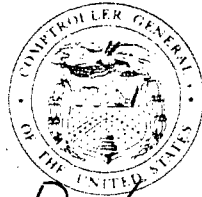


170510 Williams

DECISION



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

[Protest of Delivery Order Issuance]

FILE: B-200578

DATE: February 18, 1981

MATTER OF: Dictaphone Corporation

DIGEST:

Where in response to RFQ for items listed on multiple-award Federal Supply Schedule otherwise acceptable vendor who is substantially low fails to include price for item, and omitted item is relatively low in price, contracting officer should evaluate on basis of omitted items and, if vendor remains low, issue delivery order to that vendor.

Dictaphone Corporation protests the issuance by the Veterans Administration (VA) of a delivery order to Lanier Business Products, Inc. under a request for quotations (RFQ) for a dictation system comprised of components listed on the multiple-award Federal Supply Schedule. The system was needed for the VA Medical Center in Altoona, Pennsylvania. Dictaphone's low quotation for the components was rejected because the firm failed to quote a price for interconnect devices which in the VA's view was required by the RFQ. The devices allow access to central recorders from telephones within the installation through the central telephone lines. Dictaphone contends that the RFQ did not clearly ask for prices for interconnect devices, and that the firm's quotation therefore could not be rejected for not including them.

The protest is sustained.

Quotations were requested for listed equipment and capabilities "in accordance with VA Specification X-1710," a copy of which was attached to the RFQ. The cited Specification describes the VA's needs when acquiring central

~~015470~~ 114365

dictation systems. The RFQ listed under "Ordering Data" features which were required in the dictation system, and/or descriptions of capabilities which would not be necessary. For example, item (c) stated "[t]hree recorders are required," and item (g) stated that "[n]o conference recording is required." The section did not mention interconnect devices.

The VA reports that it rejected Dictaphone's quotation simply on the basis that item (f) of the "Ordering Data" section advised that there were three PBX (private branch exchange, i.e., regular telephone) lines and that Dictaphone should have known the dictation system simply could not interface with the telephone system without three interconnect devices. In this respect, item (f) stated that "[t]he existing system has three internal PBX lines. No additional lines will be required."

Dictaphone protests that the RFQ was ambiguous concerning whether quotations should be submitted on interconnect devices, because while the RFQ's "Ordering Data" section did not specifically require a price for them, a central dictation system of the type the VA wanted would not work without them. Dictaphone states:

"* * * it is generally recognized throughout the dictation equipment industry that central recorders cannot function properly without the use of compatible interface devices. Therefore, it seemed paradoxical that the VA was asking for recorders on one hand, yet on the other hand they were not asking for interface devices."

Dictaphone chose not to include in its quotation a price for the interconnect devices on the basis that:

"Dictaphone can only respond to the information contained within each item [of the RFQ's Ordering Data section]. * * * we must quote exactly what is contained within the specifications. We cannot quote more than the specification asks for * * *."

On that basis, Dictaphone contends that it should receive the purchase order, albeit not including interconnect devices.

We disagree with the VA's actions here. The VA "rejected" the low Dictaphone quotation because it was not "responsive" to the RFQ in that the quote did not include prices for interconnect devices. While it is not disputed that the proposed Dictaphone system would require interconnect devices, Dictaphone's failure to quote a price on those devices did not warrant rejection of the quotation. In this regard, we point out that vendors were not responding to a request for proposals or an invitation for bids with an offer that defined exactly what the vendor would do at what price. Rather, they were responding to an RFQ which was issued not to solicit price proposals which the Government could accept or reject, but to obtain quotes on whatever equipment on the Federal Supply Schedule a vendor would propose to meet the specifications and general line item descriptions of the RFQ, along with any trade-in offers. See Lanier Business Products, Inc., B-196189; B-196190, February 12, 1980, 80-1 CPD 125. Consequently, once the VA determined that the equipment proposed by Dictaphone would meet its needs subject only to the addition of the interconnect devices included on the Schedule, it should have evaluated the Dictaphone offer on the basis of the additional cost of the devices and, if Dictaphone's equipment represented the lowest overall cost to the Government, issued a delivery order to that firm which included the interconnect devices.

In this regard, we note that an agency purchasing an item from the multiple-award Federal Supply Schedule is required to do so at the lowest delivered price available on the Schedule unless the purchase of a higher-priced item is fully justified, 41 C.F.R. § 101-26.408-2 (1979); that Dictaphone's apparently otherwise acceptable quotation (without interface devices) was \$9,999, while Lanier's quote was \$17,997.30 (which included \$1,200 for three interconnect devices); and that Dictaphone informally advises that the firm's then-current Schedule price was \$295 per device.

Under the circumstances, we believe that the issuance of the delivery order to Lanier was improper. (The VA advises that although the delivery order was issued to Lanier, no deliveries have been made pending the outcome of the protest. Accordingly, and since the Schedule contracts of both Lanier and Dictaphone on which their quotations were based have expired, the issued delivery order should be canceled and a new RFQ for the dictation systems issued.) By separate letter, we are so advising the Administrator of Veterans Affairs.

B-200578

4

The protest is sustained.

Milton F. Aroslan
Acting Comptroller General
of the United States