

14871 MR Boyle

DECISION



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

[Protest of Purchase Order Award] PL1

FILE: B-198913

DATE: September 12, 1980

MATTER OF: Lanier Business Products

CNG 01045

DIGEST:

1. Although RFQ was incomplete because it did not specify useful life period to be used in determining effective low quoter, actual use by Veterans Administration of period in excess of 38.4 months was not prejudicial to protester under circumstances. Therefore, reprocurement under new RFQ is not required.
2. Since RFQ did not contain "late quotations" provision, and because GAO is unaware of any requirement mandating inclusion of provision in RFQ, amended quotation submitted 1 month after quotation closing date may not be considered.

Lanier Business Products (Lanier) protests the May 1980 award of a purchase order to Dictaphone Corporation under request for quotations (RFQ) No. "pc" issued by the Veterans Administration (VA) for central dictation equipment to be used at two divisions of the VA Medical Center, Lexington, Kentucky. The VA has deferred delivery until the protest is resolved. Based on our review of the record, we deny the protest.

The RFQ called for a price to furnish and install the new dictation equipment and a price for exchange of certain old dictation equipment. Lanier's apparent agent (Donnellon-McCarthy, Inc.) and Dictaphone submitted the following net quotes based on the quoter's Federal Supply Schedule contract prices.

Dictaphone	\$35,500.00
Lanier	30,204.50

The RFQ referred to and was based on VA specification No. X-1710 dated June 1, 1977, for central dictation

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systems, which required bidders to inform the contracting officer of the types and quantities of telephone company interface equipment required so that appropriate cost data might be obtained and utilized as an element in determining the effective low quoter. There was one important difference between the proposed Dictaphone and Lanier systems: Lanier's required 14 pieces of telephone company interface equipment (billed at \$9.85 each per month) that Dictaphone's did not need. This amounts to \$1,654.80 per year for the Lanier system in telephone company rental charges. Thus, Lanier would be the low quoter only if the useful life of the dictation equipment would be less than 38.4 months. The RFQ, however, did not disclose the useful life of the system to be used for evaluation purposes.

In evaluating the quotations, the VA used a period in excess of 38.4 months, making Dictaphone the effective low quoter. The record is not clear concerning whether the VA used the 10-year useful life listed in the VA Supply Catalog or the 5-year life expectancy in hospital environments (due to abnormal utilization of dictating systems) previously suggested by Lanier. At times, Lanier bases its quotes on a 5-year useful life. See, e.g., Philips Business Systems, Inc., B-194477, April 9, 1980, 80-1 CPD 264.

Lanier contends that it was improper for the VA to include the telephone charges in the evaluation of quotations because, in its view, the RFQ did not so provide. The VA reports that this specification has been used for several years and Lanier should have been aware of the VA's intent to consider "life-cycle" telephone charges in evaluating proposals. Both Lanier and the VA cite our decision in Philips Business Systems, Inc., supra, in support for their positions.

In that decision, we considered a purchase order awarded to Lanier prior to October 1978 under another RFQ which involved the same specification. There, the VA added telephone charges to Lanier's quote but not to the protester's, and the VA used a 5-year useful life for the system. Lanier's price was still low. The protester argued that the VA should have used a longer period since the advantage shifted from Lanier

during the sixth year. We held that no award should have resulted because the useful life to be used for evaluation purposes should have been disclosed in the RFQ to permit fair and equal competition. This conclusion was especially appropriate given the prejudicial effect that the period of system life had on the selection of the successful quoter.

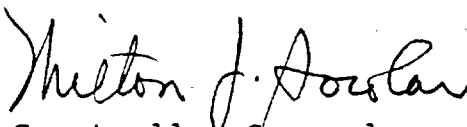
Here, we note that while the quotes were received prior to the issuance of our decision in Philips Business Systems, Inc., from the prior VA interpretation in that situation and the clear language of this RFQ, Lanier should have been aware of the VA's intention in the instant procurement to consider telephone equipment charges in determining the low quoter. Moreover, unlike the circumstances in Philips Business Systems, Inc., based on our review of the record, we do not find evidence of prejudice here resulting from the period of the useful life chosen. In view of Lanier's prior statement that 5 years would be an appropriate system's life and because Lanier would be low only if a period less than 38.4 months were to be used, we have no basis to object to the VA's determination that Dictaphone's quote contained the effective low price. Therefore, we cannot conclude that the VA is required to repro cure the requirement under the present circumstances. As a result of the Philips decision, we trust, however, that the VA will include the useful life in future RFQs.

Lanier also contends that the VA should have considered its amended quote, based on the same configuration proposed by Dictaphone, which was submitted about 1 month after the quotation closing date. We find no "late quotations" provision in the RFQ which would permit quoters to submit amended quotations after the closing date; nor are we aware of any requirement mandating the inclusion of a "late quotations" provision here. In essence, the RFQ contained the VA's implied promise to consider only those quotations submitted prior to the closing date. In our view, offerors were not entitled to amend quotations after the closing date since that would permit competition on an unequal basis. Cf. Ikard Manufacturing Company, B-192308, October 25, 1978, 78-2 CPD 301, where we took no objection to the

rejection of a late quotation, in part, because the RFQ did not contain a "late quotations" provision.

Finally, Lanier suggests that the VA should have conducted discussions to remove any doubt concerning the interpretation of its quote. This suggestion is without merit since Lanier's initial quotation was "responsive" to the RFQ and subject to only one reasonable interpretation.

Protest denied.


For the Comptroller General
of the United States