



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Lanier Business Products, Inc.

File: B-223310

Date: September 24, 1986

DIGEST

1. Protest challenging contracting agency's decision not to issue a formal solicitation before placing a purchase order under a Federal Supply Schedule (FSS) contract is untimely since it was filed after the agency advised the protester that selection of vendor would be based on informational proposals from protester and other FSS vendors.
2. When a vendor reduces the schedule price of an item listed on a Federal Supply Schedule contract, the vendor has the burden of notifying the contracting activity of the reduction. Absent actual notice, a contracting agency need not consider a price reduction in determining lowest-priced vendor.
3. Issuance of purchase order under Federal Supply Schedule (FSS) contract for central dictation system deleting one item and adding others to low-priced FSS vendor's informational proposal is proper since (1) there is no requirement that the purchase order conforms exactly to the vendor's informational proposal; and (2) protester was not prejudiced since there is no indication that its price would have been lower had it been informed of the changes.

DECISION

Lanier Business Products, Inc., protests the Veterans Administration's issuance of purchase order No. 565-A-63560 to Dictaphone Corporation for a central dictation system under a mandatory General Services Administration (GSA) Federal Supply Schedule (FSS) contract. We deny the protest in part and dismiss it in part.

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The VA Medical Center in Fayetteville, North Carolina determined in December 1985 that its central dictation system would have to be replaced. In the following months, Medical Center administrative personnel contacted Lanier and other vendors listed on the FSS for central dictation systems to discuss the Medical Center's requirements and to arrange equipment demonstrations. According to the VA, after a demonstration of Lanier's equipment on May 16, 1986, Medical Center officials informed Lanier's sales representative that the Medical Center was going to purchase an all-new dictation system since sufficient funds were available to do so. Previously, VA officials had informed Lanier that the Medical Center might purchase some used equipment, specifically a rebuilt Supervision IV Console, the most expensive component in Lanier's system. Also, according to VA officials, Lanier's representative agreed on May 16, to submit an informational proposal by May 20.

According to the VA, on May 21, Lanier's sales representative delivered to the Medical Center a package consisting of Lanier commercial literature, and three dictation system options, each with different equipment configurations and prices. Options I and II included a rebuilt Supervision IV Console, while option III had a used or demonstrator model Supervision IV Console.

Since none of Lanier's options included all-new equipment, the contracting officer adjusted the prices quoted in Lanier's option III,^{1/} in order to compare Lanier's price for an all-new system with Dictaphone's price on a comparable system. In making these adjustments, the contracting officer used a price of \$10,995 from Lanier's FSS contract for a new Supervision IV Console. In addition, according to the VA, when Lanier's representative delivered Lanier's submission, he stated that a \$4,900 trade-in allowance would be available if the Medical Center purchased new equipment, so the contracting officer also used this figure to determine Lanier's price. Further, the contracting officer applied a 15 percent volume discount to Lanier's price since this discount was used in Lanier's option III, although Lanier's first 2 options had 18 percent discounts. Based on these adjustments, the contracting officer determined that Lanier's price for an all-new system was \$27,084.65, compared with Dictaphone's price of \$23,675,85.

^{1/} Options I and II were rejected because they proposed using microcassettes rather than standard cassettes, which the VA preferred.

Before the purchase order was issued the using activity requested that the contracting officer add some items and delete other items from its original purchase request. After these changes, Dictaphone's price was still low. A purchase order of \$26,446.75 was issued to Dictaphone on May 29.

The record shows that a Lanier representative telephoned the contracting officer on May 29, and inquired as to the results of the competition. The contracting officer informed Lanier that the award had been made to Dictaphone. Lanier protested to this Office on June 6.

Lanier maintains that it was improper for the VA to issue a purchase order under the FSS contract without issuing a formal solicitation. In addition, since the purchase order did not conform exactly to Dictaphone's informational proposal, Lanier argues that the VA should have contacted both vendors for final quotations before issuing the purchase order.

Lanier further maintains that the contracting officer's modification of Lanier's informational proposal was prejudicial to Lanier because the contracting officer used an incorrect price of \$10,995 for a new Lanier Supervision IV Console. Lanier notes that it had temporarily reduced its FSS contract price for this component to \$5,995 effective April 3 to June 30, 1986, as shown in amendment No. 24 to its FSS contract. Lanier also argues that the contracting officer improperly applied a 15 percent discount to Lanier's price since Lanier's FSS contract allows an 18 percent discount for orders, such as this one, between \$25,001 and \$50,000. In addition, Lanier denies that its sales representative told the VA that a \$4,900 trade-in allowance was available; Lanier says that the trade-in allowance was only \$4,100.

As a preliminary matter, the VA argues that Lanier's protest was untimely filed. According to the VA, on May 16, Lanier knew that the VA was conducting a procurement for a central dictation system and that its proposal was to be submitted on May 20. Thus, the VA argues, Lanier knew its basis of protest by May 16, but did not protest until June 6, more than 10 days later.

We agree that the protest is untimely to the extent that Lanier challenges the VA's decision not to issue a formal solicitation. Under our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (1986), protests such as this one must be filed

within 10 days after the protester knew or should have known the basis of protest. Here, the VA states that Lanier was specifically advised of the VA's intentions by May 16, when the VA asked Lanier to submit its informational proposal by the same date on which the Dictaphone proposal was to be submitted. The VA also asserts that Lanier telephoned the VA on May 29 to inquire whether an order for the dictation system had yet been placed, indicating that Lanier believed that selection of a vendor would be based on the informational proposals submitted by Lanier and Dictaphone. Lanier does not dispute any of the VA's assertions in this regard. As a result, we find that Lanier clearly was on notice as of May 16 that the VA planned to select a vendor based on the informational proposals the VA invited Lanier and Dictaphone to submit. Since Lanier's protest was not filed until June 6, more than 10 days later, this ground of protest is untimely and will not be considered. Micro Research, Inc., B-220778, Jan. 3, 1986, 86-1 CPD ¶ 9.

Lanier's second contention is that it was prejudiced by the contracting officer's recalculation of its price. This ground of protest is timely raised, since Lanier was not advised of the modifications the VA made to its proposal, and thus was not aware of this basis of its protest, until after the protest was filed. We find Lanier's argument to be without merit, however.

Although, as we explain below, the VA's calculation of Lanier's total price was incorrect, Lanier was not prejudiced by the VA's errors since Dictaphone's total FSS price of \$26,446.75 was still lower than Lanier's correct total FSS price of \$27,320.26 for a comparable system. Since evaluation and purchase of items listed on a multiple-award FSS must be based upon the vendor's FSS contract prices, Pleion Corp., B-210790, July 6, 1983, 83-2 CPD ¶ 61, we have recalculated Lanier's total price based on that firm's FSS contract prices and discounts. Those prices and calculations are as follows:

<u>Units</u>	<u>Items</u>	<u>Unit Price from schedule)</u>	<u>Total cost</u>
6	Tel-Edisette III Standard Central Recorder	2,395.00	14,370.00
6	Telephone Interface	1,195.00	7,170.00
6	Insight Classic Cassette	659.00	3,954.00
1	Uninterrupted Power Supply	1,450.00	1,450.00
1	Cassette Identifier	659.00	659.00
1	Supervision IV Console	10,995.00	10,995.00
1	System Printer	695.00	695.00
			<u>\$39,293.00</u>
	18% discount		- 7,072.74
			<u>32,220.26</u>
	Trade-in		- 4,900.00
	Total Lanier Price		<u>\$27,320.26</u>

The contracting officer's use of Lanier's FSS contract price of \$10,995 on Lanier's Supervision IV Console, instead of Lanier's recently reduced price of \$5,995, was unobjectionable. When a vendor's price reduction is accepted by GSA as a modification to its FSS contract, the vendor has the burden of notifying the contracting activity of the reduction. Absent actual notice, the contracting agency need not consider the price reduction in determining the low offeror. Information Marketing International, B-216945, June 28, 1985, 85-1 CPD ¶ 740. Here, as explained above, although Lanier was advised of the Medical Center's requirements, and given an opportunity to submit its current prices on an all-new system, Lanier failed to inform the VA of the recent price reduction on the firm's Supervision IV Console.

Some prices submitted by Lanier and some prices used by the VA are not the same as those in Lanier's FSS contract. For instance, the information that Lanier submitted to the Medical Center listed the correct FSS price of \$2,395 for Lanier's Tel-Edisette III Standard, but the total for 6 units was listed incorrectly as \$11,370. Lanier's FSS contract does not allow quantity discounts; the correct price for 6 Tel-Edisette III Standards is \$14,370. Also, Lanier submitted a unit price of \$1,650 for an Uninterrupted Power Supply; however, since Lanier's FSS contract lists this item at \$1,450, the VA's calculations should have included this figure.

Further, the VA incorrectly applied a 15 percent discount to Lanier's price, since Lanier's FSS contract allows an 18 percent discount for orders between \$25,001 and \$50,000.

With respect to the correct trade-in allowance, Lanier argues that the trade-in only should have been \$4,100, while according to the VA, a Lanier sales representative told Medical Center officials that the trade-in allowance was \$4,900. Since the contracting officer used \$4,900 as a trade-in allowance in calculating Lanier's price, any error was in Lanier's favor and made Lanier's evaluated price lower. Lanier, therefore, was not prejudiced.

Finally, Lanier contends that the purchase order was for a system different than that initially sought by the VA. We disagree. The record shows that the purchase order issued to Dictaphone added four dictator/transcriber units and deleted one item, standard cassettes, included in Dictaphone's informal proposal. Thus, as VA states, the purchase order in effect increased the quantity of items ordered but did not change the type of system being acquired, as Lanier contends. Further, the vendors' informational proposals were price quotations based on whatever configuration of equipment available under their FSS contracts the vendors would propose to meet the VA's needs; they were not price proposals submitted in response to a formal solicitation, which the VA then could accept or reject. As a result, there was no requirement that the purchase order conform exactly to Dictaphone's informational proposal. See Spacesaver, B-224339, Aug. 22, 1986, 86-2 CPD ¶ ____.

In any event, the contracting officer determined that Dictaphone's total FSS price was still lower than Lanier's after the additions and deletion. Lanier does not contend that its own price would have been lower if the VA had informed Lanier of the changes. Thus, there is no indication that Lanier was prejudiced by the changes in the final purchase order. See Datagraphix, Inc., B-207055, Aug. 16, 1982, 82-2 CPD ¶ 132.

The protest is denied in part and dismissed in part.

for *Seymour Efron*
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General Counsel