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DECISION



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

*[Protest Alleging Agency Failed To Provide Adequate
Statement of Needs]*

FILE: B-196512

DATE: September 17, 1980

MATTER OF: Dictaphone Corporation

DIGEST:

1. Doubt as to when protester knew or should have known of basis for protest is resolved in favor of protester.
2. Contracting agency has failed to provide offerors with adequate statement of its needs where request for quotations merely identifies model numbers of particular vendor without list of salient characteristics.

Dictaphone Corporation protests the Department of the Army's issuance of delivery orders to Phillips Business Systems (Phillips) for the purchase of a Norelco central dictation system and the lease of certain other Norelco dictation equipment for use at two different locations at Fort Huachuca, Arizona, under the General Services Administration Federal Supply Schedule (FSS). Dictaphone contends that it has FSS-listed equipment which could meet the Army's needs at a lower price than will Phillips, but that the Army failed to adequately disclose its minimum needs when soliciting quotations.

The protest is sustained.

Prior to issuing the orders the Army telephonically requested quotations from three firms which held FSS contracts: Dictaphone, Phillips, and Lanier Business Products, Inc. The agency provided the companies with the model numbers, FSS identification numbers, and quantities of Norelco dictation equipment which it believed would meet its lease and purchase needs. The Army found the equipment offered by Dictaphone, which submitted

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the lowest monthly rental and purchase prices, to be unacceptable because it lacked a number of Norelco features that the agency considered necessary. For example, with respect to the lease order, it appeared to the Army that the system offered by Dictaphone did not include either a mini-cassette transcription unit or a built-in intercom capability, and that the equipment failed to meet the Army's need for components which would not require "level control" or modifications to the existing telephone system. Regarding the purchase order, the Army determined that the Dictaphone equipment lacked the required sound screen, electronic indexing capability, built-in intercom, rotary dial coupler capability, digital clock, alarm system, and rechargeable battery system.

The purchased Norelco equipment has been delivered, and the lease for the other Norelco equipment will expire shortly.

Dictaphone asserts that the equipment that it did propose in fact provides some of the features which the Army believes were not included. Dictaphone protests that when its quotations were solicited it was not advised of the features which the Army evidently considered mandatory. As stated above, Dictaphone was furnished only a list of Norelco model numbers, FSS item numbers and quantities. Dictaphone contends that had it known those salient features it would have included in the quotations certain additional equipment so that all of the Army's leasing needs would have been met, and all of the purchase needs except for the digital clock and alarm system, which the firm argues should not have been considered essential anyway, would have been fulfilled.

Initially, we note that the Army maintains that the protest is untimely under section 20.2(b)(2) of our Bid Protest Procedures, 4 C.F.R. part 20 (1980), which requires that protests be filed not later than 10 working days after the basis for protest is known or should have been known, whichever is earlier. The Army asserts that Dictaphone's representatives were contacted by telephone more than 10 working days before the protest was filed regarding the agency's decision to place the orders with Phillips and the reasons therefor. However, the protester

asserts that the Army only advised the firm in the referenced conversation that it was considering issuing the delivery orders to Phillips. Dictaphone contends that it did not learn until the following week that the orders actually had been placed or the Army's reasons for not selecting Dictaphone, in which case the protest would be timely filed.

We find the record to be inconclusive on this issue. Where doubt exists as to when a protester knew or should have known of the basis for protest, that doubt is resolved in favor of the protester. Memorex Corporation, 57 Comp. Gen. 865 (1978), 78-2 CPD 236. Accordingly, we will consider the protest on the merits.

To the extent that the Army decided to involve Phillips, Dictaphone, and Lanier in the selection process, it was obligated to treat them fairly and equally. See Dictaphone Corporation, B-193614, June 13, 1979, 79-1 CPD 416. We have previously determined that an agency has failed to provide an adequate statement of its needs to allow firms to compete on an equal basis where the request for quotations merely lists brand name items which meet the agency's requirements without listing the items' salient characteristics; it should not be left up to an offeror to guess which features of the brand name equipment the contracting agency considers necessary to meet its minimum needs. Lanier Business Products, Inc., B-195346, October 22, 1979, 79-2 CPD 275. In fact, in its report on the protest, the Army states that it recognizes this deficiency in the procurement and has initiated action to assure that offerors who are asked to furnish information in future procurements are provided with an adequate statement of the agency's requirements.

The protest is sustained.

Nevertheless, no remedial action is practical since the purchased Norelco equipment has been delivered, and the lease for the other equipment has almost expired. However, by separate letter we are advising the Secretary of the Army of the above-stated procurement deficiency.

Harry R. Van Cleave
For the Comptroller General
of the United States