

DECISION**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548*Proct**8667*

FILE: B-192305

DATE: December 22, 1978

MATTER OF: Dictaphone Corporation *CNG 01046***DIGEST:**

1. Protest [allegation that agency failed to request formal price quotations on mandatory Federal Supply Schedule (FSS) procurement] is denied, since regulations prohibit such requests.
2. Protester has not shown that agency determination that dictation system offered under FSS contract meets its needs is unreasonable.
3. Awardee has taken no exception to Government requirements. Whether awardee does or has provided equipment that meets Government requirements is a matter of contract administration, and not for GAO consideration.
4. Since Government can fulfill its minimum needs under mandatory FSS contract, it would be improper for Government to purchase dictation system which admittedly would require purchase of component on the open market.

Dictaphone Corporation (Dictaphone) has protested the award by the Department of the Army (Army), Fort Ord, California, of a delivery order under a General Services Administration (GSA) Federal Supply Schedule (FSS) contract to Lanier Business Products, Inc. (Lanier), for a dictation system for the Silas B. Hays Army Hospital.

Dictaphone alleges that it was not requested or permitted to supply a "formal written quote" on this procurement and, therefore, the Government's best interests are not being served. Dictaphone also contends that the Lanier dictation system being purchased will not interface properly with the existing telephone system,

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while Dictaphone's system will. The protester further states that if Lanier intends to furnish another device, not listed on the FSS, that will permit a proper interface, then Dictaphone would protest on the grounds that the device would not meet Federal Communications Commission (FCC) regulations and would either be procured on an open-market basis or provided at no charge.

Dictaphone admits that part of the Army requirement, a record-keeping device, is not offered under its FSS catalog. It argues that since Lanier's system will not perform properly without additional devices that must be procured on the open market, then Dictaphone should also be afforded the opportunity to compete on an open-market basis.

By letter of September 20, 1978, Dictaphone supplemented its protest with the following additional grounds. It alleges that Lanier has supplied equipment not in accordance with the awarded delivery order, and that Lanier has installed equipment not listed on its GSA contract. Dictaphone argues that this violates both the GSA contract and a representation made by Lanier that every item being provided is covered under its FSS contract and will interface with the Fort Ord system without the need for additional equipment.

The Army argues that since the items being procured are listed on a mandatory FSS, a competitive procurement was prohibited. The Army maintains that the appropriate regulations for mandatory FSS procurements were followed. Also, the Army states that Lanier's FSS contract listed all the items needed for a complete system while Dictaphone's did not, that Lanier's system will interface properly with the Fort Ord system without additional equipment, and that Lanier's price was lowest overall.

GSA annually enters into a multitude of FSS contracts. See 41 C.F.R. § 101-26.401, *et seq.* (1977). These contracts are awarded through competitive procedures and provide for the contractor to furnish the item called for upon the issuance of a purchase order against the contract by a Federal agency. Many

of these contracts are mandatory for use by Federal agencies. 41 C.F.R. § 101-26.401-1. Defense Acquisition Regulation (DAR) § 5-102.1 (1976 ed.) recognizes the requirement to purchase supplies from mandatory FSS's. DAR § 5-102.3, p.5:9, lists "Office Type Dictating and Transcribing Machines" as mandatory. Therefore, the Army was required to purchase the dictating system from the FSS if its minimum needs were met.

In making such purchases, 41 C.F.R. § 101-26.401(a), provides, in part, that:

"* * * Agencies shall not solicit bids, proposals, quotations, or otherwise test the market solely for the purpose of seeking alternate sources to Federal Supply Schedules. Further, agencies shall not request formal or informal quotations from Federal Supply Schedule contractors for purposes of contract price comparisons."

It was not only proper for the Army to refrain from requesting formal quotations in this case, but would have been in violation of regulations if it had requested quotations.

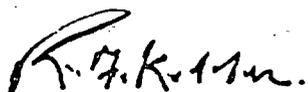
Regarding Dictaphone's allegation that Lanier's offered system will not interface properly with the hospital telephone system, the Army determined that the equipment on Lanier's FSS contract would meet its minimum needs, including successful interfacing. The determination of the needs of the Government and the method of accommodating such needs is primarily the responsibility of the procuring agency, 46 Comp. Gen. 606 (1967), and such determinations will not be questioned by our Office unless there is a clear showing of unreasonableness. See, e.g., METIS Corp. 54 Comp. Gen. 612 (1975), 75-1 CPD 44. Dictaphone has not made such a showing.

Concerning Dictaphone's allegations that Lanier has delivered a Model LX-512 dial dictate panel rather than the LX-510 listed on its schedule, that the Model LTC tone coders delivered are not on Lanier's Schedule, and that Lanier has installed certain equipment manufactured by another firm, Lanier has taken no exception to any of the Army's requirements and, therefore, its FSS contract is valid on its face. Whether, in fact, the equipment provided meets the requirements is generally a matter of contract administration for resolution by the contracting agency and will not be considered here. Borg-Warner Health Products, Inc., B-1878552, July 21, 1977, 77-2 CPD 42; Edward E. Davis Contracting, Inc., B-179719, January 29, 1974, 74-1 CPD 37.

In any event, we have been informed by the Army that the Model LX-512 was installed on an interim basis, and that the LX-510 is now in place. Also, the LTC tone coders are on Lanier's Schedule at page 15. Finally, while there is an interface device being used which is not on Lanier's Schedule, the Lanier system will meet the Army's minimum performance requirements without the device. Lanier has provided the device at no charge to the Government in order to upgrade performance which might otherwise be degraded by Fort Ord's old telephone system.

Finally, since the Army can fulfill its minimum needs from the mandatory FSS, it would be improper for the Army to purchase Dictaphone's system, which admittedly would require purchasing a component on the open market.

Accordingly, the protest is denied.


Deputy Comptroller General
of the United States