

01501

Richard Kleman
Proc. XX II

DECISION



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

FILE: B-186501

DATE: February 2, 1977.

MATTER OF: Control Data Corporation

DIGEST:

Disc packs for use with computer system not being "consumable items" as required by Federal Property Management Regulations definition for supplies are automatic data processing equipment which cannot be procured on sole-source basis by using agency without delegation of procurement authority from GSA.

This protest involves the negotiated sole-source award by Warner Robins Air Force Base of the 1-year indefinite quantity contract No. F09603-76-D-4413 to Sperry Rand Corporation, Univac/Federal Systems Division (Univac), for disc packs to be used with the Univac U-1050-II computer system. The award was made on March 25, 1976. Under the terms of the contract, an initial order for the purchase of 290 disc packs at a total price of \$221,560 was issued with the award of the contract. The maximum quantity which may be ordered during the term of the contract is 575.

Control Data Corporation (CDC) protested the award on several grounds: (1) the Air Force violated the Federal Property Management Regulations (FPMR) by not obtaining a delegation of procurement authority (DPA) from the General Services Administration (GSA); (2) the Air Force determination to negotiate on a sole-source basis pursuant to 10 U.S.C. § 2304(a)(10) (1970 ed.), as implemented by Armed Services Procurement Regulation (ASPR) § 3-210.2(xv) (1975 ed.) was not well founded; and (3) an earlier amendment of Univac contract which the Air Force relied upon in part to support its sole-source determination was not justified and was an improper "tie-in" to require the exclusive purchase of the Univac disc packs.

For reasons which are indicated below, we have concluded that the sole-source procurement without a DPA was improper. Since the procurement was not authorized by GSA, it is not necessary to consider the other contentions summarized above.

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Essentially, the protest turns on whether the disc packs are automatic data processing equipment (ADPE) or supplies. FPMR § 101-32.403-5, "Restrictions on sole source ADPE procurements," provides:

"(a) Sole source procurement of ADPE in excess of \$50,000 over the systems life by either lease or purchase is permitted only after a delegation of procurement authority (DPA) is provided by GSA. Where a sole-source procurement appears to be in the best interest of the Government, agencies shall submit to GSA a request for a DPA accompanied by a statement or determination and finding justifying the requested action. * * *"

A DPA is not required to procure supplies.

The Air Force maintains that it was not necessary to obtain a DPA because disc packs are supplies. In support of that position, the Air Force relies upon the definitions in AFM 300-6 and DOD Directive 5100.40 which list disc packs as supplies. The Air Force states that a disc pack is identified by DOD as a supply item because it is a stack of breakable "platters" on a spindle; it contains no electronic characteristics or connections; individual platters can be removed and replaced where wear or breakage occurs; and it is a storage media designed to perform a storage function not unlike computer tape and punched cards.

CDC and GSA disagree with the Air Force. They both refer to the definition of supplies in FPMR § 101-32.402-4 which states:

"Supplies' means consumable items designed specifically for use with ADPE, such as computer tape, ribbons, punch cards, and tabulating paper."

They both state that "consumable items" are the key words. GSA comments further:

"* * * In this regard, disc packs differ from computer tape in the method of transport. In a magnetic tape handler, the tape is transported by means of a series of capstans. The physical contact of the tape with these rotating shafts, plus the frequent start-stop of the tapes, induce tape wear. In contrast, disc packs are mounted on shafts or spindles and are rotated at a constant rate through force exerted by the shaft or spindle. This type of transport for discs results in minimal disc wear when compared to computer tape. The significant difference in the normal rate of wear,

plus the fact that as an industry practice disc packs are offered for lease whereas tape is normally purchased, supports the classification of computer tapes as consumables and disc packs as non-consumable items. The consumable issue notwithstanding, the Federal Supply Classification Cataloging Handbook H 2-1 lists disc memory units and magnetic disc, data storage as ADP input/output and storage devices (FSC 7025) while magnetic tape is listed under ADP supplies and support equipment (FSC 7045). The foregoing supports (GSA's) interpretation that disc packs are ADPE components as opposed to supplies."


Moreover, in Kenneth R. Bland, 54 Comp. Gen. 835 (1975), CPD 77, following the definition of ADPF at FPMR § 101-32.401-1, we stated:

"We understand that disc packs are considered ADPE within the meaning of this section."

Having regard for the fact that disc packs are not "consumable items" as required by the FPMR definition for supplies; that it has been our previous understanding that disc packs are ADPE; and that the view of GSA, which is entitled to significant weight because of its statutory responsibility and authority for Government ADPE procurement (Comdisco, Inc., 54 Comp. Gen. 196 (1974), 74-2 CPD 152), is that the disc packs are ADPE; we conclude that the Air Force was without authority to proceed with the award without a DPA. Although the DOD Directive and AFM support the contracting officer's action, the FPMR, which is binding on all Federal agencies, takes precedence in the matter. Comdisco, Inc., supra.

Since the initial order of disc packs has been completed, no remedial action on that order can be taken. However, we are recommending in a separate letter to the Secretary of the Air Force that no additional disc packs be ordered under the contract.

As this decision contains a recommendation for corrective action, it is being transmitted by letters of today to the congressional committees named in section 232 of the Legislative Reorganization Act of 1970, 31 U.S.C. § 1172 (1970).

Deputy 
Comptroller General
of the United States