied upon a General Accounting Office (GAO) ranking of MAEP contractors as supporting the selection of ABT. This reliance is evidenced by a memorandum dated December 2, 1972, from ASRT to Secretary Romney, which reads in part:

The concerns that we have about SRI's ability to perform are shared by GAO. GAO has independently reviewed our contractors and has concluded that: "There is good reason to question the ability of SRI to perform its contractual obligations satisfactorily and on time." In the GAO evaluation, SRI ranked at the bottom of the list of our contractors in overall performance. Although I disagree with some of the rating factors used by GAO, I do not disagree with their overall evaluation of the contractors.

By contrast, Abt Associates, the organization which last winter was rated a close second to SRI in the initial evaluation of the Experimental Housing Allowance Program proposers, has performed outstandingly in developing the evaluation design for the Administrative Agency Experiments portion of the Program. The final design has been accepted. Six experiments are now being set up in accordance with this design by State, County and local agencies; and Abt is under a Phase II contract with HUD to evaluate these experiments.

GAO also independently ranked Abt first among Experimental Housing Allowance Program contractors, concluding: "This is the best of the contractors and the one most likely to provide satisfactory research outcomes."

It appears that the conclusion attributed to the GAO was taken out of context. The results of the GAO investigation were contained in a memorandum dated November 27, 1972, from the GAO Assistant Director, Research and Economic Development, to HUD's Director of Housing Assistance and Economics Research. As stated therein, " * * * the purpose of the

review and evaluation by the General Accounting Office was to determine whether it was likely the contractors could bring to a successful conclusion the part of the experiment contracted out to them." From this, ASRT attributed to GAO the conclusion that ABT was most capable of performing. The implication of ASRT's memorandum is that the GAO view was related to the overall capability of HAEP contractors to successfully perform phase II of the demand experiment. However, it is clear that the GAO comments were limited to ABT's performance in the AAE.

Our review of the HAEP procurement process indicates a proclivity to sole-source awards under selection methods wherein "unique" capabilities are pointed to in justification for departures from the regulatory requirements for competitive negotiation. In our view, what has occurred is, in effect, a prequalification of ABT alone and, as such, is inconsistent with FPR 1-3.101(c) which requires the solicitation of proposals from the maximum number of qualified sources consistent with the nature and requirements of the services to be rendered. 52 Comp. Gen. _____ (B-177412, March 20, 1973); 52 Comp. Gen. _____ (B-176940, March 2, 1973). While the December 4, 1972, memorandum, quoted above, states that ABT was " * * * the only known source that can perform this effort without very serious scheduler delays and excessive costs," there were in fact other sources which were not solicited, i.e., those firms that competed under RFP H-11-72, as well as the Rand Corporation which was performing the supply experiment. In this vein, we have held that the conclusions or opinions of the contracting officer on the availability of qualified offerors may not be accepted as controlling prior to solicitation of offerors. 41 Comp. Gen. 484, 490 (1962).

In view of our conclusion that the noncompetitive award of contract H-2040 to ABT was not justified, we recommend that HUD evaluate the contract to determine whether certain tasks can be severed therefrom without a deleterious effect on the overall HAEP. If, as a result of this review, it is ascertained that portions of the contract are amenable to severance, we further recommend that such portions be terminated for the convenience of the Government and resolicited on a competitive basis.

As this decision contains a recommendation for corrective action to be taken, it is being transmitted by letters of today to the congressional committees named in section 232 of the Legislative Reorganization Act of 1970, Public Law 91-510. In view thereof, your attention is directed to section 236 of the act which requires that you submit written statements of the action to be taken with respect to the recommendation. The statements are to be sent to the House and Senate Committees on Government Operations not later than 60 days after the date of this letter and to the Committees on Appropriations in connection with the first request for appropriations made by your agency more than 60 days after the date of this letter.

We would appreciate advice of whatever action is taken on our recommendation.

Sincerely yours,

Paul G. Deabling

For the Comptroller General
of the United States