



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Dictaphone Corporation

File: B-248221.3

Date: December 23, 1992

Grace Bateman, Esq., Seyfarth, Shaw, Fairweather, & Geraldson, for the protester.
William E. Thomas, Jr., Esq., Department of Veterans Affairs, for the agency.
Jeffrey S. Forman, Esq., and Michael R. Volpe, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Trade-in allowances offered by Federal Supply Schedule vendors should be considered in the evaluation of quotations and in the determination of which quotations represent the lowest cost to the government.
2. Rejection of dictation equipment is proper where the equipment will not fit into the only available space.
3. Protester whose equipment is unacceptable is not an interested party to protest that an award to another Federal Supply Schedule (FSS) vendor exceeds the maximum ordering limitation of that vendor's FSS contract.

DECISION

Dictaphone Corporation protests the issuance of a purchase order to Sudbury Systems, Inc. by the Department of Veterans Affairs (VA) for a centralized dictation system at the VA's Medical Center in the Bronx, New York. The purchase order was placed under Sudbury's General Services Administration Federal Supply Schedule (FSS) contract for FSC Group 74 dictation equipment.

Dictaphone argues that VA improperly failed to take into account a trade-in allowance on old equipment which would have made Dictaphone the low quote and erroneously concluded that Dictaphone's system did not meet VA's minimum needs. Lastly, Dictaphone contends that the award price of \$157,640 is in violation of the \$125,000 maximum order limitation (MOL) in Sudbury's FSS contract.

The VA issued two requests for quotations (RFQ), No. 526-14-92, on May 28, 1992, which was canceled, and RFQ No. 526-17-92 on June 10, 1992, which also was canceled. In response to these RFQs, the VA received quotations from Sudbury, Dictaphone, and Lanier Business Products Inc., which set out the equipment that would be provided and a price list for this equipment.

Subsequently, the VA realized that the equipment it was purchasing was on a Federal Supply Schedule under which it was a mandatory user. The VA evaluated the data it had and determined that Sudbury's price of \$157,640 was low while Lanier's price was second low and Dictaphone's was third low, although Dictaphone had offered a trade-in for the used VA equipment of \$86,044 which, when deducted from its gross offer, made its net quote the lowest. However, the VA considered the trade-in unreasonable and not for consideration since the used equipment only had a value of \$2,691.25. The VA also found that Dictaphone's equipment would not fit in the available space and therefore did not meet its needs. The VA awarded the contract to Sudbury on July 13, 1992.

The VA argues that Dictaphone is not an interested party to protest the award to Sudbury, since Dictaphone's price is the highest and therefore it is not next in line for award should its protest succeed. See Days Inn, B-246280, Nov. 19, 1991, 91-2 CPD ¶ 481. We disagree because, as discussed below, the trade-in for the old equipment offered by the protester should have been considered; with the trade-in, Dictaphone is in line for award.

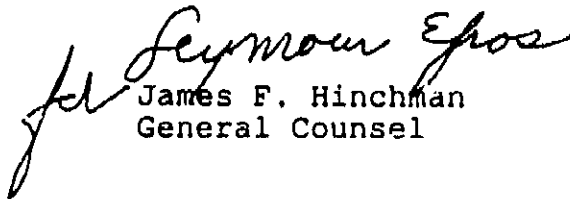
Under the FAR, an agency may order a higher priced item from a vendor on the FSS, if, among other things, the amount offered in trade by the vendor produces the lowest net cost for the item being acquired. See FAR § 8.405-1(a)(4). An amount offered as trade-in allowance is simply a matter of business judgment, and a vendor may use a high trade-in allowance to obtain a competitive advantage over other vendors. Dictaphone Corp.; Business Equipment Center, Ltd., B-192314, B-192373, Nov. 14, 1978, 78-2 CPD ¶ 345. Indeed, even if a high trade-in offer is considered tantamount to a price reduction, this is allowable since a contractor is always free to supply items listed on its FSS contract at a lower price than the Schedule price. Sony Corp. of America, B-215697, Oct. 2, 1984, 84-2 CPD ¶ 384. Accordingly, we consider Dictaphone to be an interested party to protest the VA's determination that its equipment was not acceptable.

Although Dictaphone's trade-in should have been considered, we find that VA had a reasonable basis for finding that Dictaphone's product did not meet its minimum needs. The VA determined that the Dictaphone equipment will not fit in the

only space the VA has to house the dictation equipment. Dictaphone contends that its equipment could be used either by stacking the two cabinets or housing one or more pieces of the equipment at another location. The VA states, however, that there is no other space available to house the dictation equipment and that stacking is not feasible. If the equipment were stacked, it would not fit next to the telephone switching station and it would interfere with access to the switching station that connects the central dictation system to the remote dictation system of the Medical Center. The VA contends that the cost of moving the switching equipment would be prohibitive. Moreover, contrary to the protester's assertion, the VA states that it is not planning to relocate any existing equipment which would free up additional space for dictation equipment to be located. The protester has not convincingly refuted the contracting officer's position. Thus, on this record we have no basis for disagreeing with the VA's evaluation of Dictaphone's equipment.

As for the MOL issue, we do not view Dictaphone as an interested party to raise that issue since, in light of the unacceptability of its equipment, it would not be in line for award if we were to sustain the protest on this issue.¹

The protest is denied in part and dismissed in part.


James F. Hinchman
General Counsel

¹We note that GSA, the agency responsible for administering the FSS, agrees with the VA that the Sudbury contract MOL was not exceeded here.