

4482
04215

DECISION



B 11

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

FILE: B-189134

DATE: November 17, 1977

MATTER OF: Stancil-Hoffman Corporation

DIGEST:

1. Procurement by Navy for FAA is unauthorized because FAA was required to submit a requisition to GSA for quantity of equipment exceeding the maximum order limitation of Federal Supply Schedule.
2. Although propriety of Navy's justification for procuring FAA's requirements on sole source basis is premature because applicable procedure requires FAA to refer procurement requests for requirements in excess of Federal Supply Schedule's maximum order limitation to GSA, FAA is requested to review necessity for restricting requirements to single source.

Stancil-Hoffman Corporation (Stancil-Hoffman) protests the sole-source negotiated procurement of recording equipment from Magnasync/Moviola Corporation (Magnasync) under request for proposals (RFP) N00039-77-R-0194(S), issued by the Naval Electronic Systems Command on behalf of the Federal Aviation Administration (FAA). The protester contends that FAA was required to procure the recording equipment through the General Services Administration (GSA) because the equipment was listed on the Federal Supply Schedule (FSS). The protester also contends that the Navy, in conducting the procurement for the FAA, violated the requirement for competition by negotiating sole-source with Magnasync.

The equipment in question primarily consists of recorder/reproducers which are used by both FAA and the Navy to record all communications between aircraft and air traffic controllers. The recordings are used to analyze the causes of air traffic control problems and are also used in litigation concerning aircraft accidents.

Stancil-Hoffman contends that the FAA is required to procure the recorder/reproducers through GSA, rather than having the Navy procure them. The Navy has confirmed that three producers, including the proposed supplier and

B-189134

the protester, have FSS contracts covering these recorder/reproducers. The FSS involved here specifies that both the FAA and the Navy are mandatory users of the schedule and that the maximum order limitation for most of the listed items is \$100,000. The Navy states that the price of the recorder/reproducers to be procured in this case exceeds the maximum order limitation specified in the schedule.

The Federal Property Management Regulations (FPMR) § 101-26.106 states that:

"Requisitions for items requirements exceeding maximum order limitations in Federal Supply Schedule Contracts shall be submitted to GSA in accordance with the applicable instructions in the respective schedules."

Also paragraph 9(c) of the applicable FSS incorporates by reference GSA Form 2891, which states that:

"Agencies required to use Federal Supply Schedules as a mandatory source shall forward requisitions for items included therein which exceed the applicable maximum order limitation to the GSA regional office serving the consignee."

See 41 C.F.R. 5A-73.205-6.

Here, the FAA, which is a mandatory user of the subject FSS, did not forward a requisition to GSA, or request a waiver from the FPMR requirement, but rather submitted a purchase request to the Navy. Consequently, the FAA must submit a requisition to GSA for the required recorder/reproducers. It may be that upon review GSA will choose to have the FAA purchase the recorder/reproducers through the Navy. However, we understand that GSA does consider the adequacy of any sole source determination in reviewing a request by the user agency.

As to the sole source nature of the procurement, the protester asserts that the Navy, which was conducting the procurement for the FAA, was not justified in negotiating the contract solely with Magnasync. In light of our determination that the FAA should submit a requisition for its requirements to GSA, rather than the Navy,

B-189134

the question of the propriety of a sole-source procurement need not be resolved in this decision because we recommend, for the reasons explained below, that FAA consider the acceptability of other equipment prior to referring its requisition to GSA. We are requesting GSA to insure that FAA complies with this recommendation.

The Navy seeks to justify sole-source procurement on the grounds that the Magnasync equipment has been extensively tested by the Navy while other manufacturers' equipment has not been tested. The Navy report shows that in 1969, the Naval Electronic Systems Command tested the recorder/reproducers made by six companies, not including Stancil-Hoffman. The Navy states that these six manufacturers were all of the manufacturers then known by the Navy to supply this type of equipment. An initial test and evaluation concluded that while a majority of the products tested met the agency's electronic parameters, only the Magnasync product met both the electronic and air traffic control parameters. Subsequently, the Magnasync equipment was subjected to two-year laboratory testing and operational testing at sea. As a result of this testing, the Magnasync equipment was approved for service use by the Chief of Naval Operations on July 30, 1973, and it remains the only equipment approved by the Navy for service use. While Navy acknowledges that the Stancil-Hoffman equipment has undergone laboratory temperature, humidity, shock and vibration tests, Navy asserts that such tests are inadequate for FAA's purposes. Navy states that the protester's equipment has not been subjected to operational field tests to which the Magnasync equipment has been subjected.

However, a report was submitted by the FAA in an earlier protest which indicates that the Stancil-Hoffman equipment has been tested operationally. The earlier protest (B-176298), submitted by Dictaphone Corporation on June 15, 1972, questioned the sole-source award to Magnasync of recording equipment. The protest was ultimately withdrawn because the equipment which was the subject of the protest had been delivered and because the FAA advised this Office that no additional sole-source procurements of recording equipment were contemplated

B-189134

a. that time. The FAA included in its report on the protest the results of a month-long operational test of recorder/reproducers manufactured by Stancil-Hoffman, Dictaphone and Magnasync. That report indicated that a recorder from each of the three manufacturers was installed at Edwards Air Force Base in mid-August 1971 and placed in operation from August 23, 1971, to September 23, 1971. The test report describes various positive and negative aspects of each of the three recorders and concludes that: "Considering the overall aspects of maintenance and reliability, the Magnasync/Movioia TP-1720 would rate number one with the Dictaphone 4000 and the Stancil-Hoffman GSH-34 following in that order." The report does not state that either the Stancil-Hoffman or the Dictaphone equipment was technically unacceptable so as to justify a sole source procurement. Rather, it concludes that the Magnasync product was considered the best.

From the record before us it appears that the Navy was unaware of the tests conducted for FAA during 1971. We do not know whether these test results, upon analysis, provide sufficient data for competing FAA's requirements but we think the material should be reviewed in that context by appropriate officials prior to FAA's submission of a purchase request to GSA.

R. K. Hoffman
Deputy, Comptroller General
of the United States



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

B-189134

NOV 17 1977

Rear Admiral E. B. Fowler, Jr.
Commander, Naval Electronic Systems
Command

Dear Admiral Fowler:

Enclosed is a copy of our decision of today concerning the bid protest of Stancil-Hoffman Corporation under RFP N00039-77-R-0194(S) issued by your Command for the Federal Aviation Administration.

We have concluded that FAA has erroneously requested the Navy to purchase the desired equipment. Rather, FAA should submit a requisition for its requirements of recording equipment to GSA. On the basis of the record before us we also questioned the propriety of the justification stated in your Command's reports for procuring this equipment on a sole source basis. Accordingly, negotiations with Magnasync/Moviola should be suspended, pending determination by GSA as to the most advantageous, allowable means for procuring recording equipment for FAA.

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

Sincerely yours,

R. F. Krieger

Deputy, Comptroller General
of the United States

Enclosure

cc: Paul Snow, Counsel
Naval Electronic Systems Command



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

D-139134

NOV 17 1977

The Honorable Joel W. Solomon
Administrator, General Services
Administration

Dear Mr. Solomon:

Enclosed is a copy of our decision of today concerning the bid protest of Stancil-Hoffman Corporation under a request for proposals issued by the Naval Electronic Systems Command for the Federal Aviation Administration.

Because the procurement is for a quantity of equipment exceeding the maximum order limitation of a mandatory Federal Supply Schedule, FAA should submit a requisition for its requirements to GSA, rather than to the Navy. Also, we request that GSA take care to insure that FAA complies with our recommendation that it consider the acceptability of other equipment prior to submitting its requisition to GSA.

It is requested that you advise us of the action taken in this matter.

Sincerely yours,

R.F.KELLER

Deputy Comptroller General
of the United States

Enclosure

cc: John S. Miller, III, Esq.
Office of Counsel, Room 619
Crystal Mall Building #4
Washington, D. C. 20406



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

E-189134

NOV 17 1977

The Honorable Brock Adams
The Secretary of Transportation

Dear Mr. Secretary:

Enclosed is a copy of our decision of today concerning the bid protest of Stancil-Hoffman Corporation under a request for proposals issued by the Naval Electronic Systems Command on behalf of the Federal Aviation Administration.

We have concluded that FAA is required to submit a requisition for its requirements of recording equipment to GSA, rather than to the Navy. We also recommend that FAA review, in the light of our decision, the necessity for restricting its requirements to a single source prior to submitting a purchase request to GSA.

It is requested that you advise us of the action taken pursuant to these recommendations.

Sincerely yours.

R.F.KELLEY

Deputy Comptroller General
of the United States

Enclosure

cc: John R. Reed
Acting Chief, NAVAIDS/Communications
Engineering Division
Federal Aviation Administration