



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Lanier Business Products-Oklahoma  
**File:** B-237150  
**Date:** January 17, 1990

---

### DIGEST

Agency determination to seek a waiver from the General Services Administration to purchase outside a mandatory Federal Supply Schedule because it believes its needs cannot be met by items from the schedule is not objectionable where there is no allegation of bad faith or showing that the agency's conclusion lacked any reasonable basis.

---

### DECISION

Lanier Business Products-Oklahoma protests the Department of Veterans Affairs (VA) proposed purchase of a dictation system from Dictaphone Corporation under a General Services Administration (GSA) non-mandatory telecommunications schedule. Lanier contends that the agency's needs can be met with products offered under its mandatory schedule contract.

We deny the protest.

On September 12, 1989, the VA published in the Commerce Business Daily (CBD) a notice of its intention to purchase dictation equipment from Dictaphone Corporation under that firm's FSC Group 58 non-mandatory telecommunications schedule contract with GSA. In response, Lanier filed a protest with our Office contending that the VA should obtain the equipment from it under its mandatory Federal Supply Schedule (FSS) contract for FSC Group 74; office machines. Lanier argued that the equipment offered under both Groups 58 and 74 was similar and since the agency's needs could be met through the Group 74 mandatory schedule, VA was required to purchase the equipment from the mandatory schedule by Federal Acquisition Regulation (FAR) § 8.404. Following Lanier's protest, the agency determined that the equipment it sought was sufficiently similar to the equipment in Group 74 on the FSS that it needed to either purchase from the

047478/140401

mandatory FSS or obtain a waiver from the use of the schedule from the GSA in accordance with FAR § 8.404-3. The agency determined that its needs could not adequately be met by the equipment available under the mandatory FSS contract and canceled the CBD notice and requested a waiver. We understand that GSA has not yet granted VA the waiver. Lanier now objects to the agency's decision to seek a waiver and characterizes it as an attempt to circumvent the mandatory FSS contract.

Where, as here, there is a mandatory FSS in effect, an agency is generally required to purchase its requirements from that schedule if its minimum needs will be met by the items listed on the schedule. Precision Mfg., Inc., B-224565, Jan. 12, 1987, 87-1 CPD ¶ 49. As indicated earlier the regulations do permit an agency to seek a waiver if it determines that the items available will not meet its needs. FAR § 8.404.

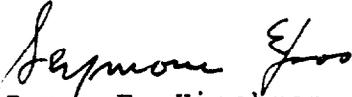
The agency states that the Lanier equipment, which is available under the FSS will not meet its needs for a self-sufficient, self-monitoring system which can be operated through a telecommunications system. The VA has transcriptions made by contractor employees at remote locations. The transcriptions are often made after business hours when there is no regular VA staff on duty. Because of this arrangement the agency says it needs features such as the Dictaphone system's ability to self-monitor for malfunctions and automatically dial for service, the ability for the remote input of changes, and a document identification display which allows work to be identified and validated by several methods including the use of job and patient numbers without requiring transcriptionists to obtain document identification information outside the system.

Lanier disagrees arguing that its system does in fact meet the agency's minimum needs. It does not dispute, however, that the system it offers under the FSS does not have all of the features that the agency states it requires. Lanier, for instance, states that its system requires that changes be entered at the console, that it does not automatically provide job and patient numbers, and that a display of patient information is not available on remote transcription stations.

The regulations clearly permit the agency to seek a waiver if it determines that the equipment available under the FSS will not meet its needs. The record shows that the VA has made such a determination and while Lanier disagrees it has not alleged that it was made in bad faith nor has it shown

it to lack any reasonable basis. See Office and Business Prod., Inc., B-232007, Oct. 19, 1988, 88-2 CPD ¶ 371. Under the circumstances we have no legal basis upon which to object to the VA's seeking a waiver from GSA under FAR § 8.404.

The protest is denied.

*for*   
James F. Hinchman  
General Counsel