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**DECISION**



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

*[Protest of CIA Procurement]*

FILE: B-201133

DATE: March 18, 1981

MATTER OF: National Office Systems, Inc.

**DIGEST:**

1. Purchases from Federal Supply Schedule must be made from source offering lowest delivered price unless purchase of higher priced item is fully justified by agency in accord with FPMR § 101-26.408-2. In present case, agency decision to buy from other than lowest priced Federal Supply Schedule source is not justified as required by FPMR § 101-26.408-2 where internal memorandum from using activity clearly indicates that lower priced source would fulfill minimum needs, and agency does not dispute that lower priced source has equivalent feature. Therefore, protest is sustained.
2. Protest that award was made to firm which did not have Federal Supply Schedule contract is denied since awardee was listed on Federal Supply Schedule as authorized agent of firm which had such contract.

National Office Systems, Inc. (National), a manufacturer's agent representing White Machine Company, has protested against the Central Intelligence Agency's (CIA) purchase from the Federal Supply Schedule of eight Lektriever Series 80 power shelving units, manufactured by Kardex Systems, Inc. (Kardex), from Remco Business Systems, Inc. (Remco).

National alleges that the entire procurement process was tainted because CIA procurement officials favored the use of Kardex equipment over the White

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Machine Company equipment offered by National. National alleges that the agency's essential technical requirements were overly restrictive and derived from Kardex advertising brochures to ensure that only Kardex equipment would meet the agency's minimum needs. National also challenges the purchase from Remco because the purchase was made from the Federal Supply Schedule and Kardex, not Remco, has the Federal Supply Schedule contract with the General Services Administration.

The protest is sustained in part and denied in part.

The protested procurement actions took place over a period of approximately 2 years in two phases. During the first phase, National dealt with the CIA's Office of Medical Services which needed to replace its existing mechanized storage filing system. National examined the existing mechanized storage file system and discussed the requirement with Office of Medical Services staff on several occasions. The CIA personnel indicated that eight mechanized files would be needed. National tried unsuccessfully to persuade CIA staff members that its equipment had a significantly larger capacity than the old files and could surpass Office of Medical Services minimum capacity requirements with just seven file units. In January 1979, National submitted a quotation based on eight power file units and an alternate quotation on seven. National submitted another quotation in April 1979, based upon eight newer, larger capacity filing units.

The second phase began in June 1979, when the CIA's Office of Medical Services requisitioned eight power shelving units with a 12,000-inch total shelving capacity from the CIA's Procurement Division. The requisitioner from the Office of Medical Services requested that award be made to Remco on a sole-source basis. The contracting officer determined that a sole-source award was not justified since mechanized filing units were available from the Federal Supply Schedule under contracts between several commercial vendors and the General Services Administration. Accordingly, in

July 1980, the contracting officer solicited and received price proposals for a mechanized file system and installation from three firms listed on the Federal Supply Schedule, including National.

The contracting officer notified the requisitioner that he was about to make an award to the lowest priced offeror. Subsequently, the requisitioner identified four previously unstated "essential minimum technical requirements" to be satisfied, including one that the power file system have an "electronic self-diagnostic feature" for pinpointing trouble areas in case of system malfunction. The three proposers responded to the new requirements in early September 1980. Since the Kardex files had this feature and despite National's protest to the CIA Procurement Division on September 8, 1980, that the self-diagnostic feature was not essential, the contracting officer determined that award to Remco for Kardex equipment was justified even though the price was not the lowest on the Federal Supply Schedule. On September 29, 1980, orders for the purchase and installation of eight Kardex power files were issued to Remco.

The CIA reports that the self-diagnostic feature (a series of indicator lights to continually monitor all safety systems) is designed to deactivate the mechanized file unit in case of malfunction, and the indicator lights automatically tell the machine operator where to take corrective action. The CIA argues this system is necessary because it reduces system downtime and repair time. National argues that the feature will not help the machine operator take corrective action because only an authorized repairman can make repairs without voiding warranties on the equipment.

Purchases from the Federal Supply Schedule are governed by the Federal Property Management Regulations (FPMR), 41 C.F.R. part 101-26.4 (1980), which provide in part as follows:

"§ 101-26.408-2 Procurement at lowest price.

"Each purchase of more than \$500 per line item made from a multiple-award

schedule by agencies required to use these schedules shall be made at the lowest delivered price available under the schedule unless the agency fully justifies the purchase of a higher priced item. \* \* \*

"§ 101-26.408-3 Justifications.

"(a) Justifications of purchases made at prices other than the lowest delivered price available should be based on specific or definitive needs which are clearly associated with the achievement of program objectives. Mere personal preference cannot be regarded as an appropriate basis for a justification. Justifications should be clear and fully expressed. \* \* \*"  
(Emphasis added.)

These clauses require Federal agencies which procure from a multiple-award Federal Supply Schedule to do so at the lowest price consistent with their minimum needs. Determinations as to the needs of an agency and which products on the Federal Supply Schedule meet those needs are matters primarily within the jurisdiction of the procuring agency and with which we will not interfere unless they involve bad faith or are not based on substantial evidence. Thus, once the procuring agency determines its minimum needs, it is required to procure from the lowest priced supplier on the schedule, unless it makes an appropriate justification for purchase from a higher priced supplier. Our Office does not believe a legal objection to the agency's determinations is warranted unless those determinations are shown to be unreasonable. See Quest Electronics, B-193541, March 27, 1979, 79-1 CPD 205.

The CIA's justification for rejecting National's proposal was the failure of that proposal to contain an automatic, self-diagnostic feature. The CIA supplied our Office with its entire contract file including an internal memorandum from the Medical

Requirements Officer, Registrar and Services Staff, Office of Medical Services, dated May 23, 1980, dealing with the filing needs of the Office of Medical Services and the proposals received from the three offerors. This memorandum states: "In view of the overall technology exhibited by all three vendor units, it appears that any one would fulfill OMS requirements." Moreover, this document indicates that, even though proposals were solicited for eight power file units, National's new, larger power files might be able to fulfill the minimum needs with as few as six power file units and that National's price per filing inch was lower than Remco's when using the newer models. In spite of the above findings, the Medical Requirements Officer recommended ordering the replacement files from Remco because "Remco Business Systems offers the best and most complete 'A' to 'Z' services."

The CIA has not adequately explained why the self-diagnostic feature was added as a minimum essential requirement other than a general statement that such a feature would help to reduce machine downtime. The CIA has not explained the discrepancy between the requirement for such feature and the Medical Requirements Officer's statement that National's equipment would fulfill the using activity's needs. Moreover, National points out that its offered equipment has a light emission diode safety indicator which would perform essentially the same function as Remco's self-diagnostic feature. The CIA has not responded to this argument. Our review of National's advertising brochure (supplied by the CIA) shows that such a feature is displayed prominently, but it is unclear from the brochure what function this feature would perform. However, it appears that CIA procurement personnel did not question National about this safety feature to ascertain its function even though a self-diagnostic feature had been made an essential requirement. We note that the self-diagnostic feature offered by Remco is labeled a "Safety Status Panel" which at least appears to be similar in function to the feature offered by National.

Another document supplied by the CIA is an abstract of proposals compiled by the CIA on September 26, 1980, just 3 days before award to Remco. This document shows that National submitted three proposals based upon: (1) eight newer, larger units, (2) seven newer, larger units, and (3) eight of its older file units. This abstract shows that National's offers could have saved the Government as much as \$12,620, or as little as \$5,266, depending upon which proposal was accepted. However, all of National's offers were labeled "Non-compliant" for failing to have a self-diagnostic feature, and award was made to Remco at a price of \$65,440. The CIA has provided no justification for its requirement that eight power units be offered, even though its internal memorandum shows that seven of National's power units might fulfill the CIA's needs.

Based upon the foregoing facts, we find that the CIA's requirements for eight power files containing a self-diagnostic feature were based on "mere personal preference" in contravention of FPMR § 101-26.408-3. Moreover, since National states that its equipment has a feature equivalent to the self-diagnostic feature which the CIA does not dispute, and the CIA rejected National's lower priced offer as noncompliant, we find that the CIA's justification for award to Remco was not based upon substantial evidence and was, therefore, unreasonable. Accordingly, this point of National's protest is sustained.

National's last basis for protest is that award to Remco was improper since the Federal Supply Schedule contract was between Kardex and the General Services Administration. However, since Remco was listed as an authorized agent for Kardex under Kardex's Federal Supply Schedule contract, this issue of protest is denied.

While we are sustaining National's protest on the basis that the CIA's justification for awarding to Remco at a higher price was unreasonable, we cannot recommend corrective action since the CIA has

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informed us that Remco has already delivered and installed all equipment ordered. However, we are notifying the Director of the CIA of our findings in an attempt to prevent similar improprieties in future procurements.

*Milton J. Arosler*

Acting Comptroller General  
of the United States