



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

092157

1-17-1000

November 26, 1973

Samuel R. Freeman, Esquire
P. O. Box 102
One Park Central, Suite 906
Denver, Colorado 80217

Dear Mr. Freeman:

Reference is made to your letter of April 17, 1973, and subsequent correspondence, on behalf of Computer Sharing Services, Incorporated (CSS), protesting the use of General Services Administration (GSA) contract No. GS-GS-11500, by the Bureau of Reclamation (BOR), Department of Interior, for certain of their automatic data processing (ADP) requirements.

The subject contract, awarded March 21, 1972, to Computer Sciences Corporation (CSC) by GSA, covers ADP timesharing services, known as the "INFONET" System, to Federal users. Article II, Part a, of the GSA-CSC contract, entitled Scope of Contract and Mandatory Use, respectively, provides:

"This contract is to provide for the normal supply requirements of Federal users identified below for full services, consisting of interactive timesharing and remote batch which require access to a common data base, under a nationwide teleprocessing network. When an agency currently needs only interactive timesharing or remote batch, but there is reasonable certainty that the other service will be needed during the contract period, the contract will be a mandatory source of supply. In connection with such services the contractor will furnish communications media to transmit data between the metropolitan areas where Federal Data Processing Centers are located and the contractor's facilities. The contractor also will furnish training for Government personnel and diagnostic services with respect to malfunction at any point in the system between (and including) the user and the contractor. This contract is not mandatory for general timesharing or remote batch when neither requires access to a common data base." (Underlining supplied.)

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Your protest alleges generally that the DOR should not be using the GSA-CSU contract to supply its ADP requirements. Specifically, you allege that DOR ADP requirements do not fall within the scope of the subject contract and there was a " * * * premeditated effort by the Automated Data and Telecommunications Services, GSA, Washington, to compel the use of its national contract in lieu of utilizing local suppliers which are available at lesser cost."

Under the provisions of Public Law 89-306, 79 Stat. 1127, 40 U.S.C. 759, which amended the Federal Property and Administrative Services Act of 1949, the Administrator of GSA "is authorized and directed to coordinate and provide for the economic and efficient purchase, lease, and maintenance of automatic data processing equipment by Federal agencies." In construing the act with respect to defining the authority of the GSA under its provisions, we concluded in a decision dated November 21, 1967, 47 Comp. Gen. 275, that Public Law 89-306, provides:

" * * * exclusive authority to GSA to procure all general-purpose ADPE and related supplies and equipment for use by other Federal agencies." Id. at 279.

In this same decision we also noted:

" * * * that responsibilities related to determining ADPE requirements, selecting types and configurations, and the use to be made of such equipment are divided by a fine line from responsibilities related to actual purchase of the equipment desired. Subsection (g) provides that the Administrator of General Services shall not interfere with determinations made by agencies in these areas." Id. at 278.

Additionally, Federal Property Management Regulation (FPMR) 101-32.403-1 provides in part:

"GSA makes selected ADPE available to agencies through requirements-type contracts when such contracts will provide for substantially lower equipment costs. Where ADPE is available from GSA requirements-type contracts, this source shall be used by all agencies as the primary source to satisfy needs in accordance with the provisions of such contracts."

From the above legislation, this Office's interpretation of that legislation, and the applicable regulations, it is apparent that a Federal ADP equipment user is responsible for determining its own requirements, while GSA is responsible for providing a method of supply.

The report submitted by GSA shows that on May 25, 1972, in consonance with FPMR 101-32.403-1, Federal ADP users were notified of the GSA-CSC contract. In response to this notice, the DOR on October 10, 1972, submitted Form 2068 requesting service under the subject contract, certifying the following:

"It has been certified by the Contracting Officer, Mr. William Lange, Jr., Bureau of Reclamation, Department of the Interior, who is authorized to so certify, that this requirement is within Article II of the contract referenced in item 8 [referring to the CSC contract] of Form 2068."

We do not believe it was incumbent upon GSA to make a determination as to whether the ADP services obtained through the DIFONET contract would satisfy the DOR's requirements. That determination was the responsibility of the DOR, and once the DOR had certified that its requirements fell within the scope of the DIFONET contract, GSA was obligated to provide such services. As GSA observed in its report to our Office:

"It can not be overemphasized that the Government has certain contractual responsibilities under Contract CS-CSC-11580 in that if a requirement falls within the scope of the contract, it must be used as a mandatory source of supply. It would be improper for GSA to deny any agency access to the DIFONET system after certification by that agency that the particular requirements involved can be satisfied by the CSC contract. It could likewise be interpreted as improper for GSA to authorize a procurement from commercial sources for services apparently falling within the scope of the CSC contract."

You also contend that GSA compelled the DOR to continue using the DIFONET system, despite the DOR's dissatisfaction therewith. In this connection, GSA states that it recognizes that although "a given agency's requirements may fall within the scope of the CSC

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contract, it does not necessarily follow that the INFORET system is capable of performing every parochial task of a new user," which is a technical determination to be made by the using agency. GSA points out, as an example, that the INFORET system has not been used for the BOR's Atmospheric Water Resources project because the BOR concluded its needs could not be met by that system. However, GSA informs us that it has not received a similar determination from the BOR with regard to its Engineering ADP requirements. Therefore, we are unable to conclude that GSA compelled BOR to continue using the INFORET system.

In view of the foregoing, we are aware of no legal basis for objection to the use of the INFORET contract by the BOR, and your protest is therefore denied.

Sincerely yours,

Paul G. Dabbling

For the Comptroller General
of the United States

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