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**DECISION**



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

**FILE:**

B-216812

**DATE:** August 21, 1985

**MATTER OF:**

South County Business Machines

**DIGEST:**

Agency is not required to purchase automatic data processing equipment under General Services Administration schedule contract where use of the contract is not mandatory. Open market purchase under small purchase procedures is proper when price offered is most advantageous to the government.

South County Business Machines protests the purchase of a word processing system and typewriter module from Kennedy Business Machines under delivery order No. N00228-84-F-TE53, issued by the Naval Supply Center, Oakland, California. South County contends that the agency should have purchased the items from the manufacturer, Systel Computers, Inc., under that firm's General Services Administration (GSA) schedule contract, No. GS-00K-8401S-5796. South County states that it has previously supplied the equipment to the Naval Air Station in Alameda, California, for which it was purchased, and believes that it would have received a commission from the manufacturer for a sale under the schedule contract.

We deny the protest.

On August 2, 1984, the Naval Air Station requested that the Naval Supply Center purchase for it a Systel word processing system and a module to connect the system to an Olympia typewriter. The Naval Air Station provided the buying activity with the number of the manufacturer's automatic data processing (ADP) schedule contract with GSA. The Naval Supply Center solicited prices by telephone from three local dealers, including the protester, that were listed in the schedule contract. On September 13, it issued a delivery order to Kennedy, the one offering the lowest price, \$2,280. The delivery order cited the Systel schedule contract number and contained the statement, "All terms and conditions of basic contract apply to this order." Kennedy delivered the equipment to the Naval Air Station on September 28, and South County's protest followed.

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Although in its report to our Office the Navy maintains that the purchase was made under the Systel schedule contract, this is not the case. As the protester points out, the contract states that orders must be made out to Systel Computers, Inc. and addressed to the firm either directly or in care of its nearest authorized dealer. Upon receipt of an order, the manufacturer is to ship new, inspected equipment to the installing dealer. All payments must be made payable to and submitted to Systel at its corporate headquarters. The contract states that government invoices can only be issued by Systel Computers, Inc. and that local Systel dealers are not authorized to issue invoices or accept payment.

The record indicates that the delivery order in this case was issued directly to Kennedy Business Machines, not to Systel. Kennedy invoiced the Navy directly and delivered the equipment, apparently from its own stock. In addition, payment was made to Kennedy and not to Systel. Thus, the Navy bought Systel equipment directly from Kennedy on the open market, rather than under the Systel schedule contract.

We do not find this improper. The Navy apparently intended to use the Systel schedule contract to purchase the equipment and failed to do so through a misunderstanding of or failure to read the contract provisions. Contrary to the protester's allegations, however, use of the schedule contract for this procurement was not mandatory. The Department of Defense (DOD) Supplement to the Federal Acquisition Regulation (FAR) provides that the small purchase procedures apply when the aggregate amount of any one ADP equipment requirement does not exceed \$25,000 annually. For small purchases of Federal Supply Classification Group 70 items, which includes the equipment in question here, the regulation states that ADP schedule contracts "may be used." DOD FAR Supp., 48 C.F.R. § 270.304 (1984). Also, neither the Systel schedule contract nor applicable FAR provisions restrict the government from soliciting quotations from dealers in equipment covered by a GSA schedule contract.

Albeit unknowingly, the buying activity here followed the small purchase procedures set forth in the FAR. These provide that for purchases between \$1,000 and \$25,000, the contracting officer must solicit quotations from a reasonable number of qualified sources to ensure that the purchase is advantageous to the government, taking into account price, the administrative cost of the purchase, and

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other factors. 48 C.F.R. § 13.106(b). We interpret this as meaning that the Navy was required to use the Systel schedule contract only if it was determined to be the most advantageous of those sources included in the competition.

The Navy did not formally determine that accepting Kennedy's offer was more advantageous than purchasing under the Systel schedule contract. In fact, the microfiche copy of the Systel contract maintained by the Naval Supply Center did not contain prices, so a comparison could not readily have been made. Nevertheless, Kennedy offered the lowest price of the three Systel dealers--a price which was in fact \$7 lower than the Systel schedule contract price. Also, Kennedy apparently agreed to the service and warranty provisions of the schedule contract, since the delivery order states that the terms and conditions of the basic contract are applicable. Consequently, we cannot conclude that the Navy's issuance of the purchase order to Kennedy was improper or that use of the Systel schedule contract would have been more advantageous.

The protest is denied.

*for Seymour Egan*  
Harry R. Van Cleve  
General Counsel