

Proc. I

DECISION



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

9646

FILE: B-193716

DATE: March 23, 1979

MATTER OF: Dictaphone Corporation

CNG 01046

DIGEST:

[Price Reduction and Possible
Violation of Basic GSA Contract]

Protest against Federal Supply Schedule procurement on ground that low offeror's price reduction violated basic GSA contract is denied because contract with GSA contained clause permitting price reductions without GSA approval or acceptance.

AGC 00017

AGC 00629

DLG 01387

Dictaphone Corporation has protested the placement of an order by Wright-Patterson Air Force Base with Donnellon McCarthy, Incorporated, under General Services Administration (GSA) Federal Supply Schedule contract No. GS-00S-66650 with Lanier Business Products. Donnellon McCarthy is the authorized sales representative for Lanier Business Products in the region which includes Wright-Patterson Air Force Base. The order was for dictation and transcription equipment and related accessories. Dictaphone contends that the award was improper because the prices quoted and used by Donnellon McCarthy in this sale were 25 percent less than the prices listed by Lanier Business Products in the Federal Supply Schedule under contract No. GS-00S-66650.

CNG 01045

The Air Force explains that before placing the order, the contracting activity made telephone inquiries of both Donnellon McCarthy and Dictaphone--the firms listed on the Federal Supply Schedule for the required equipment. Donnellon McCarthy informed the contracting officer that Donnellon McCarthy was then offering a temporary price reduction from the prices listed on the Federal Supply Schedule and that the lower prices were available to all of Donnellon McCarthy's customers for the period from November 1, 1978, through January 1, 1979. Since Donnellon McCarthy's quoted prices were lower than Dictaphone's quoted prices, the order was issued to Donnellon McCarthy on November 29, 1978.

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Dictaphone contends that any temporary price reduction offered by Donnellon McCarthy would have to have been submitted to and accepted by the GSA before such prices could properly have been offered to any Government procuring activity under Lanier Business Products' Federal Supply Schedule contract. Since Lanier Business Products' standard Federal Supply Schedule prices were higher than Dictaphone's prices for the dictation and transcription equipment ordered, Dictaphone contends that the order should have been placed with Dictaphone. Accordingly, Dictaphone requests that our Office recommend that the Air Force cancel the order with Donnellon McCarthy and reorder the equipment from Dictaphone.

GSA annually enters into a multitude of Federal Supply Schedule contracts. See 41 C.F.R. § 101-26.401, et seq. (1977). The prices offered by the contractors are filed with GSA, and price lists in conformity therewith are distributed by the contractors to the various Government agencies for use in purchasing the items. Contractors are allowed to reduce prices during the schedule contract period provided an equivalent price reduction is applied for the duration of the contract. 41 C.F.R. § 101-26.408-5 (1977). Accordingly, Lanier Business Products' contract with GSA contained a price reduction clause which stated:

"If, after the date of the offer, the Contractor (i) changes any of the pricing documents, including price lists and information in the Discount Schedule and Marketing Data sheets, or related discounts which were furnished to and used by the Government as the basis for negotiating the prices in this contract, or (ii) sells any item covered by this contract at a price below that in any of the above referenced pricing documents so as to reduce any price to any customer, other than the Federal Government, for sales within the contract maximum order limitation, an equivalent price reduction shall apply to this contract for the balance of the contract period or until the price is further reduced or, in the case of temporary price reductions, for the duration of any temporary price reduction period. 'Equivalent price reductions' means that the contract price

shall be reduced so as to maintain the same price or discount relationship between the Government and other customers as existed at the time contract negotiations were concluded. The reduction will be computed by determining the percent by which the price to any customer was reduced and then reducing the contract price by the same percentage. For purposes of this clause any method by which the price is effectively reduced shall constitute a price reduction; provided that temporary price reductions shall be made available to the Government under the same terms and conditions as to other customers, except that in lieu of accepting bonus goods, the Contractor's cost of such goods shall be deducted from the contract price, unless the bonus goods are identical to and accompany the goods being purchased in which case the Government will accept the bonus goods."

The purpose of such a clause is to assure that the Government receives the benefit of any general price reduction that may occur during the contract period. As a result of a price reduction, a contractor may be able to better its competitive position during the contract period. However, all contractors have the same opportunity to reduce their prices during the term of the contract. Accordingly, Lanier Business Products did not have to "submit" and GSA did not have to "accept" price reductions as Dictaphone contends. Under the price reduction clause quoted above, a contractor may offer a price reduction at any time and by any method without prior or subsequent GSA approval or acceptance. Microcom Corporation, B-186057, November 8, 1976, 76-2 CPD 385. Therefore, the Air Force's acceptance of the benefit of the lower price offered by Donnellon McCarthy was proper.

The protest is denied.


Deputy Comptroller General
of the United States