

13048

G. S. Sigel  
Page II

**DECISION**



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

*Protest of Agency Decision to Lease Equipment From  
Another Firm*

FILE: B-195627

DATE: March 6, 1980

MATTER OF: Lanier Business Products, Inc. *CWGD1045*

**DIGEST:**

Protest against decision to lease central dictating system from another firm on basis that protester can supply lower-priced equipment is denied where equipment proposed by protester when quotations were solicited did not meet agency's needs.

Lanier Business Products, Inc. (Lanier) protests the decision by the Defense Mapping Agency (DMA) to lease a central dictating system from Dictaphone Corporation (Dictaphone). Lanier contends that it can supply a system that will meet DMA's needs at a lower price. For the reason set forth below, the protest is denied. *AGC 00411  
CWE0046*

The record indicates that DMA established its central dictating system requirements after considerable study of the configurations and capabilities of the systems offered by various vendors. The requirements included an "endless loop" configuration, and a feature whereby a person could dictate directly into the equipment from any telephone without having to use a telephone operator or go through an internal trunk line. The record further shows that both Lanier and Dictaphone, the only vendors offering "endless loop" configurations, made presentations of the systems they proposed to furnish. Lanier's proposed system did not provide a direct access feature. Accordingly, the decision was made to lease Dictaphone's system, which was initiated by the issuance of delivery order No. DMA700-79-F-0477 for the period from August 1 through September 30, 1979, based on prices listed in the firm's Federal Supply Schedule contract.

~~008867~~

111726

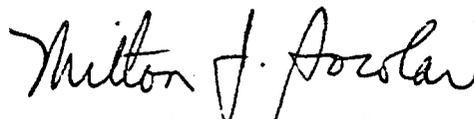
Lanier protests that it was not aware of the direct access specification when it made its presentation to DMA. The firm alleges that it in fact can supply a system with that feature, and at a lower price than will Dictaphone.

In response, DMA contends that it had clearly advised Lanier of the direct access criterion, but Lanier responded with a presentation of a system without that capability but which the firm evidently felt otherwise met DMA's needs; DMA asserts that it was not until almost one month after the instant protest was filed that it learned that Lanier could provide a direct access feature.

The record reflects a substantial effort by DMA to identify its needs and then attempt to secure, through presentation opportunities, conforming quotations from Dictaphone and Lanier, the only firms that possibly could fulfill them. With respect to the legitimacy of that attempt, i.e., whether the same needs were conveyed to both vendors, the protester has the burden to affirmatively prove its case. Reliable Maintenance Service, Inc., --Request for Reconsideration, B-185103, May 24, 1976, 76-1 CPD 337; where the only evidence on an issue is conflicting statements by a protester and a contracting agency, that burden is not met. Kessel Kitchen Equipment Co., Inc., B-190089, March 2, 1978, 78-1 CPD 162. In view thereof, we must conclude that DMA's belief that only Dictaphone could meet the agency's needs was based on presentations in response to a proper description of those needs, and thus was reasonable when made. Custom Burglar Alarm, Inc., B-192351, January 18, 1979, 79-1 CPD 30. Neither the fact that Lanier's choice of a system for its presentation may have reflected nothing more than a misunderstanding of DMA's requirements, nor the fact that if now given another chance Lanier could present an acceptable system at a low cost, is a sufficient basis to sustain the protest under the circumstances. PSI-TRAN Corporation, B-195014, October 26, 1979, 79-2 CPD 296.

We note that there is considerable discussion and dispute in the record as to whether Lanier's direct access system actually is lower in cost than Dictaphone's. In view of our conclusion above, we consider this matter to be academic.

The protest is denied.

A handwritten signature in cursive script, reading "Milton J. Fowler".

ACTING Comptroller General  
of the United States