

# DECISION



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

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**FILE:** B-219074 **DATE:** July 26, 1985  
**MATTER OF:** Advance payment for maintenance of equipment

## DIGEST:

Notwithstanding Federal Supply Schedule contract language to the contrary, agents of the government are prohibited by 31 U.S.C. § 3324 (1982) from compensating contractors for any service or goods which have not been received.

The Veterans Administration (VA) requests our decision concerning the legality of the advance payment made by the VA to the Dictaphone Corporation (Dictaphone) for the period of January 1, 1985, through September 30, 1985, under Federal Supply Schedule (FSS) contract No. GS-00F-69310, special item No. 47-320, covering maintenance service of office equipment. We understand that the special item in question has now been deleted from the contract.

The question arises because of a conflict between the terms of special item No. 47-320 and 31 U.S.C. § 3324 (1982) (formerly 31 U.S.C. § 529). Special item No. 47-320, in pertinent part, provided:

"Invoices will be rendered yearly in advance at the rate established by Dictaphone within the terms of this contract and are payable upon receipt."

However, 31 U.S.C. § 3324, in pertinent part, provides:

". . . a payment under a contract to provide a service or deliver an article for the United States Government may not be more than the value of the service already provided or the article already delivered."

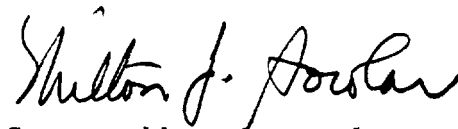
The statute does provide for advance payments where authorized by a specific appropriation or other law or the President, but those conditions do not exist here. Section 255 of U.S.C. title 41 provides for advance payment by

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civilian agencies where the agency head determines it is in the public interest and there are other specified circumstances present. That is not the situation here.

Under 31 U.S.C. § 3324, absent the exceptions noted above, agencies of the government are prohibited from paying for goods or services in advance of receiving them. See, e.g., B-172054, June 11, 1971. Therefore, notwithstanding the FSS contract language to the contrary, agents of the government are strictly prohibited by statute from compensating contractors for any service or goods which has not been received. Thus, the advance payment for the services in question should not have been made to Dictaphone.

However, since there is a short period remaining for which advance payment was made and we understand that Dictaphone is performing satisfactorily and that there is no reason to believe that it will not continue to do so for the remaining period for which advance payment was made, no corrective action need be taken in the immediate case, but in the future the VA should adhere to the prohibition in 31 U.S.C. § 3324.

*for*   
Comptroller General  
of the United States