

12823 PK-II

**DECISION**



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

FILE: B-196189; B-196190 DATE: February 12, 1980

MATTER OF: Lanier Business Products, Inc. - CNG 01045  
**[Protest of Contract Award]**

**DIGEST:**

Agency's recalculation of quotation to include volume discount provided for by quoting firm's Federal Supply Schedule (FSS) contract is not legally objectionable when it is clear that FSS transaction is intended and quotation clearly reflects prices which have not been reduced pursuant to discount to which Government is legally entitled.

A6C 761 - CNG 01046  
Lanier Business Products, Inc. (Lanier) protests the awards by the Veterans Administration's (VA) Regional Offices in Seattle, Washington and Hartford, Connecticut - 3886 to Dictaphone Corporation (Dictaphone) for dictating equipment. Competitive quotations were requested and awards were made under the General Services Administration (GSA) Federal Supply Schedule (FSS) contract No. GS-00S-92630.

As its basis for protest Lanier contends that its offer was low and should have been accepted. Instead, after quotations were received, the VA noted that Dictaphone's offers did not include the volume discount established by the FSS contract. Dictaphone was contacted and asked to clarify its price and it informed the VA that its quotations should be reduced to include the volume discount provided in the FSS contract. Lanier contends that Dictaphone's original quote included the FSS discount and should not have been further reduced. For the reasons set forth below, the protest is denied.

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The record shows that the VA requested quotes for a central dictating system in accordance with VA specification No. X-1710, for both its Seattle, Washington and Hartford, Connecticut regional offices. The specification stated that all items must be available on the current GSA Schedule. Lanier and Dictaphone submitted offers for both VA regional offices prior to the closing date. Both offers included trade-in provisions.

Initial comparisons showed that Lanier was the low offeror in each case. However, the VA noted that in neither case had Dictaphone explicitly included the volume discount established in the contract with GSA under the FSS. When queried by VA, Dictaphone replied that all items were shown at list price in accordance with the GSA catalog for VA calculation of the GSA discount based on the total dollar volume of the system. Application of this discount resulted in Dictaphone's displacing Lanier as low offeror for both regional offices.

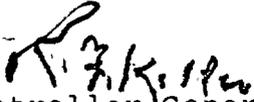
We believe VA correctly determined Dictaphone to be the low offeror. The FSS contracts of both companies indicate an applicable price per item and contain an identical provision for a discount ranging between seven and 15 percent depending on the total dollar volume of the items ordered. It is also clear that, although the quotations included, at VA request, trade-in offers which are not explicitly provided for by the FSS contracts, the quotes were submitted with a view toward the issuance of a delivery order under the FSS and not as independent offers subject to price negotiation. (The VA, of course, is a mandatory user of this FSS, see 41 C.F.R. 101-26.401 (1979); the request for quotations required quoters to reference their FSS; and trade-in offers are permissible under the FSS. See, e.g., Dictaphone Corporation, B-194128, June 19, 1979, 79-1 CPD 439.)

Since it could be readily determined from Dictaphone's quotations that they contained the FSS listed prices, the VA's recalculation of Dictaphone's quotations to reflect the discount to which the Government

was legally entitled is not legally objectionable. The fact that VA first contacted Dictaphone for clarification is not legally significant since under these circumstances we believe the VA was entitled to the discount on the basis of Dictaphone's written quotations without any further input from that firm.

This situation would not have arisen, of course, if the VA's requests for quotations designated an appropriate space for offerors to fill in the applicable volume discount. We are recommending that future solicitations make such provision in appropriate cases.

The protest is denied.

  
Deputy Comptroller General  
of the United States