



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: ViON Corporation

File: B-275063.2; B-275069.2

Date: February 4, 1997

David R. Hazelton, Esq., and David E. Ross, Esq., Latham & Watkins, for the protester.

Robert J. Moss, Esq., Dickstein, Shapiro, Morin & Oshinsky LLP, for Severn Companies, Inc., an intervenor.

Robert R. Goff, Esq., Defense Information Systems Agency, for the agency.

Guy R. Pietrovito, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. A Federal Supply Schedule contractor may properly offer only to an ordering agency a one-time price reduction from its schedule contract for a specific order.
 2. Agency properly ordered items incidental to and necessary for the operation of a computer system ordered under Federal Supply Schedule (FSS) contract, which provided for the provision of such incidental items not specifically listed in the FSS contract.
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DECISION

ViON Corporation protests the Defense Information Systems Agency's (DISA) issuance of delivery orders Nos. DCA200-97-F-0761 and DCA200-97-F-0765 to the Severn Companies, Inc., under Severn's Federal Supply Schedule (FSS) contract No. GS-35F-092D. ViON complains that the delivery orders are outside the scope of Severn's FSS contract.

We deny the protests.

On September 23 and 25, 1996, DISA issued two requests for quotations (RFQ) to contractors holding the appropriate FSS contracts and to ViON which has an indefinite delivery/indefinite quantity (IDIQ) or requirements contract with DISA for

the installation and maintenance of mainframe computers.¹ The RFQs sought quotes for the replacement of existing central processing units (CPU) at DISA's Jacksonville, Florida, and San Diego, California, Defense MegaCenter data processing sites. Vendors were informed that, among other things, they must provide International Business Machines compatible mainframe CPUs and "all additional components necessary to provide a fully functional [CPU] meeting these requirements." A 1-year warranty was required for the CPU to be installed in Jacksonville and a 3-month warranty was required for the CPU to be installed in San Diego.

In response, DISA received the following quotations from ViOn and Severn pursuant to their respective contracts:

	<u>Jacksonville</u>	<u>San Diego</u>
Severn	\$1,574,444	\$1,397,000
ViON	\$4,581,000	\$4,680,000
ViON Alternate Quote		\$2,700,000

The delivery orders were issued to Severn on October 3 and 10, based upon that firm's significantly lower quoted prices, and these protests followed.

ViON protests that the orders to Severn are materially different from, and exceed the scope of, Severn's FSS contract. Specifically, ViON complains that Severn improperly offered "one time spot discounts" below its FSS contract prices, which were not made available to other schedule users; that more than half of the items ordered by DISA are not listed on Severn's FSS contract; and that the delivery orders' warranty and "trade-in" provisions are materially different from those provided for in Severn's FSS contract.

Under the FSS program, the General Services Administration enters into indefinite delivery contracts with commercial firms to provide supplies and services, at stated prices for given periods of time, as a means of providing federal agencies with a simplified process for obtaining commonly used supplies and services at prices associated with volume buying; ordering agencies issue delivery orders directly to

¹Whether ViON's contract with DISA is an IDIQ contract or a requirements contract is the subject of litigation before the United States Court of Federal Claims. This issue is not before our Office.

schedule contractors for the required supplies and services. Federal Acquisition Regulation (FAR) § 8.401 (FAC 90-41).² Non-mandatory schedule users, such as DISA, are directed to use their business judgment in determining whether ordering supplies or services from an FSS vendor represents the best value and meets the agency's needs at the lowest overall cost. FAR § 8.404(b)(2). In selecting the best value item and the lowest overall cost, the ordering agency may consider such factors as the special features of one item not provided by comparable items which are required in effective program performance; trade-in considerations; probable life of the item compared with that of a comparable item; warranty conditions; and maintenance availability. FAR § 8.404(b)(2)(ii).

Here, DISA determined that Severn's substantially lower-priced quotes represented the best value to the agency. While ViON complains that Severn's quoted prices are "one time spot discounts" below its FSS contract prices, this is specifically permitted by FAR § 8.404(b)(3) and Severn's FSS contract, which provide that "MAS [multiple award schedule] contractors will not be required to pass on to all schedule users a price reduction extended only to an individual agency for a specific user."

ViON also complains that, in addition to the CPUs, DISA has ordered a number of other items that are not included in Severn's FSS contract.³ DISA and Severn respond that these additional items are incidental to, and necessary for, the configuration and operation of the CPUs; that the RFQs required vendors to provide "all additional components necessary to provide a fully functional [CPU] meeting

²While ViON initially argued that FAR subpart 8.4 was not applicable to this procurement of automatic data processing (ADP) equipment, FAC 90-41, effective for solicitations issued on or after August 8, 1996, extended the coverage of FAR subpart 8.4 to include ADP acquisitions.

³In its December 9 comments on the agency report on the protests, ViON argued that these no-charge items exceed the limitation in Severn's FSS contract precluding the supply of "not separately priced" items in excess of \$2,500 per schedule order. This allegation is dismissed as untimely since it was filed more than 10 calendar days after ViON knew or should have known this basis for protest. Bid Protest Regulations, § 21.2(a)(2), 61 Fed. Reg. 39039, 39043 (1996) (to be codified at 4 C.F.R. § 21.2(a)(2)). ViON knew or should have known from the documents in its possession, at the time it filed its protest on October 29, that Severn's delivery order contained a number of "not separately priced" items and that Severn's FSS contract provided the specific limitation on "not separately priced" items now referenced by the protester. ViON's initial protest did not assert that this maximum order limitation had been violated, but only that the delivery orders to Severn contained "not separately priced" items. This general complaint was not sufficiently specific to raise the maximum order limitation issue.

these requirements"; and that Severn's FSS contract stated that "equipment will be provided with all standard cables, accessories, and documentation applicable to the equipment commonly supplied by the manufacturer."

The items to which ViON here objects are various cables, clamps, racks, and controller cards, which, it is undisputed, are necessary for the operation of the CPUs. As noted, Severn's FSS contract specifically provided that cables and accessories would be provided with equipment ordered under the contract; thus, these items can be ordered within the scope of Severn's FSS contract. Moreover, an agency may procure FSS items and non-FSS items that are incidental to the FSS items under a single FSS procurement, so long as they meet the needs of the ordering agency and offer the lowest aggregate price, and if the cost of the non-FSS items is small compared to the total cost of the procurement. Dictaphone Corp., B-254920, Jan. 6, 1994, 94-1 CPD ¶ 6; American Body Armor & Equip., Inc., B-238860, July 3, 1990, 90-2 CPD ¶ 4. The record evidences that this was the case here.⁴

ViON next argues that Severn's FSS contract did not provide for tailoring warranty provisions to meet the needs of individual procurements, yet the warranty provisions were tailored for Jacksonville (a 1-year warranty) and San Diego (a 3-month warranty). We disagree. Severn's FSS contract provides, in pertinent part:

"[f]or the purposes of this contract, commitments, warranties and representations include, in addition to those agreed for the entire schedule contract: . . . [a]ny representations and/or warranties made concerning the products made in any literature, description, drawings and/or specifications furnished by Severn." [Emphasis added.]

Thus, Severn's contract provided for the offer of warranties specific to each procurement, such as was sought by the RFQs here. This is also consistent with FAR § 8.404(b)(2)(ii), which allows ordering agencies to weigh such factors as warranty conditions in determining whether an order from the FSS represents the best value to the government.

Next, ViON argues that the trade-in credits provided under the delivery orders are inconsistent with Severn's FSS contract and are unreasonable. Severn's FSS

⁴The protester argues that the total cost of the items assertedly outside the scope of Severn's FSS contract amounts to "thousands and thousands of dollars." Given that the cost of the CPUs exceeds \$1 million, these additional items would seem to be an insignificant portion of the total requirement. Raymond Corp., B-246410, Mar. 2, 1992, 92-1 CPD ¶ 252.

contract, however, recognizes that the ordering agency may receive credit for items traded in by the agency. While ViON asserts that the reasonableness of each trade-in credit had to be separately determined, FAR § 8.404(b)(2)(ii) allows ordering agencies to account for trade-in considerations in determining the best value item at the lowest overall cost. Here, DISA evaluated Severn's offered trade-in credits in connection with the firm's substantially lower prices for the CPUs, and determined that Severn's quotes, including its offered trade-in credits, reflected the best value at the lowest overall cost. ViON has not shown this determination to be unreasonable.

The protests are denied.

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