

**DECISION**

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

**FILE:** B-208836**DATE:** August 2, 1983**MATTER OF:** Dictaphone Corporation**DIGEST:**

1. Although GAO normally will not consider protest of agency decision to cancel contract, GAO will consider protest of cancellation based on an alleged impropriety in the award process.
2. Award may not be made under a non-mandatory Automatic Data and Telecommunications Service (ADTS) schedule contract when comparable equipment satisfying the procuring agency's minimum requirements is listed under a mandatory Federal Supply Service (FSS) schedule contract. Consequently, the contracting agency acted properly in canceling a purchase order placed under an optional use schedule contract in order to procure comparable equipment listed on a mandatory FSS schedule contract.

Dictaphone Corporation protests the Army's cancellation of purchase order DAKF23-32-F-A348, for an in-patient dictating system at the U.S. Army Hospital, Fort Campbell, Kentucky. The purchase order, which was issued under Dictaphone's non-mandatory Automatic Data and Telecommunications Service (ADTS) schedule contract, was canceled to permit an award for comparable equipment to Lanier Business Products, Inc. under Lanier's mandatory Federal Supply Service (FSS) schedule contract for dictating equipment.

We deny the protest.

Prior to issuing the purchase order, the Army invited potential suppliers, including Dictaphone and Lanier, to furnish prices, descriptive literature and information on their schedule contracts with GSA. Dictaphone recommended the purchase of a dictating system composed of a Master Mind control console and

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printer under a schedule contract which it held under Federal Stock Class (FSC) Group 70, and recorders, transcribers, and telephone interface equipment under two schedule contracts which it held under FSC Group 58, for a total price of \$40,541.35. Lanier offered to furnish a comparable dictating system for \$50,550.55 under a FSS schedule contract which it held under FSC Group 74. The Army determined that both Dictaphone and Lanier offered systems that satisfied its minimum requirements and, on August 17, placed an order with the lowest priced offeror, Dictaphone.

Upon learning of award to Dictaphone, Lanier raised immediate objections, asserting that Lanier's FSS contract for FSS Group 74, office machine, class 7450, office type dictating and transcribing machines, was mandatory upon defense agencies, while Dictaphone's ADTS schedule contract for FSC Group 70, automatic data processing equipment, was only optional. After discussing the matter with each firm and with GSA, the Army concluded that award should have been made under Lanier's mandatory FSS contract and, on August 19, suspended Dictaphone's purchase order and then canceled it. Dictaphone timely protested this action to our Office.

Dictaphone argues that the purchase order was properly placed because Dictaphone's ADTS schedule contract for Group 70, as amended, permits purchase of dictating equipment as an accessory to and at the same time as the purchase of Dictaphone's Master Mind unit, which Dictaphone characterizes as an office information system rather than as dictating equipment. Dictaphone contends that it is irrelevant whether similar items are listed on other schedules by other vendors, arguing that in J.J. Broderick Co., B-205209, August 10, 1982, 82-2 CPD 120, our Office held that procuring agencies are free to choose between products listed on various schedule contracts without regard to their FSC Group designation. Finally, Dictaphone argues that award to it will save the Government approximately \$10,000.

Our Office generally will not consider protests of an agency's cancellation of a contract. Evergreen Helicopters, Inc., B-202962, September 28, 1981, 81-2 CPD 252. We have recognized a limited exception to this rule, however, and will consider such protests

where the decision to cancel was based on an alleged impropriety in the original contract award. Our review in such cases is for the limited purpose of ascertaining whether award defects perceived by the agency in fact justify cancellation. Evergreen Helicopters, Inc., supra.

Our prior decisions upholding a contracting agency's right to order that item which best suits its needs, without regard to the Federal Supply Class designation of the item, concerned orders placed under optional FSS schedule contracts, not mandatory ones. See J.J. Broderick Co., supra; Baker Manufacturing Company, Inc., B-193963, August 6, 1979, 79-2 CPD 82. Because mandatory FSS schedule contracts are awarded competitively, a procuring agency is required to give them preference by placing orders under them whenever the listed item fulfills the agency's minimum needs. 41 C.F.R. 101-26.107 (1982); Dictaphone Corporation, B-192305, December 22, 1978, 78-2 CPD 431. This is distinguishable from the situation under optional ADTS schedule contracts; because such contracts are not awarded competitively, procuring agencies must obtain competition before placing individual purchase orders. Defense Acquisition Regulation § 4-1104.4(b). Consequently, a mandatory user of an FSS schedule contract must order the lowest cost, satisfactory item listed on that schedule; it does not have the option to procure a comparable item or system from a non-mandatory schedule, see Dictaphone Corporation, supra, or through its own competitive procurement. Jon B. Jolly Inc., B-189985, December 16, 1977, 77-2 CPD 474. dictating equipment. Dictaphone contends that it is irrelevant whether the record indicates that Lanier's schedule contract was mandatory upon defense agencies, while Dictaphone's was not. The Army therefore acted properly when, upon discovering this fact, it canceled Dictaphone's order and placed an order with Lanier for the equipment. While we recognize that the Army paid more under the mandatory schedule in this instance, the situation here is unique because GSA allowed a major supplier, Dictaphone, to place its equipment on the non-mandatory ADTS schedule when it failed to get on the FY '82 mandatory Federal supply schedule for office dictating equipment. We will make a limited exception to this rule, however, and will consider such protests

The protest is denied.

for *Sheldon J. Aoulan*  
Comptroller General  
of the United States