

Maeder



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Dictaphone Corporation

File: B-238159

Date: April 23, 1990

Chris E. Hagberg, Esq., Seyfarth, Shaw, Fairweather & Geraldson, for the protester.

Millard F. Pippin, Department of the Air Force, for the agency.

David S. Cohen, Esq., and Victor G. Klingelhofer, Esq., Cohen & White, for Lanier Business Products, Inc., an interested party.

Jacqueline Maeder, Esq., Paul Lieberman, Esq., and John F. Mitchell, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency properly awarded contract to low, technically acceptable, responsible offeror where protester's allegations that awardee's proposals failed to meet certain solicitation specifications are not supported by the record.

DECISION

Dictaphone Corporation protests the award of a firm, fixed-price contract to Lanier Worldwide, Inc., under request for proposals (RFP) No. F44650-89-R0043 issued by the Department of the Air Force, Langley, Virginia, for the acquisition of a dictation system for the Langley Air Force Base Hospital. Dictaphone alleges that the Lanier product does not meet all the specifications required by the RFP.

We deny the protest.

The Air Force issued the RFP on October 11, 1989, with a closing date, as extended, of November 17. The RFP called for award to the low, technically acceptable offeror and indicated that award may be made on the basis of initial proposals. The RFP included a 13-page technical specifications section which gave both a general overview of the requirements and a detailed description of the minimum capabilities of the dictation system.

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Two proposals were received, one from Lanier for \$54,910 and one from Dictaphone for \$90,196.75. Both proposals were found technically acceptable and the government awarded the contract to Lanier, based on the technical acceptability of its proposal and its lower cost, without conducting negotiations or calling for best and final offers. By letter dated December 7, the Air Force notified Dictaphone that Lanier had been awarded the contract. This protest followed.

In its initial protest, Dictaphone speculated that Lanier offered its "System 4800" and argued that this product does not satisfy five mandatory minimum characteristics set forth in the solicitation, specifically:

- "1) the dictation telephone sets must operate as standard dual-tone multiple-frequency telephones;
- "2) the system must provide step-by-step recorded instructions or prompts for users;
- "3) the system must have a minimum capacity of 40 hours of digital recording time, expandable to 80 hours;
- "4) the system must have 32 access ports to support any combination of dictation and transcription stations; and
- "5) the system must have duplicate system control."

To support this allegation, Dictaphone appended to its protest a document it described as "Lanier's own publication which sets forth the performance characteristics of its System and which is used by Lanier in marketing its System." Dictaphone points to specific statements contained in this document to demonstrate that the Lanier System 4800 does not conform to these mandatory requirements. For example, Dictaphone cites pages 2, 11 and 12 of the document that indicate that the Lanier system has 16.7 hours of voice recording which can be expanded by adding 18.57 hour modules up to a total of 72.4 hours. As noted above, the specifications require 40 hours of storage, expandable to 80 hours. Dictaphone also points out that the capabilities outlined for the Lanier System in the Federal Supply Schedule support its allegation that the System does not meet the specifications.

In its report to our Office, the Air Force defended its selection of Lanier on the basis that the firm's lower-priced proposal did satisfy the agency's specifications.

After reviewing the agency report, which included a redacted copy of Lanier's proposal, Dictaphone submitted a statement from one of its representatives who states that on a January 27, 1990, visit to Langley Air Force Base Hospital, he observed a Lanier System 1600 delivered under the contract at issue here. Dictaphone asserts that "this is not the system which Lanier proposed; it clearly proposed its VoiceWriter 4800 as stated in its letter dated November 16, 1989, and in its Technical Proposal." Dictaphone contends that the system actually installed by Lanier is even less technically acceptable than the System 4800, noting specifically that the VoiceWriter 1600 System (1) provides for only 16.7 hours of storage (2) has no duplicate system control to ensure redundancy in the event of power failure, and (3) does not have step-by-step prompts for the user. Accordingly, Dictaphone maintains that neither the system which Lanier proposed nor the system which it actually installed meets the minimum requirements of the RFP.

We find no evidence of record to support Dictaphone's allegation that Lanier's product does not meet the RFP specifications. The contracting agency is responsible for evaluating the information supplied by an offeror and ascertaining whether it is sufficient to establish the technical acceptability of its offer, since the contracting agency must bear the burden of any difficulties incurred by reason of a defective evaluation. EG&G Flow Technology, Inc., B-235830, Sept. 1, 1989, 89-2 CPD ¶ 211. We will not disturb the agency's determination unless it is shown to be unreasonable.

As indicated above, Dictaphone was not provided with its competitor's complete proposal. Dictaphone relies on the cover letter to Lanier's proposal to argue that Lanier proposed its VoiceWriter 4800 System in response to the RFP. However, the sole reference to the System 4800 reads:

"The VoiceWriter 4800 is the second generation of Lanier digital recorders. All of the knowledge gained since the introduction of our System IV digital in 1983 has been incorporated in the VoiceWriter System. As of March, 1989, Lanier reported 1,000 hospital digital system installations with an additional 400 installations of four and eight port digital recorders. We are pleased to be able to offer Langley AFB Hospital our digital technology for use in the medical records, radiology, and pathology departments."

The agency correctly argues that Lanier did not offer the System 4800, as alleged by Dictaphone, but offered its "digital technology" and described the success of its VoiceWriter 4800 System as an overview of Lanier's experience in the area of dictation systems. Indeed, as the agency notes, Lanier did not specify in its proposal the model of the system it proposed, but generally referred to the system it offered as the "Lanier VoiceWriter Digital Dictaphone System" or simply the "VoiceWriter System." The proposal states the salient characteristics of the system and explains how it attains compliance with the RFP requirements. According to the agency, Lanier delivered a 1600 EVS, a VoiceWriter 1600 with extended voice storage.

The agency argues that the 1600 EVS system meets all of the RFP requirements and rebuts each of the deficiencies cited by Dictaphone. Dictaphone has not carried its burden of establishing that the agency lacked a reasonable basis to determine that Lanier offered a technically compliant system.

As to the telephone sets, the system proposed and acquired is equipped with VoiceWriter P-130 dictation instruments which, as the agency reports, do function as standard dual-tone, multiple-frequency telephones. The system is also equipped with up to 100 different messages, which provide step-by-step instructions to help physicians effectively use the system. Contrary to Dictaphone's assertion that the VoiceWriter issues only one mass group of prompts when the system is accessed, step-by-step instructions are made available to guide new users and physicians who do not dictate on a frequent basis with comprehensive instructions as to what they will be required to do at any point during their dictation. Users familiar with the system can by-pass these prompts by immediately entering the required information. Additionally, the 1600 EVS has 43 hours of digital recording time, incrementally expandable to 181 hours. The system provides duplication of system control to assure continued operation in the event of a processor failure with multiple micro-processors which support each dictation line and transcription line independently. The failure of any one micro-processor only affects the capabilities of that one line card and not the overall system.

While Dictaphone argues that Lanier's system does not assure complete redundancy in the event of loss of power supply or loss of a disc-drive, there was no requirement to ensure complete redundancy in these circumstances. All that the RFP specified was control redundancy to assure continued system operation in the event of a processor failure. Finally, contrary to Dictaphone's assertion, the RFP

required only 16 access ports (8 ports for dictation, 8 for transcription) with expandability to 32 access ports to support any combination of dictation and transcription stations. Lanier's system has 8 dictation and 8 transcription stations and is expandable to 32 or 48 ports in any combination of dictation and transcription stations. The Air Force states that not only were these capabilities included in Lanier's technical proposal, but all of these requirements were successfully demonstrated during system acceptance testing.

As to Dictaphone's argument that capabilities outlined in Lanier's Federal Supply Schedule indicate that the Lanier system does not meet RFP requirements, as the agency points out, this comparison is not relevant because the system proposed and delivered by Lanier is not the standard system specified in that schedule. Further, Lanier explains that the Lanier publication which Dictaphone appended to its protest was an "internal Lanier memorandum that was prepared four years ago on a system three software generations removed from that proposed by Lanier for Langley Air Force Base." The memo was to provide Lanier's Marketing Department with preliminary information concerning a new system, the System V, that was to be introduced in 1986. The memo does not set forth the characteristics of the VoiceWriter System or any other currently-marketed Lanier system. Further, this document was not given to Langley Air Force Base to demonstrate the system proposed and installed at the hospital.

As detailed in the agency report and in Lanier's proposal, Lanier's system is specified to be entirely compliant with the solicitation requirements. Additionally, we note that the Air Force has fully inspected and tested the system and found it in complete compliance with the specifications and its needs. Our review of Dictaphone's allegation and Lanier's proposal reveal no basis for disturbing the Air Force's determination.

The protest is denied.


for James F. Hinchman
General Counsel