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DECISION



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

[Protest of Photocopier Lease Renewal]

FILE: B-201047

DATE: March 16, 1981

MATTER OF: Copylease Corporation of America

DIGEST:

1. Continued lease of photocopier from incumbent Federal Supply Schedule (FSS) contractor at price allegedly higher than protester's FSS contract price is proper where contracting agency determined that cost of continuing incumbent's lease, considering agency's reduced photocopy requirements, is less expensive.
2. Federal Property Management Regulations § 101-26.408-2, which requires contracting agency justification of purchase at other than lowest delivered FSS price, does not apply to lease of photocopier where, as here, protester's applicable monthly FSS contract rate is higher than that of incumbent lessor and there is no indication in record that circumstances permitting lower priced plan offered by protester are present.

Copylease Corporation of America (Copylease), protests the Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, Northeast Regional Office (NOAA), renewal of a lease with Xerox Corporation (Xerox) for a Xerox model 7000 photocopier. Copylease contends that NOAA, contrary to the requirements of Federal Property Management Regulations (FPMR) § 101-26.408-2 (1964 ed. amend. E-190), has continually ignored Copylease's proposals to lease Xerox equipment under its Federal Supply Schedule (FSS) contract with the General Services Administration (GSA) at a cost savings to the Government.

For the reasons discussed below, the protest is denied.

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Copylease asserts that, in renewing the Xerox lease, NOAA will forego a savings of \$572 (\$740, less \$168 removal charge) for the balance of fiscal year 1981. The protester further contends that NOAA is using a contingent event, proposed consolidation of several photocopy facilities with a projected increase in photocopy volume, to justify the renewal of the lease and to later upgrade the equipment from the Xerox model 7000 to an allegedly more expensive model 8200. Copylease insists that NOAA will thereby incur a direct annual cost of \$6,636.

NOAA, however, states that there has been a definite decrease in the regional office's photocopy requirements during the months of June through November 1980 due to the fact that the Office of General Counsel moved from the Northeast Regional Office. As a result, the average monthly copy estimate originally given to Copylease (35,000 copies) has decreased to 21,558 copies. NOAA does not anticipate any increase in the regional office staff during fiscal year 1981. NOAA concludes that, based upon its newly established monthly usage rate, a continued lease from Xerox is justified at the firm's monthly FSS contract rate of \$810 for up to 23,100 copies compared to Copylease's rate of \$855 for up to 35,000 copies. Finally, NOAA states that it will continue to monitor the regional office's usage rate and will consider the protester pursuant to the requirements of FPMR § 101-26.408-2 in the event the office's photocopy requirements increase.

Copylease nevertheless contends that if the average monthly volume of 21,558 copies is to be the anticipated future pattern, it will place the machine on its low volume pricing plan at \$502 per month for the first 11,000 copies, \$0.021 each for 11,001 to 40,000 copies, and \$0.0065 per copy for 40,001 or more copies. Under the low volume plan at an average monthly volume of 21,558 copies, Copylease's rental price would be \$724 per month, or \$86 per month less than Xerox, for an annual savings of \$1,032. Based on the June through November 1980 period cited by NOAA, Copylease calculates Xerox's monthly cost at \$865, \$141 per month (\$1,692 yearly) higher than Copylease. Moreover, if the volume

were to increase to 75,000 copies as NOAA previously anticipated upon consolidation of its photocopy facilities, Copylease asserts that it would save NOAA \$353 per month on the Xerox model 7000 or \$553 per month for the Xerox model 8200. Copylease notes that Xerox's pricing matrix indicates the model 7000 at volumes of 200,000 copies, so a model 8200 would not be necessary for photocopy requirements of 75,000 copies. In addition, Copylease states that it monitors the copy volume and can convert its customers to a high or low volume pricing plan on 30 days' notice if the customer's use increases or decreases.

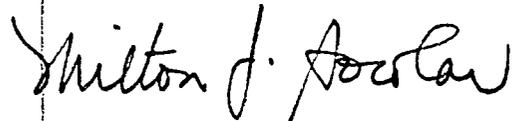
FPMR § 101-26.408-2, in pertinent part, provides:

"Each purchase of more than \$500 per line item made from a multiple-award schedule by agencies required to use these schedules shall be made at the lowest delivered price available under the schedule unless the agency fully justifies the purchase of a higher priced item. * * * Agencies not required to use schedules, but which choose to do so, are apprised of the advisability of fully justifying purchases costing more than \$500 per line item when the items are not the lowest priced available on the schedule."

The operative factor under the regulation is, therefore, whether the contracting agency is purchasing a line item of more than \$500 from an FSS contractor at other than the lowest delivered price under the schedule. Although Copylease argues that its FSS contract price is lower than Xerox's, it does so on the basis of its low volume pricing plan. We have, however, informally ascertained from GSA that, according to the protester's FSS contract, in order to be entitled to Copylease's low volume pricing plan, a contracting agency must have, or commit to use, 10 machines. In the absence of any indication in the record that such a commitment or use exists, Copylease's \$724 per month low volume plan pricing is not for consideration by us in determining the lowest delivered price under the firms' FSS contracts.

NOAA based its comparison on Copylease's regular plan monthly price of \$855 for up to 35,000 copies versus Xerox's monthly Contract Period plan price of \$810 for up to 23,100 copies. Clearly, Xerox's price for up to 23,100 copies is \$45 per month less than the protester. Therefore, NOAA's lease with Xerox is not at other than the lowest FSS price and a justification is not required. Furthermore, we note that the Copylease contract rate NOAA used in its analysis increased on December 1, 1980, and that the protester's fiscal year 1981 FSS monthly rate under its regular pricing plan is now \$960 less a 5-percent discount and a 3-1/2-percent prompt-payment discount, or about \$880 per month for up to 35,000 copies.

Under the circumstances, we find no basis upon which to conclude that NOAA's determination to renew its lease with Xerox was in violation of the requirements of FPMR § 101-26.408-2.



Acting Comptroller General
of the United States