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DECISION



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

FILE: B-203977

DATE: February 23, 1982

MATTER OF: Lanier Business Products, Inc.

DIGEST:

1. Oral amendment to request for quotations is not prejudicial to party who is informed of amendment and given opportunity to respond to it.
2. Agency originally requested quotations on equipment, listed on Federal Supply Schedule, without available extra feature and later issued oral amendment asking for alternate quotes on equipment with that feature. Although as a procedural matter agency should have amended solicitation to reflect its actual minimum needs, issuance of a purchase order based on the low quote on equipment with the extra feature, rather than lower quote on equipment without the feature, is not legally objectionable since the record shows that the agency's actual minimum needs were for equipment purchased.
3. Contracting officer's reinstatement of canceled solicitation and quotes received thereunder, including those received in response to an oral solicitation amendment, is not legally objectionable where no offerors have been prejudiced.

Lanier Business Products, Inc., protests the issuance of a purchase order to Dictaphone Corporation, under a General Services Administration Multiple-Award Federal Supply Schedule (FSS) contract, for a centralized dictation system at the Veterans Administration (VA) Medical Center, Indianapolis, Indiana.

The protester contends that it offered the lowest price in response to a request for quotations (RFQ) issued by the VA. Lanier argues that it therefore should have received the purchase order. We find no merit to the protest.

The following sequence of events establishes the factual basis for Lanier's protest. After issuing the RFQ on May 26, the contracting officer was informed by the VA personnel for whom the equipment was being purchased that the written specifications did not include a video screen readout (CRT) as a feature of the required Management Control System. Since a CRT was in fact needed, the contracting officer called each prospective offeror and asked that it submit an "alternate bid" for a system with a CRT in addition to its quote on the written specifications. Each of the prospective offerors, including Lanier, complied with this request, and submitted a quote on a system with a CRT as well as a quote on a system without one.

After opening and recording the quotes, the contracting officer discovered that the lowest quote, from Lanier, was on a system without a CRT, that is, as originally specified in the RFQ. Since he believed that he could only issue a purchase order on the basis of the lowest quote received, the contracting officer canceled the RFQ, and issued a revised RFQ for a system with a CRT. Shortly afterward, the contracting officer was informed of two decisions of this Office, Education Turnkey Systems, Inc., 57 Comp. Gen. 8 (1977), 77-2 CPD 267, and Baker Manufacturing Company, Inc.; Joerns Furniture Company; Carsons of High Point, North Carolina, 59 Comp. Gen. 573 (1980), 80-2 CPD 1, which, he was told, respectively state that an oral solicitation change given to all offerors who are then able to offer on a common basis is not prejudicial, and that canceled solicitations may be reinstated.

Relying on these decisions, and because of his concern that a resolicitation would create an "auction" situation, the contracting officer reinstated the May 26 RFQ and the quotes received thereunder, since quotes had in fact been received for the system the VA wanted (one with a CRT) as a result of his prior oral amendment to the RFQ. He notified each offeror of this action by letter dated June 26, 1981. A purchase order was issued to Dictaphone on June 29 since its quote on the system with a CRT was low.

In Education Turnkey Systems, supra, we held that while an agency should have confirmed in writing an oral change to the solicitation's recommended level of effort, there was no basis to disturb the award since all offerors were informed of the change and were able to compete on a common basis. Lanier contends that the instant case is distinguishable because it was a procurement for equipment available on the FSS, and argues that the rules governing such a procurement are stricter than those governing a negotiated procurement such as the one in Education Turnkey Systems. Lanier argues that the contracting officer therefore did not have the discretion to issue an oral change here.

We are not persuaded that the fact that this is a FSS procurement and the one in Education Turnkey Systems was not has any bearing on the applicability of that case to this one. The holding in Education Turnkey Systems did not turn on the contracting officer's discretion to issue an oral change but rather on whether any offeror was prejudiced by the fact that he had improperly done so. The question presented in that case, as well as this one, is whether the contracting officer's failure to reduce an oral solicitation amendment to writing prevented offerors from competing on a common basis. Where, as here, all offerors are adequately advised of the amendment and given an opportunity to respond, we believe that they have been afforded an equal opportunity to compete. See 49 Comp. Gen. 156 (1969).

Lanier also argues that the contracting officer did not change the specifications to require a system with a CRT, but simply added a request for alternate quotes on such a system. We agree with this position, which is supported by the contracting officer's own statement that he requested quotes on the written specifications plus alternate quotes for a system with a CRT. We do not agree, however, with Lanier's contention that this prevented the agency from awarding to the low offeror on the alternate system.

Lanier asserts that since the contracting officer did not change the solicitation to require quotes on a system with a CRT but instead solicited quotes on both a system with one and without one, it is evident that the system without a CRT meets the VA's minimum needs. Further, since the Federal Property Management Regulations require the VA, as a mandatory user of the FSS,

to order the dictating equipment which meets its minimum needs at the lowest delivered price under the FSS (41 C.F.R. § 101-26.408-2 (1980)), Lanier argues that the VA could not legally award on the higher priced system with a CRT.

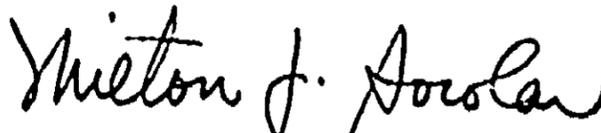
We find no merit to this position. Although we believe that, as a procedural matter, the agency should have issued a written amendment to the RFQ to accurately reflect its needs, rather than soliciting alternate quotes for a system which would meet them, we find no basis to conclude that the failure to do so resulted in an improper purchase. The record shows that the VA's actual needs were for a system with a CRT, and that after soliciting and receiving quotes on such a system, it issued a purchase order for one at the lowest delivered price available.

Lanier further contends that the contracting officer's reinstatement of the May 26 solicitation and quotes received thereunder could not also serve to reinstate the oral amendment to the RFQ. Lanier argues that there is no legal support for such a position.

We find no legal basis to object to the actions taken by the contracting officer under the circumstances of this case. As we have previously stated, Lanier was afforded an equal opportunity to submit a quote on the basis of the oral RFQ amendment and in fact did so. Lanier concedes that the contracting officer properly could reinstate the quotes received on the system as described in the written specifications. Consequently, we are not persuaded that the contracting officer was prohibited from reviving the quotes on the alternate system as well.

Lanier also requests reimbursement for the cost of preparing its quotation. In view of our conclusions above, we find no basis on which to sustain this claim.

The protest is denied.

for 
Comptroller General
of the United States