

DECISION**THE COMPTROLLER GENERAL
OF THE UNITED STATES**

WASHINGTON, D. C. 20548

FILE: B-183837

DATE: August 5, 1975

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MATTER OF: National Stenomask Verbatim Reporters Association

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DIGEST:

Contention that provision in IFB for U.S. Court of Claims reporting services which states stenomask method of reporting will not be permitted unless no other alternative method is possible improperly restricts competition, is not sustained since record shows that Court's determination of its need to so restrict competition is supported by reasonable basis, that is, difficulty experienced by the Court in the past with stenomask method.

By letter of May 8, 1975, the National Stenomask Verbatim Reporters Association (NSVRA) protested to this Office against the allegedly improperly restrictive requirements of an invitation for bids (IFB) issued by the United States Court of Claims, Washington, D.C., in April 1975. The solicitation calls for the reporting and furnishing of typewritten transcripts of all trials before the United States Court of Claims at various session locations within the United States during the fiscal year beginning July 1, 1975 and ending June 30, 1976. By amendment dated May 12, 1975, the IFB was amended to delete an explicit prohibition against the use of the stenomask method of reporting, and provided instead that:

"This reporting contract does not specifically prohibit the use of the Stenomask method of system of verbatim reporting or the use of tape recording. However, bidders should know that the Court reserves the right to allow or prohibit the use of either of those methods, and that the Stenomask method will be permitted only when no other alternative method is possible."

The Court of Claims' authority to contract for reporting services is found in 28 U.S.C. 796 (1970), which provides:

"The Court of Claims is authorized to contract for the reporting of all proceedings had in open court, and in such contract to fix the terms and conditions under which such reporting services shall be performed, including the terms and conditions under which transcripts shall be supplied by the contractor to the court and to other persons, departments, and agencies."

NSVRA protests that the language utilized in the solicitation, with its negative reference to the stenomask method, unreasonably restricts competition to the detriment of its members. The protester concedes the Court's right to solicit any method of reporting it wishes, but questions the authority of the Court to exclude one method from utilization without bearing the burden of showing sufficient reason to question the accuracy and trustworthiness of that method. To support its assertion that the stenomask method of reporting is not less accurate nor less trustworthy than more traditional forms of court reporting, the protester points out that the stenomask method has been used in various Federal Government agencies, courts and congressional committees, and is the official method of reporting of the Armed Services. In addition, the protester cites a decision of the United States Court of Appeals for the District of Columbia in which the tape recording method of reporting was at issue and the Court stated that "experimentation with * * * newly authorized procedure should be encouraged rather than blocked * * *." Colonial Times, Inc. v. Honorable Oliver Gasch, No. 74-1349, January 3, 1975.


Based on its experience, the Court has come to the conclusion that the stenomask system is less desirable for its purposes than other systems. In substantiating this conclusion, the Court notes that in several instances it has found that the stenomask operator's voice, although muffled, may be distracting to a witness; difficulties arise in read back; and in many instances there is an absence of tape back-up which precludes any means of checking the accuracy of the transcript in contrast to instances where stenotype, stenographic or tape recording methods are utilized.

We have recognized that where a procurement is for services or supplies of a highly technical or specialized nature, there may well be differences of opinion as to how an agency's needs

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should be accommodated but that in the absence of a clear showing of unreasonableness the agency's determination in the matter will not be questioned by this Office. Digital Equipment Corporation, B-181336, September 13, 1974. See also CSA Corporation, 54 Comp. Gen. 645 (1975), in which we held that a United States Tax Court invitation which limited court reporting only to electronic reporting services did not improperly restrict competition. In this case, although the stenomask system is being used by other Federal agencies, we cannot say that the Court of Claims' determination to restrict its procurement to other than the stenomask recording system, except as an alternative method, is without a reasonable basis.

In view of the foregoing, the protest is denied.


Deputy Comptroller General
of the United States