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DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

FILE: B-200695.2; B-200696.2 DATE: December 30, 1981

MATTER OF: Dictaphone Corporation -- Reconsideration

DIGEST:

1. Where the subject of a protest involved a potentially recurring problem of the proper procedures to be followed when employing life cycle cost analysis in evaluating responses to solicitation, it presented an issue of sufficient importance to warrant consideration on its merits even where the protest was untimely filed.
2. Where the evidence offered by a party urging reconsideration of a prior decision fails to present any new facts or identify errors of law sufficient to justify a reversal or modification of the initial decision, that decision is affirmed.

Dictaphone Corporation requests that we reconsider our decision in Lanier Business Products, 60 Comp. Gen. 306 (1981), 81-1 CPD 188, in which we sustained protests by Lanier of two solicitations issued by the Veterans Administration (VA). In requesting reconsideration of our decision, Dictaphone, the awardee under both solicitations, argues that Lanier's protest was in part untimely and that Lanier had not been prejudiced by the deficiencies we observed because it knew in advance that life cycle cost analysis would be employed by the VA in its cost evaluations.

Our decision in Lanier, supra, dealt with two different VA solicitations for dictation equipment where life cycle cost analysis was employed. The first solicitation was issued by the VA Regional Office, Winston-Salem, North Carolina, and contained no

reference to the method to be used in determining the lowest cost system. The second solicitation, issued by the VA Medical Center, Montgomery, Alabama, contained only a general reference to the effect that life cycle cost analysis would be used to determine the lowest acceptable offer. We concluded both solicitations were defective and did not permit fair and equal competition.

Dictaphone asserts that Lanier's protest of the Montgomery solicitation was not timely filed under our Bid Protest Procedures, which require that protests based on apparent improprieties in a solicitation shall be filed prior to opening or the closing date for receipt of proposals, 4 C.F.R. § 21.2(b)(1) (1981). We agree with Dictaphone that Lanier's protest of the Montgomery solicitation was not timely filed under our procedures. However, this does not necessarily mean that the protest should not have been considered on the merits by our Office. Indeed, 4 C.F.R. § 21.2(c) provides for the consideration of untimely protests which raise issues significant to procurement practices and procedures.

The VA purchases large quantities of dictation equipment on a decentralized basis. Our experience indicates that these procurements are frequently the subject of protests which, in many instances, concern the propriety of the evaluation of offers of competing equipment. See, e.g., Philips Business Systems, B-194477, April 9, 1980, 80-1 CPD 264. The Montgomery procurement is illustrative of a potentially recurring problem regarding the proper procedures to be followed when life cycle costs are to be an evaluation factor. In fact, in conjunction with this decision, we recommended to the Administrator of Veterans Affairs that the agency consider developing centralized, agency-wide life cycle costing evaluation factors so as to preclude similar difficulties in the future. For this reason, we considered the protest on its merits.

The second basis for Dictaphone's request for reconsideration is that Lanier was aware that a life cycle cost analysis would be used to determine the lowest priced system on the Winston-Salem solicitation. As evidence of this, Dictaphone has provided two letters from Lanier representatives to VA officials responding to information requests concerning service contract costs. The first letter, to the VA Medical Center in Montgomery, gives an estimate of service

contract costs. The second letter, to the VA Regional Office in Winston-Salem, gives price quotations for annual costs on service contracts for each of three quotations Lanier submitted. As additional support for its position, Dictaphone argues, as it did when Lanier's protest was initially considered, that Lanier was put on notice that life cycle costs would be evaluated by an August 20, 1980 letter from the VA which stated as a matter of policy that life cycle costs would be evaluated in all future VA procurements. Dictaphone again argues that Lanier's extensive history of procurements with the VA indicates that they were fully aware of the VA's policy regarding life cycle costs.

We stated the essence of our initial decision in this case as follows:

"In our view, the real issue in this case is whether the VA's RFQs adequately advised offerors of the basis and procedures for cost evaluation. We do not believe that they did.

"In one case, the RFQ completely failed to inform quoters that life cycle costing would be employed. In the other case, the RFQ merely stated that life cycle costing would be used without adequately informing quoters of the basic evaluation factors to be used. We fail to see how a quoter could intelligently submit an offer under the circumstances."

Thus even if, for the sake of argument, we accepted Dictaphone's contention that Lanier did in fact know that some form of life cycle cost evaluation would be used by the VA, that still would not negate the validity of our holding that quoters were not adequately advised of the "basis and procedures" that would be used in making such an evaluation. Again, as we stated in our initial decision, "the need for such disclosure is readily evident from the present case, where even the procurement of identical items by the same agency did not result in use of identical life cycle cost evaluation factors."

The two letters to which Dictaphone refers were sent by Lanier, after the quotations for the dictation systems had been submitted, in response to requests by VA officials for information on such matters as how Lanier arrived at its trade-in allowance, whether there would be a charge for switching dial couplers, what annual maintenance charges would be, and what the voltage and ampere requirements were for its equipment. We do not believe these letters show that at the time it submitted its quotations Lanier was aware of the criteria which were to be used in the VA's life cycle cost evaluation.

Dictaphone's next argument is that Lanier was put on notice of how its quotation would be evaluated by the August 20, 1980 letter from the VA advising of a general VA policy of employing life cycle cost analysis in future procurements of central dictation systems. This very point was argued by the VA in our original consideration of Lanier's protest and was rejected by this Office. The VA letter was merely a general statement of policy which failed to indicate which procurements would be subject to the policy and failed to provide any criteria for determining life cycle costs.

Similarly, Dictaphone's argument that Lanier has had extensive procurement experience with the VA also fails to demonstrate why this somehow gave Lanier sufficient notice that life cycle analysis would be employed in these procurements and knowledge of the criteria which would be used to determine it. Dictaphone has not raised any new facts which would cause us to alter our prior decision, nor has it demonstrated any errors of law to justify a reversal of our decision. Capital Recording Company, Inc., - Reconsideration, B-189319, September 25, 1978, 78-2 CPD 222; Annapolis Tennis Limited Partnership, B-189571, July 11, 1978, 78-2 CPD 28.

Accordingly, our decision is affirmed.

For the

Harvey D. Chen
Comptroller General
of the United States