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# DECISION



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

FILE: B-195346

DATE: October 22, 1979

MATTER OF: Lanier Business Products, Inc.

[Protest of FSS Contract Award]

DIGEST:

CN 1045

Protest challenging purchase order under Federal Supply Schedule (FSS) contract because protester's equipment was lowest priced is denied. Protester's equipment does not meet Government's minimum needs. However, ICC should assure that vendors are provided an adequate statement of its requirements when they are asked to provide pricing information for evaluation.

CN 1046

Lanier Business Products, Inc. protests the award of purchase order No. ICC-79-Y-1987 for dictation equipment to Dictaphone Corporation by the Interstate Commerce Commission (ICC). The order was placed under a Dictaphone Federal Supply Schedule (FSS) contract.

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Prior to issuing the purchase order, ICC informally requested that Lanier and Dictaphone provide FSS pricing information for dictation systems. Lanier and Dictaphone each proposed a system incorporating its equipment. After initial technical evaluation, Lanier's system was found to be slightly less expensive. However, the ICC technical evaluators found that Lanier had listed equipment which could not meet several of the ICC's requirements. Substituting other equipment increased the cost of Lanier's system, making it more expensive than Dictaphone's. Also, ICC asserts, Lanier's system lacked at least one needed feature which Lanier cannot provide.

✓ Lanier argues that it has the lowest priced system that meets ICC's actual requirements. At a conference held on this protest, however, Lanier admitted that it could not provide automatic assignment of dictation

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based on accumulated workload. In a post-conference submission, ICC maintains that automatic assignment is essential to assure maximum distribution flexibility because, "with only three dictation tanks, and at least four document types \* \* \*, sequential input could result in overloading some tanks and under use to others." Lanier views ICC's belated explanation as merely an attempt to justify its elimination.

In response, ICC seeks to:

"\* \* \* emphasize that under Federal Supply Schedule procedures, an agency is not required to consult a firm prior to making decisions on equipment comparisons and selection."

✓ On the present record Lanier has not shown that the ICC's automatic assignment requirement is other than bona fide. We therefore must deny the protest.

✓ We are concerned, however, with the procedures ICC followed in this case. To the extent that ICC involved Lanier and Dictaphone in the selection process, we believe it was obligated to treat them fairly and equally. See, e.g., Dictaphone Corporation, B-193614, June 13, 1979, 79-1 CPD 416. In our opinion, ✓ ICC failed to provide an adequate statement of its needs. Cf. General Electrodynamics Corporation--Reconsideration, B-190020, August 16, 1978, 78-2 CPD 121. Lanier merely was furnished a list of Dictaphone equipment which ICC believed would meet its requirements and was given a list of general specifications, including the automatic assignment requirement. However, Lanier was advised that the specifications were furnished only for information purposes and had been developed in connection with a different and larger procurement requiring a wider variety of equipment.

We do not agree with the contracting activity's view that:

"A knowledgeable vendor should be able to select those [items of equipment and specifications] which are applicable to the equipment [proposed by its competitor] and make a reasonably accurate judgment as to the level of equipment required, not simply the least expensive equipment to be 'competitive.'"

Although we deny the protest, we are recommending to the Chairman of the Interstate Commerce Commission that appropriate procedures be adopted to assure that offerors asked to furnish FSS information in future procurements are provided with an adequate statement of the ICC's requirements.

*R. F. K. H.*

Deputy Comptroller General  
of the United States

*Although the protest was therefore denied.*