

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

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FILE: B-212072**DATE:** January 23, 1984**MATTER OF:** Lanier Business Products, Inc.**DIGEST:**

1. Request for quotations (RFQ) to obtain information from multiaward Federal Supply Schedule (FSS) contractors does not constitute an invitation for bids, and award to a vendor offering the lowest prices for items meeting RFQ specifications is not required in view of the government's alternative under the Federal Property Management Regulations to justify the purchase of higher priced items.
2. A procuring agency is not required to include the justification for purchase of higher priced FSS items in an RFQ; the justification properly may be based on features not called for in the RFQ specifications.
3. Purchase of other than lowest priced equipment from the FSS is justified on the basis of compatibility and of specific and particular features which facilitate more efficient and effective staff use of the equipment.
4. Agency properly evaluated vendor's price on the basis of reductions in FSS prices which the agency had been advised were available at the time of award.

Lanier Business Products, Inc. (Lanier), protests the award of delivery order No. N68085-83-F-9328 to Dictaphone Corporation (Dictaphone) by the Naval Supply Systems Command (Navy). The order is for a central dictation system at the Naval Regional Medical Center, Jacksonville, and was placed under Dictaphone's Federal Supply Schedule (FSS) contract No. GS-00S-63040. Lanier asserts that the Navy improperly used restrictive requirements in order to justify placing the order with Dictaphone when Lanier offered lower priced equipment under its FSS contract.

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We find the protest without merit.

The equipment in question is covered under a mandatory FSS. In January 1983, the Navy issued a delivery order under the FSS to Dictaphone. Lanier protested this delivery order and the Navy canceled the order because it determined that there were multiple sources listed under the FSS and that the order had been improperly placed at other than the lowest schedule price because the contract file did not contain an appropriate justification as required under Defense Acquisition Regulation (DAR) § 5-106(a) (1976 ed.).

Navy procuring officials subsequently met with Dictaphone and Lanier representatives and the Navy issued an RFQ for the equipment in question. Lanier protested that these RFQ specifications and an amended version of the RFQ specifications were overly restrictive. Finally, the Navy issued a second amended version of the RFQ, No. N68085-3066-1648, on April 28, 1983, containing revised specifications which were general in nature.

Lanier's response provided the lower scheduled price of \$51,455.91, compared to Dictaphone's price of \$55,266.75. However, pursuant to DAR § 5-106 and Federal Property Management Regulations (FPMR) § 101-26.408-2 and 3, the Navy determined that purchase of the higher priced Dictaphone system was justified on the basis that the equipment offered by Dictaphone more adequately fulfilled the agency's minimum needs. The justification memorandum prepared by the Chief, Patient Affairs Services, found that purchase of the Dictaphone equipment was warranted for a number of reasons, including the following. Dictaphone's system provided 30 percent more available dictating time to physicians because of its eight-select dictating phone, compared to Lanier's six-select system, thereby diminishing the likelihood that physicians would be locked out of the system. Dictaphone's system provides for the physical separation of cassettes into "routine" and "priority" and automatically identifies cassettes with human readable codes, thereby permitting more efficient staff handling of the cassettes. Dictaphone's transcription stations have the ability to show work location within the recording tank without the need to scan the tank in order to locate material for transcription. Dictaphone's system is less bulky and takes up less space, which is a consideration because of the scarcity of hospital room space. The Dictaphone system is compatible with the existing hospital work processing system.

The Navy placed the order with Dictaphone on June 6, 1983, and Lanier protested that the Navy justification for the order essentially reimposed the same restrictive specifications that had been contained in the previous canceled purchase order and in the prior versions of the RFQ. However, in our view, the relevant question is not whether or not the Navy's justification in effect reimposed the previous specifications; rather, the question is whether the justification satisfied the above-referenced DAR and FPMR provisions which permit purchase of higher priced equipment from the FSS.

Lanier argues that the Navy's minimum requirements are restricted to those contained in the specifications in the final revised RFQ issued on October 28. However, we believe that this argument misconstrues the function of the RFQ as being essentially identical to an invitation for bids (IFB) in a formally advertised procurement, where award must normally be made to the low, responsible bidder whose bid is responsive to the specifications contained in the IFB. By contrast, here, the RFQ does not constitute such a solicitation, as is reflected by the standard form 18 on which the RFQ is issued, which provides in relevant part that:

"This is a request for information and quotations furnished are not offers. . . . This request does not commit the government . . . to procure or contract for supplies or services."

Our Office has held that vendors responding to such an RFQ are not providing an offer that defines exactly what the vendor would provide at what price; rather, the RFQ permits the government to obtain quotes on whatever equipment on the FSS a vendor would propose to meet the specifications and general line item descriptions of the RFQ, but the concept of responsiveness is not directly applicable. Dictaphone Corporation, B-200578, February 18, 1981, 81-1 CPD 104.

Our Office has also held that even where such an RFQ improperly stated that award would be made to the vendor offering the lowest price, the government retains its option provided for under the FPMR to justify the purchase

of higher priced items. Dictaphone Corporation; Business Equipment Center, Ltd., B-192314, B-192373, November 14, 1978, 78-2 CPD 345. In this instance, the Navy initially proposed to award a delivery order to Dictaphone on the basis that Dictaphone's equipment offered the above mentioned features which were not available on the Lanier equipment on the FSS. After canceling this order because the contract file did not contain the required justification for purchase under the FSS at other than the lowest scheduled price, the Navy issued an RFO which specifically required the features in question. In response to Lanier's repeated objections to the specifications, the Navy eventually deleted these feature requirements in favor of more general specifications. However, while the revised specifications no longer contained these features, it is clear from the Navy's justification memorandum that the Navy continued to require the features. Under these circumstances, it is unfortunate that the Navy elected to delete the features from the RFQ specifications since it is apparent that its needs had not changed. However, we do not believe that Lanier was prejudiced by this action in the context of the relatively informal requirements of an RFO relating to the FSS, since it is clear from the record that Lanier's FSS equipment does not offer the features in question.

The determination of an agency's minimum needs and of which products on the FSS meet these needs is a matter primarily within the jurisdiction of the procuring agency with which our Office will not interfere unless it clearly involves bad faith or is not based on substantial evidence. 52 Comp. Gen. 941, 944 (1973). Where, as here, the procuring agency makes an appropriate justification that its needs warrant placement of an FSS order for higher priced equipment, our Office will not sustain an objection to this determination unless it is shown to have no reasonable basis. Quest Electronics, B-193541, March 27, 1979, 79-1 CPD 205; Microcom Corporation, B-186057, November 8, 1976, 76-2 CPD 385. While an agency justification must be adequately substantiated, the fact that the protester disagrees with the justification is insufficient to show that it is objectionable. Olivetti Corporation of America, B-195243, September 21, 1979, 79-2 212.

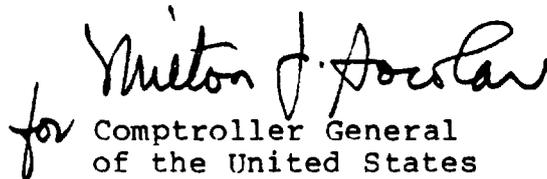
As outlined above, the Navy has provided a number of bases for its justification, most of which are related to ease of use of the dictation system, effective and efficient staff practices in operation of the system, and

to equipment compatibility. Lanier has presented neither any evidence nor arguments that these stated bases are unreasonable or that they constitute mere personal preference. Rather, Lanier casts its argument in terms of its contention that only the final RFQ specifications govern and they do not reflect the restrictions imposed by the Navy's justification. As discussed above, this does not provide a valid basis for objection, particularly where it is clear from the record that the Dictaphone system does have a number of features not present in the Lanier system, and the agency has specifically determined that the need for these features outweighs the cost savings offered by the Lanier system. Accordingly, we cannot conclude that the agency justification lacked a reasonable basis.

We note that as a general principle, even in the context of formally advertised procurements where there is a requirement to maximize competition, specifications which limit competition are not objectionable where they reflect legitimate agency needs. See Ingersoll Rand Company; Sullair Corporation, B-207246.2, B-211811, September 28, 1983, 83-2 CPD 385.

In its first protest submission, Lanier asserted that certain government allowances and price reductions quoted by Dictaphone did not accurately reflect Dictaphone's FSS prices in effect at the time of the issuance of the quotation. The Navy has documented the fact that it verified Dictaphone's FSS prices with the General Services Administration, and the prices quoted accurately reflect the terms and prices in effect on the Dictaphone FSS contract at the time that the delivery order was placed, and Lanier has offered no evidence to the contrary. Thus, there is no basis for objection to the prices quoted by Dictaphone. Motorola, Inc., B-191339, October 19, 1978, 78-2 CPD 287; Transmagnetics, Inc., B-186463, September 22, 1976, 76-2 CPD 272.

We deny the protest.


for Comptroller General
of the United States