

DECISION



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

7815

FILE: B-191988

DATE: September 19, 1978

MATTER OF: Neff Communications, Inc.

DIGEST:

Agency is not required to separately purchase item listed on Federal Supply Schedule contract where agency's overall needs can be satisfied only through "total package" procurement approach involving award for total requirements to one contractor.

Neff Communications, Inc. (NCI) objects to the failure of the Department of Commerce, National Oceanic and Atmospheric Administration, National Weather Service (Commerce) to procure Fidelipac continuous loop magnetic tape cartridges for use in Commerce's Automatic Audio System (AAS) pursuant to NCI's Federal Supply Schedule contract No. GS-00S-66028. The cartridges are being procured from the Ampro Corporation (Ampro) under Commerce contract No. 6-35383.

The Ampro contract is for the furnishing, installation, and maintenance of a national AAS network. Included in the contract is a requirement that tape cartridges be shipped monthly to each AAS location. The contract price for a box of 16 cartridges is \$44.97; the schedule contract price is \$32.17. At least 24,000 cartridges are to be ordered under the Ampro contract. Consequently, NCI contends that purchase of the tapes through the schedule contract would be in the best interest of the Government because the Government would receive the same tapes, now being furnished by Ampro, at a price lower than the Ampro price.

Commerce advises that it is aware of the NCI schedule contract, but that it views the tape portion of the Ampro contract requirements as an element of the AAS and one which impacts on Ampro's responsibility for total systems reliability. That responsibility arises from the following contract provision:

"Each contractor-maintained AAS shall perform as specified by the contract at least 98% of the time based on 24-hours a day, 7 days a week operation. No contractor-maintained AAS will experience system outage time in excess of 175 hours per year. A system outage is defined as the loss of the ability to provide high quality audio output from the AAS, or the non-availability of at least one record/playback and one playback deck in the manual AAS or two record/playback decks in the remote AAS. System outages caused by acts of God or vandalism and outages not within the contractor's control, shall be corrected as soon as possible, and will not be assessed against the 175 hours total outage time allowed. All other system outages shall be corrected so that the mean time to restore them averaged over one year, will not exceed 12 hours."
(Emphasis supplied.)

Commerce's position is that under the Ampro contract the choice of tape is up to the contractor, and that if Commerce were to separately obtain the tape cartridges and provide them for use in the AAS, Ampro's liability for systems outages resulting from the cartridges would be questionable since arguably the outage would not be "within the contractor's control."

We see no basis for objecting to Commerce's procurement approach. In Capital Recording Company,

B-188015, B-188152, July 7, 1977, 77-2 CPD 10, we stated:

"Generally, it is for the contracting agency to determine whether to procure by means of a total package approach rather than by separate procurements for divisible portions of the total requirement. In the absence of clear evidence that such determinations lack a reasonable basis, they will not be disturbed by this Office." Allen and Vickers, Inc., et al., 54 Comp. Gen. 445, 452 (1974), 74-2 CPD 303 and Control Data Corp., 55 Comp. Gen. 1019, 1023 (1976), 76-1 CPD 276.

Here, although the General Services Administration, which has looked into this matter, believes the cartridges should be purchased from the schedule contract because the cartridges "are replacement items separate from the integral functioning mechanisms" of the system, we cannot conclude that Commerce's insistence on having the cartridges furnished through its AAS contractor is unreasonable. Cf. 53 Comp. Gen. 270 (1973), where we recognized that two agencies could reasonably hold diametrically opposite positions with respect to the need for purchasing on a "total package" basis. We think Commerce's concerns regarding Ampro's contractual responsibilities and liabilities are valid and provide an appropriate basis for using the "total package" approach in this instance.

Moreover, it appears that the schedule contract is inconsistent with Commerce's needs. First of all, the contract with NCI runs for 10 years, while the schedule contract is for one fiscal year with a maximum of three additional option years. Thus, Commerce cannot depend upon the availability of a schedule source of supply through the NCI contract period. In addition, we are advised that the schedule contract is subject to price changes and can be canceled by either party, so that again

Commerce cannot depend on having either a schedule source of supply or the same price currently available. Commerce also refers to inconsistencies between its needs as spelled out in the NCI contract and the schedule contract with regard to delivery and minimum and maximum order limitations.

Thus, on this record, while there may well be some cost savings associated with the separate purchase of tape cartridges, Commerce has reasonably established that its needs require the "total package" approach. Accordingly, Commerce is not required, under these circumstances, to separately purchase the tape cartridges for the AAS from the schedule contractor.


Deputy Comptroller General
of the United States