

McCann, P.L.

Subst 14580

DECISION



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

FILE#-197520

DATE: August 15, 1980

MATTER OF: Dictaphone Corporation *CNG 01046*

DIGEST:

Protester's challenge to requisition of dictation equipment under Federal Supply Schedule contracts with multiple-source provisions on grounds that agency made award to higher priced supplier without justification is denied where agency minimum needs determination is not shown to be unreasonable.

Dictaphone Corporation (Dictaphone) [protests the issuance of two delivery orders] under General Services Administration (GSA) Federal Supply Schedule contracts to Lanier Business Products, Inc. (Lanier), for dictation equipment at Chanute Air Force Base Hospital, Illinois (Hospital).

Against

*AGC 00007
AGC 01045*

DLG 00066

The protester contends that it offered the lowest price and that Hospital personnel determined that its system was technically acceptable. Accordingly, the protester argues that the delivery orders should be rescinded and orders placed with it.

We find the protest to be without merit.

In September 1978, personnel at the Hospital recognized a need for a new dictation system and, from then until November 1979, had various contacts with several firms including a site visit by Dictaphone. After establishing the requirements of the system and reviewing the equipment offered, it was determined that only Lanier offered a system meeting the Hospital's requirements. Since all components needed to make up the required system were available under schedule contracts, no formal solicitation was issued. Hospital

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personnel then prepared a purchase request and a sole-source letter, dated November 16, 1979, requesting purchase from Lanier. Another letter, dated December 12, 1979, identified the specific characteristics that the dictation system must possess to meet the Hospital's minimum needs--a 10-digit code capability to link patient, doctor, and department and production of an end product on standard size paper, or on standard size Hospital forms.

A representative of the contracting officer met with Hospital personnel concerning the purchase request and concluded that only the Lanier system met the Hospital's minimum needs. Subsequently, Dictaphone was contacted to verify that Hospital personnel had correctly evaluated the Dictaphone system. The representative was advised that Dictaphone did not presently have a 10-digit capability but anticipated it would add this feature sometime in February 1980. Dictaphone also conceded that its printer utilizes a roll-type paper which is only approximately 5-1/2 inches wide. Because of this, the contracting officer issued the two delivery orders dated January 17, 1980, against Lanier's schedule contracts.

When using schedule contracts with multiple-source provisions, the agency is permitted to procure from other than the lowest priced source if consistent with its specific minimum needs. See Defense Acquisition Regulation § 5-106(a) (1976 ed.); 41 C.F.R. § 101-26.408 (1979); Olivetti Corporation of America, B-195243, September 21, 1979, 79-2 CPD 212; Microcom Corporation, B-186052, November 8, 1976, 76-2 CPD 385. We will not object to the agency's needs determination unless the determination is shown to be unreasonable. Furthermore, while a needs justification must be adequately substantiated, the fact that a protester disagrees with the agency's reasoning is not necessarily sufficient to show the justification is objectionable. Quest Electronics, B-193541, March 27, 1979, 79-1 CPD 205; Lanier Business Products, Inc., B-193597, February 22, 1979, 79-1 CPD 125; Dictaphone Corporation; Business Equipment Center, Ltd., B-192314, B-192373, November 14, 1978, 78-2 CPD 345.

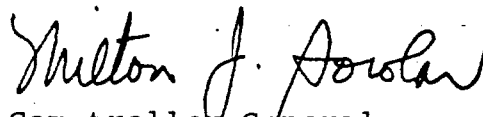
Dictaphone argues that its system not only met but exceeded the agency's minimum needs by providing a 17-digit code capability, and that the agency was so notified. Also, the requirement for a printer which uses standard size paper was merely a personal preference.

Initially, we observe that at no time does the record show that Dictaphone's system was considered compliant with the agency's needs. As for the system's code capability, the agency's contemporaneous memorandum of the predelivery order contact with Dictaphone directly conflicts with Dictaphone's unsupported version. Therefore, the protester has not sustained its burden of proof. See Patton Electric Company, Inc., B-194565, August 27, 1979, 79-2 CPD 154.

In any event, the record clearly shows that the establishment of a minimum need of a printer which uses standard size paper was made so that medical records could be maintained more efficiently and at a lower cost. The Lanier system provides direct copy to standard size paper as opposed to the 5-1/2-inch paper roll which Dictaphone provides. Use of the Dictaphone system would require additional personnel and/or time to transcribe the data from the 5-1/2-inch paper roll to standard size paper, and the 5-1/2-inch paper roll would be an added expense. Personal preference, therefore, was not the basis for the selection of a printer which uses standard size paper.

On the basis of our standard of review stated supra, we see no grounds to conclude that the Hospital's position was unreasonable.

The protest is denied.



For The Comptroller General
of the United States