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Comptroller General  
of the United States  
Washington, D.C. 20548

## Decision

**Matter of:** Dictaphone Corporation  
**File:** B-244691.2  
**Date:** November 25, 1992

Grace Bateman, Esq., Seyfarth, Shaw, Fairweather & Geraldson, for the protester.  
Norman E. Lindsey, Esq., and Gregory H. Petkoff, Esq., Department of the Air Force, for the agency.  
Daniel I. Gordon, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Pursuant to the Economy Act, 31 U.S.C. § 1535 (1988), one agency may properly acquire goods under another agency's contract, where the user agency reasonably determines that the goods cannot be obtained as conveniently or cheaply from a commercial enterprise, and the requirements of the Economy Act otherwise are met.

### DECISION

Dictaphone Corporation protests the Department of the Navy's proposed acquisition, pursuant to the Economy Act, 31 U.S.C. § 1535 (1988), of a digital dictation system through an Air Force contract with Sudbury Systems, Inc. Dictaphone contends that the Navy failed to comply with the Economy Act's requirement that the user agency determine that the desired goods cannot be provided as conveniently or cheaply by a commercial enterprise.

**We deny the protest.**

On May 20, 1991, the Air Force issued a requirements contract for an estimated quantity of 40 centralized digital dictation systems for Air Force hospitals under request for proposals (RFP) No. F44650-90-R0038. Both Dictaphone and

Sudbury had participated in the competition for the contract, which Sudbury won as the offeror of the lowest priced, technically acceptable proposal. Only 13 of the estimated 40 systems have been ordered to date.

Approximately 1 year after the Air Force issued the requirements contract to Sudbury, the U.S. Naval Hospital at Portsmouth, Virginia, decided to procure one dictation system. The Navy orally contacted three known vendors of such systems, Dictaphone, Sudbury, and Lanier Dictation Systems, to seek quotations. Dictaphone and Lanier notified the Navy that each held a General Services Administration Federal Supply Schedule (FSS) contract which covered the desired system, and each quoted a price pursuant to its FSS contract: \$197,598.75 for Dictaphone and \$201,373.92 for Lanier. The Navy is permitted, but not required, to obtain supplies under an FSS contract.

When the Navy telephoned Sudbury to obtain a quotation from that company, Sudbury stated that the system needed by the Navy could be obtained under the Air Force contract referenced above, and Sudbury quoted a price based on that contract: \$176,259.00. Because the price which Sudbury quoted was lower than those quoted by Dictaphone and Lanier, the Navy decided to acquire the dictation system under the Air Force contract. On June 29, 1992, the Navy contracting officer made findings pursuant to the Economy Act to permit the Navy to place an order for processing under the Air Force contract. Upon review of the Navy request, the Air Force concluded that it was within the scope of the Air Force contract and that the Air Force had the authority to place the order on behalf of the Navy.

Dictaphone contends that the Navy treated offerors unequally.<sup>1</sup> Specifically, the protester alleges that Dictaphone understood from the Navy's telephonic request for quotations that Dictaphone could only submit a quote under its FSS contract, while "[a]pparently in the course of discussions with one vendor, Sudbury, the Navy conveyed that Sudbury was not limited to quoting its GSA pricing." In

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<sup>1</sup>Initially, Dictaphone also alleged that the sale of the dictation system exceeded the scope of the Air Force contract. Although the agency report responded to the allegation, Dictaphone in its comments failed to address the issue. Consequently, we deem this protest ground abandoned. See Hampton Rds. Leasing, Inc., B-244887, Nov. 25, 1991, 91-2 CPD ¶ 490.

Dictaphone's view, it would have been proper for the Navy to purchase the dictation system under an FSS contract, but acquiring the system under the Air Force contract amounted to receiving what Dictaphone terms an "open market" quotation from only one source. Dictaphone claims that, if the Navy had made clear to Dictaphone that vendors were free to offer open market prices, "[i]n order to meet competition, Dictaphone's open market quote would have been lower than the quotes it submitted under its GSA contracts" and it "might have offered prices lower than the price Sudbury quoted under its Air Force contract."<sup>2</sup>

The Competition in Contracting Act of 1984 (CICA), 10 U.S.C. § 2301 et seq. (1988), generally requires that, in conducting a procurement for property or services, the head of an agency obtain full and open competition through the use of competitive procedures. However, CICA exempts from this requirement procurement procedures expressly authorized by statute. 10 U.S.C. § 2304(a)(1). The Economy Act authorizes such a procedure by providing:

"The head of an agency . . . may place an order with . . . another agency for goods or services if--

- (1) amounts are available;
- (2) the head of the ordering agency or unit decides the order is in the best interest of the United States Government;
- (3) the agency or unit to fill the order is able to provide the ordered goods or services; and
- (4) the head of the agency decides ordered goods or services cannot be provided by contract as conveniently or cheaply by a commercial enterprise."  
31 U.S.C. § 1535(a).

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<sup>2</sup>The protester does not allege that the agency was required to contact additional sources or to conduct a full and open competition (which would have required, among other steps, publication of a solicitation). Instead, Dictaphone essentially argues that, while it was enough to obtain oral quotations from three sources, those three sources had to be treated in the same fashion.

Pursuant to the Economy Act, one agency may use its own requirements contract to satisfy another agency's needs. Liebert Corp., 70 Comp. Gen. 448 (1991), 91-1 CPD ¶ 413.

Dictaphone recognizes that the Economy Act provides a procurement methodology exempt from the normal competition requirements of CICA, and it concedes that the Navy complied with the first three requirements of the Economy Act set forth above. The protester contends, however, that the Navy failed to satisfy the fourth requirement. According to Dictaphone, the agency lacked a reasonable basis to decide that it could not obtain a dictation system more cheaply than through Sudbury's Air Force contract, because the Navy never gave Dictaphone the opportunity to offer an open market price. We disagree, because we find that the Navy had a reasonable basis to conclude that the single system it needed could not be acquired more cheaply than under Sudbury's Air Force contract.

Multiple-award FSS contracts are based on discounted prices associated with volume buying, Federal Acquisition Regulation (FAR) § 38.101, and agencies are permitted to purchase from FSS contracts without testing the open market or otherwise seeking further competition. FAR § 8.404(a). The Air Force, however, had obtained prices even lower than the FSS contract prices after conducting a full and open competition that included Dictaphone. The Navy's use of Sudbury's Air Force requirements contract allowed the Navy to benefit from those lower prices.

Since Dictaphone does not dispute that it would have been permissible for the Navy to pay an FSS contract price (which for Dictaphone's system amounted to \$197,598) without testing the open market, Dictaphone has no tenable basis to challenge the reasonableness of the Navy's paying the much lower price (\$176,259) available under Sudbury's Air Force contract. Under the circumstances, we see no reason why the Navy should have had to further test the market before reasonably concluding that it could not obtain the system it required more cheaply or conveniently than through that contract.

Dictaphone's assumption that the agency treated the competing firms unequally is without factual basis in the record. Dictaphone does not explicitly allege that the Air Force advised the protester that only FSS contract price quotations were permissible, and nothing in the record supports such an allegation. Indeed, even if Dictaphone believed that the Navy would not consider a quotation outside the framework of the company's FSS contract, the company was not precluded from quoting a reduced price for the FSS contract items.

The protest is denied.

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for James F. Hinchman  
General Counsel