



The Comptroller General  
of the United States

Washington, D.C. 20548

# Decision

Matter of: Dictaphone Corporation

File: B-237557.2

Date: May 4, 1990

Chris E. Hagberg, Esq., Seyfarth, Shaw, Fairweather & Geraldson, for the protester.  
David S. Cohen, Esq., Cohen & White, for Lanier Business Products, Inc., an interested party.  
E.L. Harper, Department of Veterans Affairs, for the agency.  
David Hasfurther, Esq., and John Brosnan, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

## DIGEST

Only reasonable reading of a Federal Supply Schedule contract is that an overall maximum order limitation (MOL) on any order is to apply to all the items listed on that contract, including those which do not have specific MOLs. Since the order for the lease of equipment exceeded the overall MOL, the General Accounting Office recommends that it be terminated.

## DECISION

Dictaphone Corporation protests the issuance of purchase order No. 317J95103 by the Department of Veterans Affairs (VA) to Lanier Business Systems, Inc., for the 1-year lease with the option to purchase of a dictation system, including maintenance and installation, for VA's Bay Pines, Florida, Medical Center. The purchase order was placed under Lanier's General Services Administration (GSA) Federal Supply Schedule (FSS) contract No. GS-COF-85661 for FSC Group 74, which among other items includes dictation equipment. Dictaphone contends that the award price of \$167,940 is in violation of the \$160,000 maximum order limitation (MOL) in Lanier's FSS contract and argues that the order should be terminated and the VA's needs procured competitively.

We agree with the protester and sustain the protest.

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Lanier's FSS contract for the dictation system ordered by VA contains the following terms:

"TABLE OF AWARDS:

Special Item No.	Description
47-345-1	System Equipment
47-360	Supplies and Accessories
47-320	Maintenance Services
47-300	FLTOP <u>1</u> /

"MAXIMUM ORDER LIMITATION:

The total dollar value of any order placed under this contract shall not exceed \$160,000.

Special Item No.	Description	M.O.L.
47-345-1	Systems Equipment	\$100,000
47-360	Accessories	\$ 60,000"

The agency argues that the \$160,000 overall MOL was only to apply to special item No. 47-345-1, purchase of the system equipment, and special item No. 47-360, supplies and accessories. It was not, according to VA, to apply to special item Nos. 47-320 and 47-300, maintenance services and leasing of the equipment. In support of its position, the agency points to the solicitation that resulted in Lanier's FSS contract and to the face pages on the original contract, which the agency argues show that GSA and Lanier both intended that the MOL not apply to leasing or maintenance services. In addition, the agency cites a GSA memorandum prepared in response to the protest which states that ". . . it is the policy of FSS not to include MOLs for lease items in the negotiation of multiple award schedule contracts," and an internal GSA "Recommendation For Award" prepared at the time Lanier's FSS contract was awarded which contains the notation "No MOLs are established for services."

While it may well have been GSA's intention at the time of award of the FSS contract to exclude the maintenance services and lease portions of the schedule from the \$160,000 MOL, we do not believe that the contract itself can be reasonably read that way. In this regard, the portions of the RFP and the award documents cited by the agency set

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1/ FLTOP refers to leasing of the system equipment rather than its outright purchase.

forth the same scheme as set forth above. In each of the cited documents there is an overall MOL listed as applicable to a "total order" and specific smaller MOLs listed for special item Nos. 47-345-1 and 47-360. Further, in each there is no MOL listed as specifically applicable to special item Nos. 47-320 or 47-300.

In our view, the only reasonable reading of the language in Lanier's schedule stating that "the total dollar value of any order placed under this contract shall not exceed \$160,000" is that the \$160,000 limit is to apply to all four special items listed in the schedule. VA does not argue that special item Nos. 47-320 and 47-300 are not purchased via "orders" nor, in our view, is there anything on the face of the schedule which would limit the application of the \$160,000 overall limit to the two special items that are subject to specific MOLs of \$100,000 and \$60,000, respectively. In fact, since any order involving both of these two items would be limited by the specific MOLs to a total of \$160,000, the overall limit of \$160,000 makes little sense except in the context of orders for maintenance service or leasing which have no individual limits.<sup>2/</sup> A contract must be interpreted so as to give meaning to all its provisions, Ebasco Constructors Inc., B-231967, Nov. 16, 1988, 88-2 CPD ¶ 480, and here, for the \$160,000 MOL provision to be at all meaningful, it must also be applicable to maintenance and leasing.

An order under an FSS contract may not exceed the established MOL covering the subject matter of that order. Precision Mfg., Inc., B-224565, Jan. 12, 1987, 87-1 CPD ¶ 49. Since, the purchase order covering the lease of the Lanier equipment exceeds the \$160,000 MOL which, in our view, applies to all of the items listed in Lanier's FSS contract, we sustain Dictaphone's protest on that basis.

Moreover, our review of the record shows that while VA was under the impression that as a mandatory user of this

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<sup>2/</sup> Lanier cites Copylease Corp. of America, B-205231, June 15, 1982, 82-1 CPD ¶ 583, as standing for the proposition that an overall MOL like the \$160,000 listed in Lanier's contract is to be applied only to items which are subject to a specific MOL. In Copylease, we held that a similar overall MOL was not applicable to items listed under it which had the word "none" written next to them under a heading "Maximum Order Limitation." We think that the contract's use of the word "none" next to the excluded items distinguishes Copylease from this case which lacks any such specific indicator that the MOL is not to apply.

particular FSS it was required to place the order for the lease and maintenance services with Lanier, the agency's understanding was, in our view, incorrect. The instructions for the use of the FSC Group 74 schedule provide as follows:

"6. EXEMPTIONS TO MANDATORY USE

c. Except 47-145: Typewriters Electronic and 47-150: Attachment, Features and Accessories, except GSA which will be MANDATORY SOURCES.

Exemptions from Mandatory Use (unless otherwise required by regulations of the ordering equipment):

- a. Rental, Repair and Maintenance of equipment; and
- b. Purchases in Alaska, Hawaii and Puerto Rico."

While VA argues that these items were not clearly listed as nonmandatory, we disagree and conclude that under these instructions the lease<sup>3/</sup> of equipment and the purchase of maintenance services are nonmandatory items. In this regard, when a non-mandatory item is ordered, the agency must conduct the procurement on a competitive basis if it has actual knowledge that it can procure the item from elsewhere than off the FSS at a price more advantageous to the government--after allowing for the burden and cost of a new procurement. Federal Property Management Regulations (FPMR), 41 C.F.R. § 101-26.401-5 (1986); Precise Copier Servs., B-232660, Jan. 10, 1989, 89-1 CPD ¶ 25. VA made its determination to issue the purchase order to Lanier on the basis that the items being procured were mandatory under Lanier's FSS contract. That determination did not include the required finding regarding the existence of another source despite the fact that the record shows that VA was aware that Dictaphone maintained that it could offer similar equipment at a lower price.

The protest is sustained because the purchase order issued to Lanier exceeded the applicable MOL. We, therefore, recommend that the purchase order be terminated and the

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<sup>3/</sup> All parties agree that the term "Rental" used in the schedule refers to the type of lease which was the subject of the VA's purchase order.

requirement be solicited on a competitive basis assuming that the agency requirements cannot be met at a price below the MOL. Should the agency decide that its needs may be met consistent with the MOL, it may order its requirements from the FSS with due consideration to all the terms of the schedule and, if applicable, FPMR 41 C.F.R. § 101-26.401-5 concerning nonmandatory items.

We also find the protester is entitled to the costs of filing and pursuing its protest, including attorneys' fees.<sup>4/</sup> Bid Protest Regulations, 4 C.F.R. § 21.6(d)(1) (1989). The protester should submit its claim for these costs directly to the contracting agency. 4 C.F.R. § 21.6(e).

The protest is sustained.



Acting Comptroller General  
of the United States

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<sup>4/</sup> The protester also claims that it is entitled to the cost of contesting a Lanier protest concerning the same procurement before the General Services Administration Board of Contract Appeals. We have no authority to award protest costs incurred before another forum.