

DECISION



11523  
Transp.  
Mr. Cohen

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

FILE: B-195043

DATE: September 25, 1979

MATTER OF: Dictaphone Corporation

*CNG01046*  
*Host*  
*[Protest Alleging That Agency Did Not Use Current FSS Prices]*  
DIGEST:

1. It is responsibility of supplier of item listed on ~~General Services Administration (GSA) Federal Supply Schedule~~ *FSS* contract to notify contracting activities of price reduction, and contracting activity therefore is not required to contact GSA or supplier to verify listed price.
2. *As* Item offered to GSA for listing on Federal Supply Schedule must be new and current model at time of offer, but not necessarily in current production.

*AGC00102*  
*CNG01045*  
Dictaphone Corporation (Dictaphone) protests the issuance by the Federal Bureau of Investigation (FBI) of a delivery order to Lanier Business Products, Inc. (Lanier), for dictation equipment at \$469 per unit for the FBI's San Juan, Puerto Rico, office. The order was issued on May 16, 1979, under the then current General Services Administration (GSA) Federal Supply Schedule (FSS) Contract No. GS-005-66650.

Dictaphone asserts that at the time the order was issued Dictaphone was the lowest cost supplier under the FSS contract for the dictation equipment that would meet the FBI's needs. In this connection, pursuant to Federal Property Management Regulations (FPMR) § 101-26.408-2 (1978) the FBI was required to purchase the equipment at the lowest delivered price available under the FSS unless the agency fully justified the purchase of a higher priced item. Dictaphone also contends that the Lanier units purchased were not "in current production" when offered by Lanier to GSA under the FSS contract, allegedly having last been produced in June 1977, and that GSA's acceptance of Lanier's offer therefore was improper under the terms of the FSS contract. We find no merit to the protest.

The record indicates that Dictaphone's units originally were listed on the FSS at \$489 each, but by letter of January 9, 1979, Dictaphone reduced the unit price to \$465. The reduction was accepted by GSA on January 11, effective December 7, 1978. However, the FSS data reviewed by the FBI in anticipation of purchasing the equipment did not reflect the price reduction, but

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showed Dictaphone's unit price as \$489. We note here that Dictaphone's January 9 letter to GSA indicated that its dictating equipment was "of foreign origin," but it is not clear from the record whether the factors imposed under the Buy American Act, 41 U.S.C. § 10 a-d (1976), were considered in evaluating the lowest delivered price.


Concerning the price reduction, Dictaphone suggests that it was incumbent on the FBI to contact GSA to determine the most current FSS prices for the agency's requirements, arguing that "it would be virtually impossible for any vendor to supply each of the thousands of Federal contracting officers with all information regarding pricing and/or price reductions." We disagree. We have recognized that the burden is on the supplier of an item under an FSS contract to notify contracting activities of a price reduction communicated to GSA, and that absent actual notice by a contracting activity a determination under FPMR § 101-26.408.2 based on the higher price is proper. B-166819, July 23, 1969; B-148889, August 8, 1962. In this respect, clause 284 (e) of the FSS contract requires the contractor as part of its contractual obligation to "Distribute \* \* \* pricelists to all ordering offices on the list of addressees furnished by the Contracting Officer," and advises that where dictating and transcribing machines are concerned the distribution will involve approximately 2100 addressees. Moreover, GSA's January 11, 1979, approval of Dictaphone's price reduction expressly directed the Contractor that: "Changes shall be shown, in detail, including effective date, in Supplement to authorized Price List furnished and distributed by contractor." (Emphasis added.)

GSA advises that it has no record of a Supplement having been filed with that agency by Dictaphone concerning the price reduction, and Dictaphone has offered no evidence that it made the price reduction known to the FBI or other agencies. Thus, the protester must be considered to have failed to fulfill its responsibility in that regard, and in our view the FBI's reliance on otherwise current data showing Lanier as the lowest priced FSS supplier therefore was proper. Motorola, Inc., B-191339 October 19, 1978, 78-2 CPD 287, at p. 6.

With regard to the above, there is some confusion in the record as to whether an agency is prohibited from contacting either GSA or a vendor to confirm a price on the FSS. In this respect, we have indicated that an agency is not required to do so, even though there appears to be no prohibition against that procedure in the regulations. See Dictaphone Corporation, B-193716, March 23, 1979, 79-1 CPD 200.

Regarding whether the Lanier equipment ordered by the FBI was "in current production" at the time it was offered to GSA for inclusion on the FSS, clause 494 of the FSS contract with GSA, entitled "Workmanship," provides that "Any item contracted for must be new, current model at the time of offer, unless otherwise specified. \* \* \*" Thus, a model offered under an FSS contract only must be a new and current model at the time of offer, not necessarily in current production, as argued by Dictaphone. Since there is nothing in the record to indicate that the Lanier units were other than new and current models when they were offered to GSA in 1978, we find no merit to this contention.

The protest is denied.

  
Deputy Comptroller General  
of the United States