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DECISION



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

FILE: B-191383

DATE: May 8, 1978

MATTER OF: Dictaphone Corporation

DIGEST:

1. Protest against use of small purchase procedures and nonapplicability of Buy American Act differentials is summarily denied where protester's initial submission affirmatively establishes that protester is not entitled to relief.
2. Armed Services Procurement Regulation requires use of small purchase procedures on procurements of less than \$10,000. Therefore, decision to use small purchase procedures for \$7,000 procurement provides no basis for objection.
3. Individual elements of dictation system are components under Buy American Act where contract contemplates purchase of operational system and not collection of discrete components. Buy American Act differentials do not apply to system for which cost of domestically manufactured components exceeds 50 percent of total component cost.

The Dictaphone Corporation (Dictaphone) protests the purchase by the Plattsburgh Air Force Base of a central dictation system for the base hospital under small purchase procedures.

Dictaphone learned of the proposed purchase on February 8, 1978, and protested to the procuring agency on February 21. By letter dated March 1, 1978, received by Dictaphone on March 6, the contracting officer denied Dictaphone's protest. Dictaphone's protest to this Office, filed on March 14, 1978, incorporates the documents used to support Dictaphone's initial protest and the agency's response thereto. For the reasons stated below, we are of the opinion that Dictaphone's protest should be summarily denied on the basis of Dictaphone's initial submissions to this Office.

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Dictaphone objects to the procurement for the following reasons: (1) although Dictaphone products are on GSA contract No. GS-00S-43221, the line was not surveyed despite repeated requests; (2) Dictaphone was provided only a copy of a "Request for Purchase" instead of a request for quotation (RFQ), denying formal bid protection; (3) the request for purchase was proprietary because it specified a particular manufacturer's equipment without providing for an "or equal" offer; (4) there was no Buy American provision; and (5) Dictaphone was not advised in advance of the procurement despite repeated requests and expressions of interest.

The contracting officer addressed each of these arguments in his denial of Dictaphone's protest to the agency. This letter indicates that the dictaphone product line description in the GSA contract was examined and that it was determined that no further demonstration was required; it also states that on the day after receipt of the purchase request by the contracting officer, Dictaphone was furnished a copy of the request and was orally asked to furnish a quotation for an equivalent system. Quotations received from Lanier Business Products Company (Lanier) and Dictaphone were examined and the award was made to Lanier. The contracting officer's letter denying Dictaphone's protest also advises that he considered the applicability of the Buy American Act but determined that it did not apply since both quotations were on a complete system and the percentage cost of domestically manufactured components exceeded 50 percent in each case. The total cost of the system was less than \$7,000.

Dictaphone's protest involves essentially two issues: (1) the propriety of the use of small purchase negotiated procurement procedures in lieu of formal advertising, and (2) the applicability of the Buy American Act adjustments to the instant procurement. With regard to the first question, it is well recognized that so-called "small purchases" are not subject to the same requirements and strictures that apply to more costly procurements. Under the provisions of 10 U.S.C. § 2304(a)(3) (Supp. V, 1975),

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procurements involving \$10,000 or less may be accomplished by negotiation rather than formal advertising. The implementing provision in Armed Services Procurement Regulation (ASPR) § 3-203.2 (1976 ed.) requires the use of the simplified procedures set out in ASPR § 3-600, et seq., for small purchases. These procedures, among other things, encourage the use of oral solicitation of quotes from a limited number of suppliers in the accomplishment of the procurement. ASPR § 3-604.2(a) (1976 ed.).

Since the amount of the procurement involved here is less than \$10,000, the regulations cited above require the use of small purchase procedures. In these circumstances, we can ascertain no basis for objection to their use in this procurement and the protest on this basis is dismissed. See Associated Builders and Contractors, Inc., B-185333, April 27, 1976, 76-1 CPD 283.

Dictaphone also contends that the procuring activity should have applied Buy American Act differentials to Lanier's offer in evaluating the two competitive proposals and that, had the agency done so, Dictaphone's proposal would have offered the lower cost. Dictaphone cites a prior decision by our Office, Lanier Business Products, Inc.; Mid-Atlantic Industries, Inc., B-187819, August 24, 1977, 77-2 CPD 143, in support of its assertion that the differentials should have been applied to the transcribing machines incorporated in Lanier's proposed system, relying on Lanier's argument cited in that decision that the transcribers were independent items of equipment severable from the balance of the items purchased.

Dictaphone raises this issue for the apparent purpose of demonstrating that the transcribers offered by Lanier in the present case are independent "end products" rather than components of the proposed dictation system. We note that the distinction is relevant in this context because the Buy American Act differentials are applicable only to "end products."

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Under Executive Order 10582, articles, materials and supplies shall be considered to be of foreign origin if the cost of foreign products used in them constitutes 50 percent or more of the cost of all component products used in them. Under this order, a Buy American Act differential must be applied if the end product to be furnished (1) is not manufactured in the United States, or (2) is manufactured in the United States and contains foreign components which make up 50 percent or more of the total component cost. See Blodgett Key punching Company, 56 Comp. Gen. 18, (1976), 76-2 CPD 331.

We have held that "as to a given contract the end product is the item to be delivered to the Government as specified in the contract." 46 Comp. Gen. 784, 791 (1967); Brown Boveri Corporation, 56 Comp. Gen. 597 (1977), 77-1 CPD 328. In B-175917, July 27, 1972, we determined that oscilloscopes procured incident to a shipbuilding program were components rather than end products because they were "an integral part of the on-board communications quality monitoring and control system" and the Navy was procuring the vessels in question as completely assembled operating units. In 47 Comp. Gen. 21 (1967), we considered foreign-made batteries to be components of a diesel electric unit. And in 46 Comp. Gen. 813 (1967) we viewed the domestic assembly of a pump unit from an American-made pump and an English motor sufficient to consider the pump assembly as a domestically manufactured construction material because the cost of the domestic components exceeded 50 percent of the cost of all the components. Conversely, in Brown Boveri Corporation, supra, we refused to consider a sodium pump-drive system as a small component of the Clinch River Breeder Reactor Demonstration Project because the particular sub-contract concerned was only for the pump-drive system rather than the entire project.

In Lanier Business Product, Inc.; Mid-Atlantic Industries, Inc., supra, cited by Dictaphone and which we note parenthetically did not address the question of applicability of the Buy American Act, the purchase order listed each of the discrete system

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components being purchased together with the quantity required and the individual and aggregate price of each component. We stated in that decision that " * * * it appears to us that while VA's intention may have been to obtain a complete system, the purchase order quoted on pages 2 through 4 of this decision described a series of individual components." We think that this may be distinguished from the purchase order in the present procurement, which shows the item to be purchased as a "central dictation system consisting of the following" accompanied by a paragraph listing of the components required rather than an item-by-item breakdown; the only price reflected in the purchase order is the single price for the system.

We think it clear that the contract with which we are concerned here contemplated the purchase of a dictating system rather than a collection of discrete items and that these components were each an integral part of the system. We note also that the procuring activity determined that the cost of the American components was greater than 50 percent of the total cost of all components and that Dictaphone has neither contested this conclusion nor provided any evidence to the contrary. In these circumstances, we can ascertain no basis on which we might question the procuring activity's determination that the Buy American Act differentials were not applicable to Lanier's offer.

In view of the foregoing, we are of the opinion that Dictaphone's initial submission to our Office demonstrates affirmatively that Dictaphone is not entitled to the relief requested. In these circumstances, we see no advantage to be gained from obtaining a report on the matter from the Air Force. The protest is summarily denied. See Alaska Industrial Coating, B-190295, October 12, 1977, 77-2 CPD 290; Hawthorn Melody, Inc., B-190211, November 23, 1977, 77-2 CPD 406; Braswell Shipyards, Inc., B-191451, March 24, 1978, 78-1 CPD 233.


Deputy Comptroller General
of the United States