



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

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FEB 22, 1973

The Honorable Joel T. Broyhill
House of Representatives

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Dear Mr. Broyhill:



This is our report on our examination made pursuant to your request of June 29, 1972, that we investigate a complaint by the Hoppmann Corporation, Springfield, Virginia, concerning two recent decisions by the Navy to acquire audiovisual projection systems for the conference room at the Naval Training Command's headquarters building in Pensacola, Florida, and for the auditorium of the newly constructed education building at the Naval War College, Newport, Rhode Island.

In essence, Hoppmann contended that the Navy violated Government policy in deciding to let an in-house source (the Naval Training Equipment Center, Orlando, Florida) design and fabricate the audiovisual systems rather than purchase them from commercial sources and the Navy may have used Hoppmann's proprietary data in designing its systems. Furthermore, Hoppmann contended that before the Navy made its decisions it improperly compared the Hoppmann proposals with the systems designed in-house.

We interviewed Navy officials and examined documents at the Command headquarters, the Center, the War College, and the Office of Naval Education and Training. We reviewed applicable Office of Management and Budget (OMB), Department of Defense (DOD), and Navy policies and criteria. We also interviewed Hoppmann officials and considered the Navy's reply to you dated July 21, 1972, regarding the same matters.

The Command became fully operational on July 1, 1972, after being established on August 1, 1971. During 1971 and the first few months of 1972, the Command headquarters and the War College independently developed equipment requirements for their respective projects. Because responsible Navy officials had no audiovisual standards or guidelines,

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they visited several DOD installations having capabilities similar to those being proposed for each project. The officials also contacted Hoppmann and other commercial sources to obtain information and/or price quotations on suggested audio-visual projection systems.

Hoppmann was first contacted about the Pensacola project in August 1971 and about the Newport project in November 1971. In each instance Hoppmann agreed to submit an unsolicited, preliminary proposal for an audiovisual system. Hoppmann submitted its initial letter proposals on November 4, 1971, for the Pensacola project and on March 2, 1972, for the Newport project. Because the Command wanted detailed drawings and prices for the Pensacola project, Hoppmann submitted a follow-on proposal dated March 8, 1972. In the meantime (January 13, 1972), the Command requested that the Center design a system for the Pensacola project and provide cost estimates for equipment purchases and installation. The War College requested the same services on May 1, 1972.

The Center designed systems for both the Pensacola and Newport projects, with estimated costs of \$26,000 and \$92,000 respectively. Hoppmann proposed a system for the Pensacola project with various levels of sophistication and with prices ranging from \$60,000 to \$90,000. Hoppmann's proposed system for the Newport project was priced at \$128,000.

After considering the various proposals, the Navy in both instances decided to let the Center design the systems and procure the necessary equipment from various commercial sources. The primary justification was that the Center could provide well-engineered systems which, although less sophisticated, were sufficient to meet the Navy's needs and less expensive than the systems proposed by Hoppmann. The proposals received from other commercial sources were rejected for reasons other than cost. None of the commercial firms were requested to resubmit proposals or bids based on the equipment requirements established in the Center's design. A secondary justification for using the Center was that delays caused by competitive advertising for formal bids could be eliminated.

Although both the Command headquarters and the War College used lower cost as justification for using the in-house

source for their projects, they did not make detailed comparative cost studies. Information from both the Center and Hoppmann showed that, in total, the costs quoted by the Center were substantially less than the prices quoted by Hoppmann. However, the Center's pricing proposals did not include all costs of furnishing the systems and were for less sophisticated systems.

The Center's proposals included only the cost for equipment, which was based, when applicable, on prices of vendors shown on General Services Administration Federal Supply Schedules. Hoppmann's pricing proposals, on the other hand, included costs for engineering, installation and checkout, overhead, and profit. The Hoppmann and in-house systems differed substantially--particularly in types, degree of automation, and quantities of equipment involved.

Our responses to each of the basic issues raised by Hoppmann are summarized below.

DID THE NAVY VIOLATE GOVERNMENT POLICY IN
DECIDING TO LET AN IN-HOUSE SOURCE DESIGN
AND FABRICATE AUDIOVISUAL SYSTEMS?

Hoppmann contended that the Navy violated Government policy when it decided to let the Center, an in-house source, design and fabricate the two audiovisual systems rather than purchase them from commercial sources. To support this contention, Hoppmann cited Bureau of the Budget (now OMB) Circular No. A-76, and various DOD and Navy directives which provide guidelines to Government agencies for acquiring commercial or industrial products and services for Government use. According to the circular, the Government's general policy is to rely on private enterprise to supply its needs; however, it provides that under any of five specified circumstances it is in the national interest for the Government to maintain commercial or industrial activities capable of providing the products and services it needs. An example of these circumstances is when procurement from a private source would disrupt or materially delay an agency's program

The circular defines a Government commercial or industrial activity as one operated and managed by an executive

agency to provide for the Government's use a product or service that is obtainable privately. Circular No. A-76 provides that all Government commercial or industrial activities be inventoried and periodically reviewed. The purpose of these reviews is to determine whether the activities' continued existence is justified under any of the five specified circumstances. The circular provides also that, before a new Government commercial or industrial activity can be started, the need for the activity must be reviewed and justified under one of the five circumstances. DOD and Navy directives implementing Circular No. A-76 generally reflect these provisions.

The Center's audiovisual capability has not been inventoried or justified because the Center believes audiovisual systems are necessary to support its military mission. However, we could find no language in the circular or the directives stating that Government commercial or industrial activities were excused from the inventory and justification requirements if they were necessary to support military missions. Furthermore, a review of the formal description of the types of work performed by the Center's Audio-Visual Engineering Department indicates that most of this department's effort does not seem to be uniquely oriented to a military mission. Some of the Department's responsibilities are:

"Audio-visual training systems and presentations, sound-slide programs, charts, transparencies, graphic training aids ***.

"Basic and advanced electronic trainers to support general training in electronics ***.

"Educational closed-circuit television system and video recording systems."

Thus, we believe the Center's audiovisual capabilities, or at least those capabilities not uniquely military oriented, should be inventoried, reported to higher levels, and their continued existence justified in accordance with one of the five specified circumstances. Although the agency head or his designee may exempt a commercial or industry activity from the review and justification procedure, we believe that such an exemption should be adequately supported in applicable records.

We are unable to conclude whether the Center's audio-visual capabilities can or cannot be properly justified. Whether the two specific acquisitions in question were proper depends, we believe, on the larger and still unresolved question of whether the Center's audiovisual capabilities are justified.

DID THE NAVY USE HOPPMANN'S PROPRIETARY DATA?

Hoppmann contended that, in designing its audiovisual systems, the Center may have used proprietary data which had been included with Hoppmann's submission of informal proposals. Hoppmann stated that when the Navy decided to use its in-house source, Hoppmann was not given the opportunity to protect its proprietary information from a competitor's review and use.

On January 13, 1972, the Command requested that the Center design an audiovisual system for the Pensacola project. Enclosed with the request was Hoppmann's letter proposal of November 13, 1971, including its prices by components for three different systems. Hoppmann did not submit the designs and drawings in question to the Command until March 8, 1972. An indication that the Center did not use Hoppmann's proprietary data in designing the Pensacola project was a memorandum of March 10, 1972, wherein a Command official recommended that the Center perform the design work after considering proposals from the Center, Hoppmann, and another commercial source. A representative of the Center advised us that he received no designs or drawings made by Hoppmann.

In May 1972, when the Center was requested to design a system for the War College project, Hoppmann's proposed system concept and equipment list were transmitted to the Center, but the design drawing was not. Hoppmann restricted the use of the drawing but not the contents of the letter proposal.

The Center's project engineer, who designed both systems, told us that he ignored Hoppmann's letter proposals and designed a system on the basis of his own audiovisual expertise.

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In summary, our examination did not disclose evidence that Hoppmann's proprietary data was used by the Navy. However, Hoppmann was not given the opportunity to request the return of its proprietary information after the Navy decided to use the in-house source.

DID THE NAVY IMPROPERLY COMPARE
HOPPMANN'S PROPOSALS WITH IN-HOUSE
PROPOSALS?

Hoppmann contended that before the Navy made its decisions, it improperly compared the Hoppmann proposals with the in-house proposals. In this regard, Hoppmann asked:

- Is it the policy of the Command to evaluate proposals from companies with which the Command directly competes?
- Can such an evaluation be conducted objectively to insure that all relevant cost factors, including initial design and development costs already borne by private enterprise, have been fully considered in arriving at total cost for Government in-house manufacture?

With respect to the first question, the Navy policy depends upon the type of proposal obtained from commercial sources. Paragraph 5-701(a) of the Armed Services Procurement Regulation (ASPR) provides, as follows:

"It is the policy of the Department of Defense not to place Government agencies in direct competition with commercial sources. Accordingly, prior to soliciting bids or proposals from commercial sources, it shall be decided whether to obtain supplies or services from Government agencies. Invitations for bids and requests for proposals shall not be sent to Government agencies. Current market prices, recent procurement prices, or prices obtained by informational bids as provided in 1-309"

may be used to ascertain whether procurement can be effected more cheaply from commercial [or from in-house] sources." (Underscoring supplied.)

The Navy considered the Hoppmann proposals to be informational rather than responsive to formal requests for proposals. Under these circumstances, we believe the Navy was authorized to request and evaluate informational proposals before deciding on the source of procurement.

However, the Navy did not follow the procedures of ASPR 1-309 for obtaining proposals from private industry for informational or planning purposes. ASPR provides that such requests for proposals be written and that they be clearly labeled as being issued for informational or planning purposes only. Further, these requests for proposals are to be approved by an individual at a level higher than the contracting officer.

With respect to the second question, there is no evidence that the Center used Hoppmann's design or other proprietary information. However, as mentioned previously, the Navy did not consider all cost factors in arriving at total cost to the Government by letting the Center provide the audiovisual systems. For example, such costs as design and installation services incurred by the Center were not included. Being a nonindustrial fund activity, the Center absorbs such operating costs rather than charging them to the projects and ultimately to a customer. On the other hand, had the Navy contracted for the systems, it would have incurred certain costs associated with preparing a specification package needed to advertise for bids plus contract administration and related costs.

In summary, it appears that the audiovisual capabilities of the Center should be reported and their continued existence justified in accordance with stated Government policy. We believe the question of whether the two specific acquisitions were properly made depends on the larger question of whether the Center should be performing audiovisual work.

We saw no evidence that the Center used Hoppmann's proprietary data; however, we do not believe that the Command

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and the War College made effective cost comparisons of the Hoppmann and in-house proposals. We believe that in order for the Navy to have made effective cost comparisons of the Hoppmann and in-house proposals it would have been necessary to obtain informational proposals from Hoppmann on the less sophisticated systems being furnished the Center. In comparing the costs of the less sophisticated systems, the cost comparison guidelines set forth in OMB Circular No. A-76 should have governed.

We did not obtain written comments from any of the parties involved, but we did obtain and consider informal, verbal comments from Navy representatives on a draft of this report. We believe that a copy of this report should be sent to the Secretary of Defense; however, we will release it only if you agree or publicly announce its contents.

Sincerely yours,



Comptroller General
of the United States

Enclosure