



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Monroe Systems for Business, Inc.

File: B-271136

Date: May 17, 1996

Jerome Snyder for the protester.

Paul Grabelle, Esq., and Philip Kauffman, Esq., Department of Veterans Affairs, for the agency.

Jennifer D. Westfall-McGrail, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Where contracting officer failed to seek clarification of warranty provision in protester's Federal Supply Schedule contract for photocopying equipment, and most reasonable interpretation of clause is that warranty extends to equipment acquired under lease to ownership plan (LTOP), protest against agency's price evaluation, which failed to give the protester credit for its warranty in an LTOP acquisition, is sustained since agency did not select vendor meeting its needs at the lowest overall cost.

DECISION

Monroe Systems for Business, Inc. protests the decision by the Department of Veterans Affairs (VA) to award a lease for nine photocopiers for use at the VA Medical Center in Long Beach, California, to Edgemont Business Systems, a Sharp Electronics Corporation dealer. Monroe contends that its overall price for the photocopying equipment and associated maintenance is lower than Edgemont's and that it therefore should receive the award.

We sustain the protest.

After deciding to replace the nine photocopiers on a lease to ownership plan (LTOP) basis--under the terms of which title and ownership of the equipment is transferred to the government without any additional payment at the conclusion of the specified lease period (in this case, 36 months)--the contracting officer

requested prices for the lease, installation, and maintenance¹ of appropriate machines from three vendors holding FSS contracts for photocopiers: Monroe, Edgemont, and Konica. Both Monroe and Edgemont submitted prices, while Konica responded that it did not offer an LTOP. The contracting officer determined that the copiers submitted by both Monroe and Edgemont would meet the medical center's needs and that price therefore would be the determinative factor in selection of an awardee. In this regard, when ordering from the FSS, a procuring agency is required to order from the schedule contractor offering the lowest overall price for products meeting its needs. Federal Acquisition Regulation (FAR) § 8.404(b)(2), (c)(1); Imaging Technology Corp., B-270124, Feb. 12, 1996, 96-1 CPD ¶ 68.

In calculating Edgemont's overall price, the contracting officer included only 33 months of maintenance since Edgemont had noted in its price proposal that "all copiers come with a 90 day warranty." In calculating Monroe's overall price, in contrast, the contracting officer included maintenance costs for all 36 months. As calculated on this basis, Edgemont's overall price was \$1,596.80 lower than Monroe's (\$81,349.92 vs. \$82,946.72). On February 2, the contracting officer notified Edgemont that it had been selected for award.

Monroe argues that the contracting officer erred in calculating its overall price. The protester asserts that it, like Edgemont, offered a 90-day warranty on the copiers-- and that the contracting officer therefore should have included maintenance costs for only 33 months in calculating its overall price, as she did in calculating Edgemont's. The protester maintains that its price, as correctly calculated, is \$81,326.72, i.e., \$23.20 less than Edgemont's.

The contracting officer responds that she did not interpret the warranty provision in Monroe's FSS contract as applying to LTOP acquisitions. She contends that her interpretation is consistent with the view of a GSA contracting officer responsible for administering photocopier contracts that unless the terms of a vendor's FSS contract explicitly extend the vendor's warranty to equipment acquired under an LTOP, the warranty is presumed to apply to purchased equipment only. The VA contracting officer further argues that it is reasonable to require an explicit

¹The General Services Administration (GSA) solicitation pursuant to which the Federal Supply Schedule (FSS) contracts for photocopying equipment were awarded, as well as the portions of both Monroe's and Sharp's FSS photocopier contracts pertaining to LTOPs, provide that "the [g]overnment agrees to maintain the leased equipment while under LTOP at the current prices, terms and conditions covered under [special item number] 51-57 [the full service maintenance portion of the FSS contract]."

extension of the warranty to LTOP acquisitions given the FSS contract provision committing the government "to maintain the leased equipment while under LTOP."

The warranty provision, in the General Terms and Conditions section of Monroe's FSS contract, states as follows:

"Monroe warrants to the [g]overnment that the equipment delivered under this Agreement will at the time of delivery be free of defects of manufacture. During the 90 day warranty period Monroe will provide at no cost to the [g]overnment adjustments, repair, labor and parts replacement, excluding photoreceptor drum, including transportation of the equipment to and from Monroe's repair facility, if required, excluding repair required due to accident, misuse or neglect by the [g]overnment. . . ."

We agree with Monroe that the most reasonable interpretation of this language is that the warranty extends to copiers acquired under its LTOP since they are "equipment delivered" under the agreement. Moreover, it is apparent from a promotional brochure summarizing Monroe's LTOP (published by Monroe in 1993 and furnished to us in conjunction with this protest, but apparently not in the contracting officer's possession at the time of her evaluation) that this is Monroe's longstanding interpretation of its warranty language. In an introductory section to the brochure, Monroe states that copiers acquired under its LTOP come with a "90 day warranty" and that a maintenance contract must be procured with each copier "for the term of the LTOP (excluding 90 day warranty)." With regard to GSA's argument that warranty provisions are presumed not to apply to LTOPs unless explicitly identified as applicable, we think that identification of the warranty as applying to all equipment "delivered under this Agreement" was sufficiently explicit to place purchasers on notice that Monroe was not limiting its warranty to items purchased. Since, as noted above, Monroe's overall price is lower than Edgemont's after factoring in the cost savings from the 90-day warranty, the VA should have placed the order with Monroe. See FAR § 8.404(b)(2), (c)(1).

To the extent that the contracting officer viewed Monroe's offer of a 90-day warranty as unclear, she could (and should) have sought clarification from Monroe. In this regard, we note that a request for quotations is a negotiated procurement and agencies are not barred from holding discussions with, and seeking additional information from, vendors after the submission of quotations. Imaging Technology Corp., supra. Without clarifying that Monroe did not intend to offer 90 days of free maintenance, the contracting officer could not be certain that its overall price was higher than Edgemont's; she therefore could not be certain that in selecting Edgemont for award, she had selected the vendor that met the agency's needs at the lowest overall cost, as required by FAR § 8.404.

Given our conclusion that Monroe's 90-day warranty provision applies to LTOP acquisitions--or, at a minimum, that the contracting officer should have clarified any perceived ambiguity in the warranty terms--we sustain Monroe's protest.² Since it is clear, based on the record developed in conjunction with this protest, that Monroe intended to offer 90 days of free maintenance to the government and that its overall price, less the cost of 3 months maintenance, is lower than Edgemont's, we recommend that the VA enter into an agreement for lease of the copiers from Monroe rather than Edgemont. We also recommend that the agency pay the protester the costs of filing and pursuing its protest. See Bid Protest Regulations, 4 C.F.R. § 21.8(d)(1) (1996). In accordance with section 21.8(f)(1) of our Regulations, Monroe's certified claim for such costs, detailing the time expended and the costs incurred, must be submitted directly to the agency within 90 days after receipt of this decision.

The protest is sustained.

Comptroller General
of the United States

²Monroe also argued, as an alternative basis of protest, that the contracting officer should have included maintenance costs for only the first year of the LTOP in calculating vendors' overall prices, since second and third year maintenance costs are subject to change pursuant to an Economic Price Adjustment clause contained in the master solicitation. Since we sustain Monroe's protest on the previously discussed ground, we need not address this argument.