



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: A. B. Dick Company

File: B-228086

Date: December 15, 1987

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### DIGEST

Protest against award to a higher-priced vendor under a mandatory, multiple-award federal supply schedule contract is denied where the agency reasonably determines that the higher-priced vendor's equipment offers features which will satisfy the agency's actual minimum needs and the protester has failed to show that the requirements are clearly unreasonable.

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### DECISION

A. B. Dick Company protests the award of delivery order No. DAKF49-87-F-6747, to AM Multigraphics by the United States Army. The order is for duplicating equipment for use at the Fort Sam Houston Printing and Publications Branch in Texas and was placed under AM Multigraphics' mandatory, multiple-award federal supply schedule (FSS) contract. A. B. Dick contends that the delivery order was awarded to AM Multigraphics at a higher price than its own FSS contract price in violation of applicable procurement regulations. We deny the protest.

The Fort Sam Houston Printing and Publications Branch determined in May 1987 that certain duplicating equipment was nearing the end of its recommended useful life and would have to be replaced. Authority was granted to purchase two automated tandem duplicators, AM Multigraphics model #2975-S, or equal; one electrostatic platemaker, AM Multigraphics model #2400, or equal; and one remanufactured electrostatic platemaker, AM Multigraphics model #2400R.<sup>1/</sup> On that basis, the purchasing agent contacted A. B. Dick and seven other vendors listed on the FSS to discuss Fort Sam Houston's requirements and to solicit technical and price information from each vendor. According to the Army, oral

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<sup>1/</sup> The remanufactured platemaker is an off-schedule item being purchased on an open market.

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quotes were requested and received from only two vendors of tandem duplicators, AM Multigraphics and A. B Dick. After evaluating the technical and price information received from both firms, the contracting officer determined that AM Multigraphics' equipment would meet the specific minimum needs of the user and, on July 17, issued a delivery order to AM Multigraphics under that firm's FSS contract.

The record shows that the user prepared two justifications to support the decision to order the higher-priced equipment from AM Multigraphics. The justifications state, in part, that no other tandem duplicator is available which meets all the government's minimum requirements for duplicating equipment, and is capable of the necessary productivity, simplicity of operation, consistent quality, reduced operator intervention and overall cost effectiveness to support the mission of the using activity. The features of the AM Multigraphics tandem duplicator determined to meet the government's minimum requirements and, thus, justify the decision to place an order with a higher-priced FSS vendor are as follows:

1. electronic ink and moisture control;
2. automatic master converter with doubles detector;
3. doubles sheet eliminator;
4. continuous simplexing.

While the Army has provided detailed support for its insistence upon these features, we believe its rationale for the requirements may be summarized as follows:

The electronically controlled ink and moisture system continuously monitors the amount of ink and moisture in the system while the machine is in operation and continuously monitors the quality of copy throughout the duplicating cycle without operator intervention. By eliminating or reducing operator intervention, the Army states that this system (1) increases productivity because the operator is free to perform other tasks, such as, making masters and unloading sorters; (2) reduces waste by ensuring consistent copy quality; and (3) minimizes the degree of operator training and expertise that would be required.

The automatic master converter with doubles detector is a feature necessary to ensure that all masters are reproduced in the proper sequence.

The doubles sheet eliminator is required because, if the duplicator feeds double sheets, this feature will detect the double sheets and eliminate them while allowing the machine to continue operation. Thus, this feature eliminates the

need for operator intervention should the equipment feed double sheets.

The requirement for continuous simplexing is justified on the basis that a tandem (two-headed) duplicator equipped with this feature allows both duplicating heads of the tandem unit to be used for "simplexing" in a sequenced rotation. This feature reduces idle down time thereby improving the productivity of the equipment.

In addition, the agency justifies the award on the basis that the justification required by section 8.405-1(a) of the Federal Acquisition Regulation (FAR), 48 C.F.R. § 8.405-1(a) (1986), had been met. That regulation provides, in pertinent part:

". . . Justification for ordering a higher priced item may be based on such considerations as -  
(1) Delivery time in terms of actual need that cannot be met by a contractor offering a lower price;  
(2) Specific or unusual requirements such as differences in performance characteristics;  
(3) Compatibility with existing equipment or systems;  
(4) Trade-in considerations that favor a higher priced item and produce the lowest net cost; and  
(5) Special features of one item not provided by comparable items that are required in effective program performance."

The agency reports that the contracting officer made a specific finding that the justification for ordering the higher-priced equipment from AM Multigraphics satisfied considerations (2), (3), and (5), of the above-cited regulation.

On July 21, A. B. Dick was informed that an award had been made to AM Multigraphics and on July 17, the protester filed an agency-level protest against the award. Prior to resolution of the agency-level protest, A. B. Dick protested to this Office on August 20.

A. B. Dick maintains that it was improper for the Army to issue a delivery order to AM Multigraphics since its offered equipment was equal to AM Multigraphics'; was proven more productive; and was offered at a lower price. The protester charges that the four requirements noted earlier are restrictive of competition and exceed the minimum needs of the user. Clearly, the crux of this protest is the Army's determination that only AM Multigraphics' equipment, which has these four features, meets the agency's minimum needs.

Generally, when a protester alleges that specifications restrict competition, the initial burden is on the procuring activity to establish prima facie support for its contention that the restrictions are needed to meet its actual minimum needs. See Chi Corp., B-224019, Dec. 3, 1986, 86-2 C.P.D. ¶ 634 at 3. Once the prima facie support is established, however, the burden shifts to the protester, to show that the allegedly restrictive provision is unreasonable. Id.

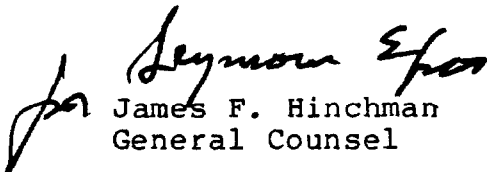
Further, an agency ordering from an FSS contract is required to order from the lowest-priced vendor consistent with its minimum needs unless it prepares an appropriate justification for purchase from a higher-priced vendor. FAR, 48 C.F.R. § 8.405-1(a); White Office Systems, Inc., B-227845, Sept. 8, 1987, 87-2 C.P.D. ¶ 227. Moreover, the determination of the minimum needs of an agency and which items on the FSS meet those needs are matters primarily within the jurisdiction of the agency and we will not question such a determination unless it clearly appears to involve bad faith or is not based on substantial evidence. National Micrographics Systems, Inc.; Cannon U.S.A., Inc., B-220582, B-220582.2, Jan. 9, 1986, 86-1 C.P.D. ¶ 22 at 4. Therefore, although the agency, after determining its minimum needs, is required to procure from the lowest-priced vendor on the schedule unless it makes an appropriate justification for purchase from a higher-priced vendor, a legal objection to the agency's justification is not warranted unless it is clearly shown to have no reasonable basis. Id. Here, the Army determined that the four requirements which made A. B. Dick's equipment unacceptable to meet the user's needs, justified the purchase of other than the lowest-priced equipment.

With reference to the agency's need for these requirements as determined by the Army, A. B. Dick maintains that the electronic ink and moisture control feature "may not be necessary to produce good copy quality and in fact may not be utilized by many operators." Concerning the automatic master converter with doubles detector and doubles sheet eliminator, the protester simply states that its equipment (1) does not "experience" problems with feeding double masters; (2) that the feeder section of its tandem equipment is "specifically designed for efficiency and productivity;" thus, feeding doubles has never been a problem with its equipment. As to the requirement for continuous simplexing, A. B. Dick asserts that if this feature was a "major" requirement, purchase of the awardee's equipment is not justifiable since, in its view, "there are systems costing thousands of dollars less."

Although A. B. Dick argues that its equipment is more productive than AM Multigraphics' and can meet the needs of the user, A. B. Dick has not shown that the requirements at issue in this protest do not reasonably reflect the Army's actual minimum needs. Nor has the protester offered any explanation or factual support for its contention that these requirements exceed the minimum needs of Fort Sam Houston. Indeed, the protester admits that its tandem duplicator does not possess those features which the Army states represent the government's minimum needs to support the mission of several commands located on and nearby Fort Sam Houston. Consequently, we will not consider the extensive arguments and documentation (which the Army refutes) proffered by the protester to support its claim that its equipment is more productive. In sum, we cannot conclude from this record that the protester has shown that the Army's definition of its needs is arbitrary or unreasonable.

Finally, A. B. Dick's contention that the delivery order was issued in violation of part 10 of the FAR is without merit since those regulations do not apply to orders placed under multiple award schedules. See FAR, 48 C.F.R. § 38.102-2; A.B. Dick Co., B-220144, Nov. 26, 1985, 85-2 C.P.D. ¶ 606 at 3.

Accordingly, the protest is denied.

  
James F. Hinchman  
General Counsel