

DOCUMENT RESUME

08152 - [C3488586]

**[Protest Involving Compliance with Buy American Act Provisions].
B-193204. December 12, 1978. 2 pp.**

**Decision re: Lanier Business Products; by Milton J. Socolar,
General Counsel.**

**Contact: Office of the General Counsel: Procurement Law I.
Organization Concerned: Department of the Air Force; Dictaphone
Corp.**

Authority: Buy American Act. B-193033 (1978). E-188271 (1977).

**A protester against a contract award contended that the
potential awardee would not deliver American-made equipment as
required by the contract, alleging that it had established a
pattern of such violations on past contracts. The matter of the
potential awardee's intended compliance with provisions of the
contract was one of contract administration which is not
reviewable by GAO. Allegations regarding performance on past
contracts are being referred to the audit division for review.
(HTW)**

DECISION



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

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FILE: B-193204

DATE: December 12, 1978

MATTER OF: Lanier Business Products, Inc.

DIGEST:

GAO will not investigate or consider merits of protest under Bid Protest Procedures challenging potential awardee's intended compliance with Federal Supply Schedule contract provision that equipment offered is domestic for purpose of Buy American Act. However, protester's allegations regarding potential awardee's past performance on nine specific contracts are being referred to audit division for review.

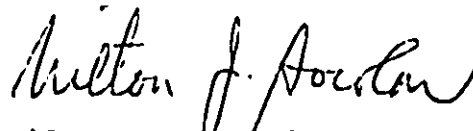
Lanier Business Products, Inc. (Lanier), protests any award to the Dictaphone Corporation by the Air Force for certain dictation equipment to be used at Malcolm Grow Air Force Medical Center.

Lanier essentially contends that it would be the low-priced vendor but for Buy American Act preferences given to Dictaphone. Lanier believes that in the past Dictaphone has furnished Japanese-made equipment in violation of its Federal Supply Schedule (FSS) contractual obligations, thus establishing a pattern of contractual violations. Lanier argues that Dictaphone should be denied Buy American Act preferences in the instant procurement.

Dictaphone states that (1) if an award is made under its current FSS contract, only American-made equipment will be delivered to the Air Force, and (2) even before Buy American Act preferences, Dictaphone's unit price of \$545 is lower than Lanier's unit price of \$589. Dictaphone also states that it fully intends to comply with all contractual obligations and requirements in the event of an award.

In our view, Lanier's contention--that Dictaphone will not deliver American-made equipment as required by contract--is in essence a matter of contract administration for resolution by the contractor and the contracting activity rather than this Office. Protests seeking an investigation of a potential contractor's intended method of providing American-made equipment have been dismissed in the absence of (1) an agency request for an advance decision, or (2) solicitation or bid provisions apart from the standard Buy American Act certificate. See, e.g., Nicolet Technology Corporation, B-193033, November 3, 1978; Tharsen Tool Company, B-168271, March 1, 1977, 77-1 OPD 154. Accordingly, Lanier's protest will not be considered under our Bid Protest Procedures and is dismissed.

We are, however, referring Lanier's allegations regarding Dictaphone's past performance on nine specific contracts to our audit division for its review.



Milton J. Sordlar
General Counsel