

Lebowitz



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Whitaker Brothers Business Machines, Inc.  
**File:** B-237121  
**Date:** January 17, 1990

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### DIGEST

1. An award of less than all of the line items is proper where, under a request for quotations, the agency deleted one item because sufficient funds were not available to award this item.
2. Award of a contract for equipment under a non-mandatory Federal Supply Schedule is proper where agency has no "actual knowledge" of a price more advantageous to the government.

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### DECISION

Whitaker Brothers Business Machines, Inc., protests the Department of the Army's issuance of a delivery order for a disintegrator/paper pulverizer system to Security Engineered Machinery Co., Inc. (SEM), under that firm's non-mandatory Federal Supply Schedule (FSS). Whitaker basically argues that the agency's deletion of the installation line item from the request for quotations (RFQ) after receipt of quotes was improper and that the agency improperly awarded the delivery order under the FSS.

We deny the protest.

On June 23, 1989, the Army issued RFQ No. DAAC67-89-Q-0287 which listed the following five contract line item numbers (CLINs): (1) disintegrator/paper pulverizer machine, (2) conveyor, (3) pads, (4) waste removal system, and

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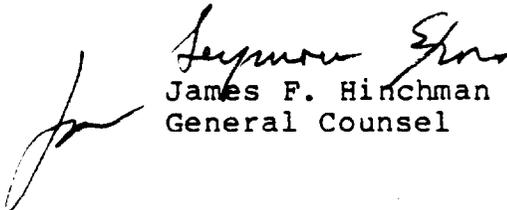
(5) installation. The equipment items were SEM equipment or equal. Whitaker and SEM were the only firms which submitted quotes. SEM quoted on its equipment listed in the FSS. Whitaker quoted on equipment not listed in the FSS. Based on Whitaker's suggestions concerning the equipment required, the agency orally revised the RFQ and solicited new quotes. The agency received revised oral quotations from Whitaker and SEM. For all five line items, Whitaker was low at \$69,995. SEM's quote was \$73,849. Both firms' total quotes exceeded the agency's fiscal year 1989 obligation authority of \$64,413 for the acquisition. Since the equipment would not be installed until fiscal year 1990, the agency decided it would resolicit for the installation requirement once funds for fiscal year 1990 were available. On September 15, the agency, by amendment, deleted CLIN 5 from the RFQ, and on September 18, it awarded the delivery order under the FSS to SEM, the low quoter for the equipment at \$61,849. This protest followed.

Whitaker argues that the agency improperly deleted the equipment installation requirement. However, where sufficient funds are not available for all line items or the total quantity advertised, the award may be based on less than all items or less than the total quantity. See Capital Eng'g & Mfg. Co., B-232144.3 et al., Apr. 21, 1989, 89-1 CPD ¶ 398. The protester has provided no basis to question the agency's determination that funds were not available for CLIN 5. In any event, since quotations are not price proposals under a formal solicitation which are subject to acceptance or rejection, there is no requirement that the agency issue a purchase order which conforms exactly to the informational quotations. See Lanier Business Prods. Inc., B-223310, Sept. 24, 1986, 86-2 CPD ¶ 341.

Whitaker also alleges that the agency acted improperly by awarding the delivery order under the non-mandatory FSS. Agencies are encouraged to use the non-mandatory FSS as a primary source of supply, except where the agency has "actual knowledge" that it can procure by solicitation the item at a price more advantageous to the government, after allowing for the burden and cost of a new procurement. Federal Property Management Regulations § 26.401-5(b), 41 C.F.R. § 101-26.401-5(b) (1988); see generally Precise Copier Servs., B-232660, Jan. 10, 1989, 89-1 CPD ¶ 25. Here, Whitaker's quote on the equipment was higher than SEM's quote. The agency also has estimated that the administrative expenses of conducting a competitive procurement are approximately \$4,500 and would result in a

3-month delay in obtaining the system. Accordingly, since the agency had no "actual knowledge" of lower priced equipment, and Whitaker has not shown otherwise, the award to SEM was proper.1/

Accordingly, the protest is denied.



James F. Hinchman  
General Counsel

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1/ Whitaker also argues that SEM improperly offered, and the agency improperly accepted, discounts from the list price in SEM's FSS contract. Under a standard clause contained in the FSS contracts, a contractor may offer a price reduction at any time and by any method without prior or subsequent approval by the General Services Administration which administers the contracts. KYBE Corp., 68 Comp. Gen. 188 (1989), 89-1 CPD ¶ 48. Thus, the award to SEM based on discounted prices is not objectionable.