

DECISION



Transportation
13903
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

[Protest Against Air Force Award of Purchase Order]

FILE: B-197300

DATE: June 4, 1980

MATTER OF: Sony Industries

DIGEST:

1. Question whether Air Force properly accepted voluntary price reduction submitted in response to temporary funding limit need not be decided because additional funds would have been obtained to support award of purchase order even if reduction had been rejected.
2. Alleged failure of awardee to give timely notice to General Services Administration of voluntary price reduction under Federal Supply Schedule contract is matter of contract administration which GAO will not review.
3. GAO will not investigate contractor's intended method of compliance with Buy American Act requirements.

Sony Industries (Sony) protests an award of a purchase order for dictation equipment to Dictaphone Corporation (Dictaphone) by Luke Air Force Base under General Services Administration (GSA) Federal Supply Schedule (FSS) contract No. GS-00S-92630. Sony alleges that the Air Force improperly accepted a reduction in Dictaphone's price for the equipment prior to the award and that the items delivered under the purchase suggest Buy American Act privileges should not have been granted to Dictaphone. We cannot question the award of the order based on our review of the record. *CWG*

Price Reduction

Offers were received for the requirement on December 10, 1979, from three FSS "multiple award" contractors. The Air Force decided that only Sony's

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offer should be adjusted under the Buy American Act from \$19,293.73 to \$27,384.86. Because of this adjustment, Dictaphone became the low offeror at a price of \$21,384.81.

Since the Air Force's fund certification on the purchase request was only \$20,600, Dictaphone was then notified that award would have to be delayed while the additional \$784.81 was authorized. In order to expedite the award, Dictaphone orally communicated a voluntary price reduction of \$784.81 in its offer which was accepted as the price of the awarded order. The reduced prices, for the several items, were confirmed by Dictaphone in a letter which also advised that the prices had been communicated to GSA.

Sony contends that the acceptance of the price reduction was improper because: (1) other offerors were not given the opportunity to reduce their prior offers; and (2) Dictaphone had not, in fact, submitted any notice of price reductions to GSA concerning the equipment procured by Luke Air Force Base as required under its FSS contract.

In reply, the Air Force argues that the voluntary price reduction by Dictaphone did not prejudice Sony in any way since Dictaphone was the low offeror and would have received the award in any event once the necessary additional funding was approved.

The general propriety of allowing an otherwise successful offeror to reduce its price after selection but prior to award is well established. See, for example, Blue Cross of Maryland, Inc., B-194810, August 7, 1979, 79-2 CPD 93, in which we said:

" * * * If the Government elects to consider a late modification received from an otherwise acceptable low offeror, other offerors may not complain because their relative standing is not affected."

However, in King-Fisher Company, B-192480, November 3, 1978, 78-2 CPD 321, we upheld the rejection of a voluntary price reduction offered by the low bidder where the low bid as originally submitted was unacceptable

as exceeding the agency's available funding. Furthermore, in King-Fisher, supra, the original bid exceeded the Government estimate by 15.6 percent and we noted that even if the reduced price had been accepted it still would have exceeded the agency's funding limitation. Here, it is clear that the Air Force believed the initial price offered was reasonable and that additional Air Force funds would have been obtained to support an award to Dictaphone even if the reduction had been rejected. Dictaphone's price reduction was proposed in order to expedite the award and to avoid additional delays. Under these circumstances, we see no reason to question the action taken by the Air Force.

As to Sony's allegation that Dictaphone has failed to provide GSA with appropriate notice of this price reduction, we have been informed by a representative of GSA that Dictaphone provided notice of a pricing reduction regarding the company's "telephone interface" product line in October 1979. This October 1979 reduction apparently represents at least part of the December reduction in question. In any event, we do not believe that this issue concerns any possible impropriety in the award process. Whether or not Dictaphone filed notice with GSA is, in our view, essentially a matter for GSA to resolve in the course of the administration of its FSS contract with Dictaphone and is not for resolution under our Bid Protest Procedures, 4 CFR Part 20 (1980). Nicolet Technology Corp., B-192895, September 28, 1978, 78-2 CPD 244.

In this connection, under the FSS contract between GSA and the supplier, GSA is provided with remedies if timely notice is not given. The pertinent FSS contract provision states that where a contractor fails to give timely notice of the price reduction to GSA, the price reduction is then applicable for the life of the contract or until the price is further reduced. Under this provision, failure to give notice may also provide a basis for GSA to terminate the contract for default. Under these circumstances, we believe GSA is the proper party to consider Sony's allegation that Dictaphone is not in compliance with the FSS contract.

Further, Sony's apparent belief that the failure to notify GSA or another procuring agency of a voluntary price reduction is a benefit to the supplier in subsequent procurements is not necessarily valid. Although the issue of notice was raised in a somewhat different context, our decision in Dictaphone Corporation, B-195043, September 25, 1979, 79-2 CPD 222, illustrates this point. In that case, the supplier, Dictaphone, did not comply with notice requirements for informing individual agencies of price reductions and for supplementing GSA's authorized price list. As a result, the contracting agency was unaware of a price reduction offered by Dictaphone and used the then-current higher listed price for Dictaphone's equipment rather than the company's reduced price. Because notice of the price reduction was not properly given by Dictaphone, the order for the equipment was awarded to another supplier. See also, Motorola, Inc., B-191339, October 19, 1978, 78-2 CPD 287. We have also stated that the burden is on the supplier of an item under an FSS contract to notify contracting activities of a price reduction communicated to GSA, and that, absent actual notice of the reduction, an agency may award based on a higher price. Dictaphone Corporation, supra.

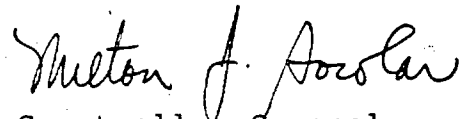
Buy American Act Application

Sony alleges that 75 percent of the cartons containing Dictaphone's equipment delivered for this procurement were labeled "made in Japan" and suggests that Dictaphone's Buy American Act preference is not justified. We have considered and rejected a similar contention made against Dictaphone in the past. See Lanier Business Products, Inc., B-193204, December 12, 1978, 78-2 CPD 407. Our Office will not investigate the contractor's intended method of compliance with its obligation to provide American-made equipment except under circumstances not applicable here, since that issue is a matter of contract administration and has no impact on the validity of the issuance of the purchase order. Lanier Business Products, supra;

Propper Manufacturing Company, B-193230, February 16, 1979, 79-1 CPD 117.

Sony has also requested a copy of the purchase order, delivery receipt, and Dictaphone's Buy American Act certification for the equipment. The delivery order used as the award document was included in the contracting officer's report, a copy of which was furnished to the protester. With regard to the requested documents, which are not in our possession, the protester should apply to the Air Force.

The protest is denied.



For the Comptroller General
of the United States