

Lebowitz



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Insinger Machine Company
File: B-235320
Date: August 3, 1989

DIGEST

Agency properly awarded a contract to a Federal Supply Schedule (FSS) contract vendor which offered lowest priced equipment available on the FSS which met agency needs.

DECISION

Insinger Machine Company protests the Department of the Navy's issuance of purchase order No. N00211-89-RQ-02862, to Gill Marketing Company for the purchase of automatic dishwashing equipment for the Naval Hospital in Great Lakes, Illinois, under General Services Administration (GSA), Federal Supply Schedule (FSS) contract No. GS-09F-43898. The Navy is a mandatory user of the GSA FSS contracts that cover this type of equipment. Insinger, also an FSS contractor, argues it offered the lowest-priced equipment, and therefore, the Navy should have purchased the equipment from it.

We deny the protest.

The essential facts are not in dispute. The Navy requested quotations for dishwashing equipment, identified as available from GSA's FSS. On February 28, 1989, Insinger submitted a quotation of \$26,390 for a Master RC-21 RPW-W dishwashing machine, which was listed on its current price schedule #47, dated April 4, 1988, pursuant to its GSA contract No. GS-09F-43874. However, the February 28 quotation for the model RC-21 did not meet agency needs because the quote did not include certain accessory equipment and the model's conveyor area was 1 foot shorter than required. In any event, Insinger revoked its February 28 quotation and on March 6 submitted a new quotation of \$31,022 for a Master RC-22 dishwashing machine, which was not listed on Insinger's current price schedule #47. The Navy informed Insinger that the model RC-22 was not listed on its authorized current FSS price schedule. Insinger

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responded that the model RC-21 could be ordered with additional footage added to the conveyor, as specified in its price schedule, thus making the model RC-21 equivalent to the model RC-22, and accessory equipment could be ordered. At this point, after confirming with Insinger that its price schedule was current and in effect, the Navy recalculated Insinger's price for the model RC-21 (base price \$39,000), including the additional 1 foot on the conveyor (\$850), the blower-dryer (\$6,850), and steam coils (\$1,600), and determined that Insinger's price, with a 30 percent discount as reflected on its price schedule, totaled \$33,810.

On March 22, the Hobart Corporation, through its distributor, Gill Marketing, submitted a quotation of \$31,113.88 for a Hobart model FT822-BD dishwashing machine, which was listed on its current price schedule, pursuant to its GSA contract No. GS-09F-43898. On March 24, after determining that Hobart, through its distributor, Gill Marketing, offered the lowest price among the five firms submitting quotations, the contracting officer issued a purchase order in the amount of \$31,113.88 to Gill Marketing. On April 7, upon learning that an order had been placed with Gill Marketing, Insinger asserted to the contracting officer that the price it quoted on March 6 for the model RC-22 was lower than the price for the Hobart equipment. By letter of the same date, Insinger filed an agency-level protest. The contracting officer informed Insinger on April 18 that its quote was not considered because the quoted model RC-22 was not on Insinger's current price schedule and Insinger's price for the modified model RC-21 was not low. This protest followed on April 26.

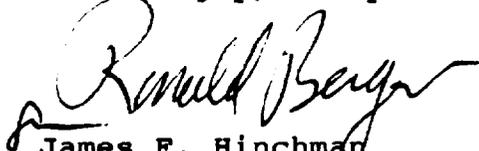
Insinger argues that its March 6 quotation of \$31,022 for the model RC-22 dishwashing equipment was the lowest price received for the required equipment, and, therefore, the Navy should have purchased the equipment from it. However, where, as here, there is a mandatory FSS contract in effect, an agency is required to purchase its requirements from that schedule if its minimum needs will be met by the items listed on the schedule. See Sutron Corp., B-228302, Jan. 13, 1988, 88-1 CPD ¶ 27; Precision Mfg., Inc., B-224565, Jan. 12, 1987, 87-1 CPD ¶ 49. Insinger's March 6 quotation was for the model RC-22. The record shows, and Insinger does not dispute, that this model was not included on Insinger's current schedule. Furthermore, while Federal Acquisition Regulation (FAR) § 8.404-1(c) (FAC 84-16) establishes an exception to this mandatory-use requirement which applies when an agency finds another source that can provide the identical product (make and model) at a lower price than the schedule price, this

exception does not apply in this case because Insinger's equipment was not identical in make and model to the Hobart schedule equipment. Thus, the agency was required under these circumstances to buy the lowest-priced schedule equipment which met its needs, and could not accept Insinger's non-schedule equipment.

Moreover, based on Insinger's price schedule in effect when the purchase order was issued to Gill Marketing, the schedule price for a modified Insinger model RC-21 with the extra footage and accessory equipment was still higher than the price for the Hobart model FT822-BD. While Insinger argues its offer would be low based on an additional 5 percent discount over the 30 percent discount in its price schedule and its offer of steam coils at no additional cost, modification No. 6 to its GSA contract No. GS-09F-43874, which reflected these changes, was not signed by Insinger until March 27 and was not signed by the GSA contracting officer until April 12. While correspondence indicates Insinger proposed these modifications prior to issuance of the purchase order, the changes did not become part of the GSA contract, as indicated above, until after this purchase order was issued and the Navy was unaware of these proposed changes when it issued its order. Insinger again does not dispute this. Thus, the Navy properly calculated the price of the modified Insinger model RC-21 by using the 30 percent discount in effect at the time the purchase order was issued, and concluded that Insinger did not have the lowest FSS price for the required equipment.

Under these circumstances, the Navy properly issued the purchase order for the Hobart model FT822-BD dishwashing equipment to Gill Marketing which offered the lowest price schedule equipment meeting the government's minimum needs. See FAR § 8.405-1 (FAC 84-32); Office and Business Prods., Inc., B-232007, Oct. 19, 1988, 88-2 CPD ¶ 371.

Accordingly, the protest is denied.


James F. Hinchman
General Counsel