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**DECISION**



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

FILE: B-195243

DATE: September 21, 1979

MATTER OF Olivetti Corporation of America

*CNG 00960*

**DIGEST:**

*[Protest Challenging]*

1. Where protester challenges requisition of electric typewriters under Federal Supply Schedule contract (FSSC) on grounds that agency made award to higher-priced supplier without satisfying justification criteria of Federal Property Management Regulations (41 C.F.R. § 101-26.408-3 (1978)), GAO will not object to agency's justification unless it is clearly shown to have no reasonable basis.
2. While agency's justification for purchasing higher-priced item from FSSC must be adequately substantiated, protester's disagreement with agency justification is not sufficient to meet its burden of proof to show justification is objectionable.

*DLG 02816*

Olivetti Corporation of America (Olivetti) has protested the Military Personnel Command's, Department of the Navy (Navy), order of 67 Royal 5000 CD electric typewriters pursuant to requisition No. N62980-790-RQKA778. This was a multiple-award Federal Supply Schedule (FSS) procurement.

The Federal Property Management Regulations (FPMR), which control all FSS procurements (41 C.F.R. § 101-26.408-1, 2 and 3 (1978)), contain, in pertinent part, the following requirements concerning purchases from a multiple-award schedule:

"§ 101-26.408-1 Description.

"(a) Multiple-award Federal Supply Schedules cover contracts made with more than one supplier for comparable items at either the same or

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different prices for delivery to the same geographical area.

\* \* \* \* \*

"§ 101-26.408-2 Procurement at lowest price.

"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. \* \* \*

"§ 101-26.408-3 Justifications.

"(a) Justifications for purchases made at prices other than the lowest delivered price available should be based on specific or definitive needs which are clearly associated with the achievement of program objectives. Mere personal preference cannot be regarded as an appropriate basis for a justification. Justifications should be clear and fully expressed. Recital of or reference to one of the factors set forth in paragraph (b) of this § 101-26.408-3 is not sufficient.

"(b) The following are examples of factors that may be used in support of justifications when used with assertions that are fully set forth and documented.

"(1) Special features of one item not provided by comparable items are required in effective program performance.

"(2) An actual need exists for special characteristics to accomplish identified tasks.

"(3) It is essential that the item selected be compatible with items or systems already existing within using offices.

"(4) Trade-in considerations favor a higher priced item and produce the lowest net cost.

"(5) Time of delivery in terms of actual need cannot be met by a contractor offering a lower price. \* \* \*"

Olivetti's position is essentially that the Navy violated the aforementioned regulations when it made award to Royal Business Machines, Inc. (Royal), at \$744 per unit rather than Olivetti at \$727 per unit, without satisfying the justification criteria. Olivetti argues that one of the purposes of the aforementioned regulations is "to terminate the long standing practice by federal agencies of purchasing the highest priced typewriters because of personal preference and paying lip service to the regulations by routinely writing a letter of 'justification' alleging a necessity for special features and consisting entirely of conclusionary statements of a procurement officer with no substantiation nor documentation." To emphasize this, Olivetti cites a passage from S. Rep. No. 294, 94th Congress, 1st Sess. 286 (1975), submitted pursuant to the 1976 Treasury, Postal Service, and General Government Appropriations Bill, where the Committee on Appropriations, at page 47, recognized, among other things, that care must be exercised when the Federal Government procures typewriters to ensure that the typewriter selected meets the needs of the procuring agency. While it is true that the committee recognized the need for care in this type of procurement, we believe that the thrust of the committee's statement was directed toward preventing the practice of selecting the "highest cost items," which the committee advised occurred "over 70 percent" of the time, with a justification letter citing "availability of type style and pitch change."

In addition, Olivetti points to the Comptroller General's report to the Congress, Ineffective Management of GSA's Multiple Award Schedule Program--A Costly, Serious, and Longstanding Problem, PSAD-79-71, May 2,

1979, which states, at page 25, that the justification for "purchases made at prices other than the lowest delivered price available should be based on specific or definitive needs which are clearly associated with the achievement of program objectives." However, the report advises that a review of transactions which resulted in the purchase of higher-priced items disclosed "no or inadequate justification existed for purchasing the higher priced item."

On August 21, 1979, a conference was held at our Office and a demonstration of the Royal 5000 CD and the Olivetti L93C electric typewriters was conducted by the Navy. Initially, the Navy's justification for purchasing the Royal machine contained six factors which were typed on the requisition and invoice shipping document. However, it is clear from the record that the Navy was basing its decision on only three of the factors which are:

"(a). The Royal typewriter has a noiseless paper injector and ejector. This feature alone saves an operator a minimum of 15% in paper handling.

"(b) The Royal typewriter has a nontabulating carriage. This saves an abundance of desk space, making the working area more comfortable for the operator.

\* \* \* \* \*

"(d) The lock in half space key enables the operator to have both hands free to cover key board when inserting words on OCR forms. This feature alone can save the operator time and increase productivity."

The following sequence includes Olivetti's comments to the Navy's justification and the Navy's response thereto:

Olivetti:

"To insert or remove paper in the Royal machine one uses a lever, in the Olivetti machine one uses a knob. In both cases it takes both hands and there is no other distinction. This lever becomes in the language of the procurement officer a 'noiseless paper injector/ejector' which saves an operator 'a minimum of 15% in paper handling.'"

Navy:

"The paper injector/ejector is a significant feature of the Royal machine; so much so that on the Federal Supply Schedule, the General Services Administration has listed this feature as a characteristic which should be considered by contracting officers in making awards. Attachment A to this letter is a copy of that schedule with this item highlighted. Additionally, the Navy conducted a time and motion study on typewriters using actual action pieces of correspondence. This study revealed that, by manually inserting correspondence and envelopes into a machine without the automatic injector/ejector capability, it took approximately nine minutes more per hour to complete a given quantity of work than with the Royal typewriter. The contracting officer found that this feature was required by the Navy for the uses the machines were to be put to."

Olivetti:

"The Royal typewriter with a non-tabulating carriage has a 15 inch width base with knob extending 1 1/4 inches on each side, totalling 17 1/2 inches. The Olivetti machine with a tabulating carriage has a 12 inch width base and the carriage extends to a maximum of 3 inches on each side, totalling 18 inches. From these

figures the procuring officer arrives at the preposterous conclusion that the Royal typewriter has a non-tabulating carriage which 'saves an abundance of desk space making the working area more comfortable for the operator.'

Navy:

"These figures are completely inaccurate. The Royal machine's width from the left end of the carriage (including the knob) to the right end of the carriage (including the knob) is 22 inches. This machine features a non-movable carriage. Hence this figure (22 inches) represents the total required desk space for the Royal machine. The Olivetti machine, including the swing of its movable carriage, requires 42 inches of desk space - almost double that of the Royal machine. The Olivetti machine therefore requires significantly greater desk space than the Royal machine. Because of the limited working area available in the spaces in which these machines would be used, the contracting officer determined that the Royal machine would fit the Navy's needs and that use of the Olivetti machine would be impractical.

Olivetti:

"All typewriters have a half-space key. It is used when a word is misspelled because of the omission of a letter. E.g., if the word 'fraud' were typed 'frad,' the letter 'd' would be erased, the half-space key depressed, and letters 'u' and 'd' inserted where the original 'd' had been so that the word would be correctly spelled with only the space between the last two letters being diminished. A half-space key that locks obviously adds exactly nothing to the process. Yet, the purchasing officer cites this as an excuse for the expenditure of the tax payers' money."

Navy:

"This example is completely misleading. The Navy's requirements for these machines include completion of orders for enlisted men and officers and also include the completion of forms for Navy accounting and budgeting offices. In each of these cases machine operators must type onto forms providing a very limited space and requiring the use of the half-space feature for completion of the entire form. Use of the Olivetti machine would require the operator to use one hand to hold the half-space key and leave only one hand free for typing the entire form. The 'lock-in' half space key feature, available only on the Royal machine, allows the operator to lock in the half-space operation and frees both hands for typing. The contracting officer found this to be a significant convenience and time-saving feature."

It is a function of the procuring agency to determine its minimum needs and once that determination is made the agency, when using the FSS, is required to procure from the lowest-priced supplier on the schedule, unless it makes an appropriate justification for purchase from a higher-priced supplier. Microcom Corporation, B-186057, November 8, 1976, 76-2 CPD 385. A justification must be adequately substantiated; however, the fact that the protester disagrees with the agency's reasoning is not necessarily sufficient to show the justification is objectionable. Dictaphone Corporation; Business Equipment Center, Ltd., B-192314, B-192373, November 14, 1978, 78-2 CPD 345. Our Office has indicated that we will not object to an agency's justification unless it is clearly shown to have no reasonable basis. See Microcom Corporation, supra. In these matters, we are concerned with reviewing the reasonableness of the agency's justification, not what supplier's equipment should be purchased.

While Olivetti disputes the benefits to be gained by characteristics of the Royal typewriter, it is clear from the record that the Royal typewriter does have characteristics not present on the Olivetti typewriter and the

Navy has determined these characteristics to outweigh the cost savings offered by Olivetti. Moreover, in view of our standard of review, we do not believe that the protester has presented enough evidence to support a conclusion that the agency's justification is totally unreasonable. See American Chain & Cable Company, Inc., B-188749, May 23, 1978, 78-1 CPD 390.

Accordingly, Olivetti's protest is denied.

*R. Z. K. 11/12*  
Deputy Comptroller General  
of the United States