



Comptroller General
of the United States

Washington, D.C. 20548

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Decision

Matter of: Dictaphone Corporation

File: B-254920.2

Date: February 7, 1994

Grace Bateman, Esq., Seyfarth, Shaw, Fairweather & Geraldson, for the protester.

William E. Thomas, Jr., Esq., Department of Veterans Affairs, for the agency.

Linda S. Lebowitz, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

After issuing purchase orders to a particular firm for equipment on the Federal Supply Schedule (FSS) and then concluding that the request for quotations did not specify all of the agency's minimum needs, the agency properly took corrective action by suspending the firm's performance of the purchase orders, advising the firms which initially submitted quotes of the agency's additional requirements, and then requesting revised quotes from these firms. Upon receiving revised quotes, based on a standard clause contained in FSS contracts, the agency was not precluded from considering promotional discounts which made another firm's quote low priced.

DECISION

Dictaphone Corporation protests the cancellation of purchase orders issued to the firm by the Department of Veterans Affairs (VA) under a request for quotations (RFQ) for a centralized dictation system for the VA Medical Center in Muskogee, Oklahoma, and the subsequent issuance of a purchase order to Lanier Business Products.

We deny the protest.

The RFQ was issued on August 19, 1993, to four firms, including Dictaphone and Lanier, whose equipment was listed on the General Services Administration's (GSA) Federal Supply Schedule (FSS) for which the VA is a mandatory user. The RFQ required, among other items, a management console for backlog and productivity reports, a high speed printer, a digital system capable of recording 40-45 hours of

transcription with redundant recording, a minimum of 20 ports, 5 "transcription stations," 12 phones for dictation input, a "re-record module and recorder," and medical transcription word processing software. Dictaphone and Lanier were the only firms which submitted quotes by the August 26 closing time. Dictaphone's quote was approximately \$24,000 less than Lanier's quote. Following the evaluation of quotes, on September 9, the VA issued two purchase orders to Dictaphone, the firm submitting the low priced quote.

On September 13, after learning that the VA had issued the purchase orders to Dictaphone, Lanier met with the VA's contracting officials and was allowed to review Dictaphone's quote, including pricing information. Lanier complained that Dictaphone's system did not meet the requirements in the RFQ, specifically, that Dictaphone's system did not include a separate file server (while Lanier's system did include this item), a re-record cassette unit, and programmable transcription stations. The VA reevaluated Dictaphone's quote. Based in part on consultation with its technical staff, the VA purchasing official concluded that Dictaphone's system did not include a separate file server, now identified as a minimum need of the VA in order for the system supervisor to maintain centralized management and control of the facility's transcription functions; Dictaphone omitted a re-record cassette unit as required by the RFQ; and Dictaphone's transcription stations, while satisfying the generic requirement in the RFQ for "transcription stations", were nonprogrammable and the VA's minimum need, now clarified, was for programmable transcription stations which would represent a technological advance over the existing system. The VA believed that without obtaining the file server and programmable transcription station, it would not be purchasing a significantly better system than it already had.

On September 13, the VA telefaxed a letter to Dictaphone advising the firm to suspend performance of the purchase orders. The VA met with Dictaphone on the same day and told the firm that it would reevaluate its quote based on the addition of a file server, a re-record cassette unit, and programmable transcription stations. The VA informed Dictaphone that Lanier had reviewed Dictaphone's quote.

On September 16, Dictaphone submitted a revised quote which included a price for a file server, a re-record cassette unit, and programmable transcription stations. Dictaphone made no other changes to its quote.

Also, on September 16, in response to the VA's request, Lanier submitted a revised quote reflecting the replacement of the existing computers with more advanced, state-of-the-

art computers, now identified as a minimum need of the VA.¹ Lanier also recalculated its quote in light of promotional discounts approved by GSA which became effective September 10. Lanier made no other changes to its quote.

The VA evaluated the revised quotes of Dictaphone and Lanier. Lanier's revised quote was approximately \$22,000 less than Dictaphone's revised quote. On September 21, the VA canceled the initial purchase orders issued to Dictaphone and issued a new purchase order to Lanier, the firm submitting the low priced quote.

Dictaphone objects to the VA's cancellation of its purchase orders and the issuance of a purchase order to Lanier.

Quotations solicited from FSS vendors are not offers that can be accepted by the government; rather, they are informational responses to an agency's RFQ indicating the supplies or services the vendors would propose to meet the agency's minimum needs and the price of those supplies and services that the agency may use as a basis for issuing an order to an FSS contractor. Nautica Int'l, Inc., B-254428, Dec. 15, 1993, 93-2 CPD ¶ _____. Where an RFQ fails to set forth the agency's actual minimum needs, the RFQ should be revised and new quotes solicited to ensure that all firms are afforded an equal opportunity to compete based on the same set of requirements. New Brunswick Scientific Co., Inc., B-246291, Feb. 3, 1992, 92-1 CPD ¶ 141.

Here, after issuing the purchase orders to Dictaphone, the VA concluded that the RFQ failed to specify all of its minimum needs. Specifically, the VA required a file server so that the system supervisor could maintain centralized management and control of the facility's transcription functions,² programmable transcription stations which would

¹Dictaphone, because of licensing requirements, must use its own software and equipment; therefore, Dictaphone's quote already reflected replacement of the existing computers, thus satisfying the VA's minimum needs. While Lanier does not have similar licensing requirements and based its quote upon the use of the existing computers, the VA requested that Lanier replace these computers in order to satisfy the VA's minimum needs.

²In its protest, Dictaphone challenged the VA's position that a file server was a minimum need. The VA responded to this issue in its agency report. In its comments to the agency report, Dictaphone does not rebut the VA's position with respect to this matter. We view this issue as abandoned. Heimann Sys. Co., B-238882, June 1, 1990, 90-1 CPD ¶ 520.

represent a technological advance over the existing nonprogrammable transcription stations, and computer upgrades. Accordingly, the VA took corrective action by suspending Dictaphone's purchase orders and requesting revised quotes in light of the VA's additional requirements. The VA advised Dictaphone, which already offered computer upgrades, of its minimum need for a file server and for programmable transcription stations (and for a re-record cassette unit as required by the original RFQ). The VA advised Lanier, which already offered a file server and programmable transcription stations, of its minimum need for computer upgrades. We therefore have no basis to object to the VA's corrective action since the VA advised both firms of its additional requirements and afforded both firms an opportunity to compete on an equal basis by submitting revised quotes which added only those items previously omitted, but now identified as minimum needs of the VA. See Lanier Business Prods., Inc., B-203977, Feb. 23, 1982, 82-1 CPD ¶ 159.³

As a result of the corrective action, the VA canceled Dictaphone's purchase orders and issued a purchase order to Lanier as the low-priced firm. While Dictaphone objects to the VA's consideration of Lanier's promotional discounts because they were approved by GSA after the initial closing time for receipt of quotations and after the original purchase orders were issued to Dictaphone, under a standard clause contained in FSS contracts, a contractor may offer a price reduction at any time and by any method without prior or subsequent approval by GSA which administers the contracts. Whitaker Bros. Business Machs., Inc., B-237121, Jan. 17, 1990, 90-1 CPD ¶ 62. Thus, we conclude that Lanier was not precluded from offering these discounts to the VA in its revised quote and the VA's issuance of a purchase order to Lanier based on discounted prices is not legally objectionable.⁴

³Dictaphone argues that the appropriate corrective action would have been for the VA to simply add to its quote its price for the file server, re-record cassette unit, and programmable transcription stations and then to compare its revised quote with Lanier's initial quote. However, this approach would have denied Lanier an opportunity to satisfy the VA's minimum needs by submitting a revised quote which included computer upgrades.

⁴Contrary to Dictaphone's assertion, we do not believe that an impermissible auction resulted because the VA revealed the terms of Dictaphone's initial quote to Lanier. In this regard, the record shows that the purchase orders were issued to Dictaphone on September 9, Lanier's discounts had
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The protest is denied.

Christine S. Melody
for Robert P. Murphy
Acting General Counsel

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been accepted by GSA effective September 10, and Lanier did not review Dictaphone's quote until September 13. In other words, Lanier's discounts were already effective prior to Lanier's review of Dictaphone's quote. There is no evidence in the record that the VA's action in reopening the competition was motivated by the availability of Lanier's discounts. Rather, because neither Dictaphone's nor Lanier's initial quote would satisfy the minimum VA's needs, the VA reopened the competition in order to obtain an upgraded system which would meet its needs.