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The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Department of Veterans Affairs; Lanier Business Systems, Inc.--Reconsideration

File: B-237557.3; B-237557.4

Date: September 17, 1990

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

DIGEST

Request for reconsideration is denied because the requests for reconsideration do not show that the initial decision contained errors of fact or law that would warrant its reversal or modification.

DECISION

The Department of Veterans Affairs (VA) and Lanier Business Systems, Inc., request reconsideration of our decision Dictaphone Corp., B-237557.2, May 4, 1990, 69 Comp. Gen. ___, 90-1 CPD ¶ 448, in which we sustained the protest of Dictaphone against the award of a purchase order to Lanier.

We deny the reconsideration request.

In our decision we concluded that VA's issuance to Lanier of a $167,940 purchase order for a lease with the option to purchase of a dictation system, including maintenance and installation, was improper since it exceeded the $160,000 maximum order limitation (MOL) in Lanier's General Services Administration (GSA) Federal Supply Schedule (FSS) contract No. GS-COF-85661. We reached this conclusion because the only reasonable reading of the language in Lanier's FSS

contract was that the $160,000 MOL applied to the total dollar value of any order placed under that contract including those for leasing and maintenance services. We further found that the VA had erroneously concluded that it was a mandatory user of the FSS for the subject items.

Both VA and Lanier disagree, arguing in essence that the evidence, including affidavits from those involved in the negotiation of the FSS contract, shows that both parties intended that the MOL not apply to leasing or maintenance services. They argue that it is inconsistent with fundamental principles of contract law to conclude that the MOL was to apply to both items in the face of clear evidence that both of the parties to the contract intended otherwise.

The established standard for reconsideration is that a requesting party must show that our prior decision contains either errors of fact or law or information not previously considered that warrants reversal or modification of the decision. Bid Protest Regulations, 4 C.F.R. § 21.12(a) (1990); Department of the Air Force, et al.--Request for Recon., 67 Comp. Gen. 372 (1988), 88-1 CPD ¶ 357. Repetition of arguments made during the original protest or mere disagreement with our decision does not meet this standard. Id.

Both VA and Lanier argued during the initial protest that when they entered into the FSS contract they intended that the MOL not cover leasing and maintenance services. In reiterating this argument, either party has shown that our conclusion was erroneous as a matter of law. We found that the only reasonable reading of the contract schedule was that the MOL was to apply to all four special items listed. Neither VA nor Lanier has disputed that conclusion nor have they provided another reading of the schedule language. Rather, it appears that their position is based on the view that the intent of the parties is something apart from the clear wording of the contract and is to govern notwithstanding that language. We disagree. The use of evidence to show the intent of the parties is controlling where the meaning of the contract language is unclear or ambiguous. See Design and Production, Inc. v. United States, 18 Cl. Ct. 168 (1989), and Sunbury Textile Mills, Inc. v. Comm'r, 585 F.2d 1190 (3d Cir. 1978). In this case, the language in the contract schedule is neither unclear nor ambiguous.

VA also requests that we reconsider our finding that the agency was not a mandatory user of the FSS for the lease and maintenance services. VA presents the same arguments made under the original protest. They were not persuasive at

that time and are no more so now. Repetition of arguments made during the original protest or mere disagreement with a decision does not provide a basis for reconsideration. Travel Centre--Request for Recon., B-236061.3, Mar. 22, 1990, 90-1 CPD ¶ 316.

The reconsideration request is denied.

for James F. Hinchman
General Counsel