

01645

L. Kozlowski
Proc. I.



DECISION

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

FILE: B-188176, B-188441 (DATE: March 29, 1977)
MATTER OF: CNC Company

DIGEST:

1. Protest that company is not "regular dealer" within purview of Walsh-Healey Public Contracts Act and therefore ineligible for award is not for consideration, since such determinations are exclusively vested with contracting officer subject to final review by Department of Labor.
2. Protest against alleged improprieties in solicitation not filed prior to closing date for receipt of proposals is untimely.
3. Issuance of purchase order under Federal Supply Schedule contract is not award of contract and subject to competition.

CNC Company has protested against the making of an award to Marsden Government Contracts Division of M.S. Ginn Company (M.S. Ginn) under General Services Administration request for proposals (RFP) No. FPGG-Z-36273-N-2-15-77. The solicitation is for offers on multiple award contracts under Federal Supply Schedule, FSC 73, Part III, for food service equipment. Additionally, CNC challenges the placing of purchase orders with M.S. Ginn under GSA contract No. GS-00S-04155, also under Federal Supply Schedule, FSC 73, Part III, on the grounds that it violates the requirements for competition.

CNC has protested that Marsden cannot meet the requirements of the Walsh-Healey Public Contracts Act, 41 U.S.C. § 35-45 (1970). The Walsh-Healey Act provides, *inter alia*, with certain exceptions not here material, that every contract exceeding \$10,000 in amount entered into by any Government agency for the procurement of supplies shall contain a stipulation that the contractor is a manufacturer of, or regular dealer in, such supplies. Our Office does not review determinations of whether a particular firm is a regular dealer or manufacturer within the purview of the Walsh-Healey Act and the related implementing regulations, since such determinations are exclusively vested with the contracting officer subject to final review by the Department of Labor. See Corbin Sales Corporation, B-181454, July 10, 1974, 74-2 CPD 21; Trand Advertising Company, B-182212, February 19, 1975, 75-1 CPD 101; F & H Manufacturing Corporation, B-183491, April 29, 1975, 75-1 CPD 266.

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CNC's complaint that the solicitation did not contain Federal stock numbers or specifications goes to the adequacy of the solicitation. In this regard, section 20.2(b)(1) of the Bid Protest Procedures, 4 C.F.R. part 20 (1976), provides in pertinent part:

"Protests based upon alleged improprieties in any type of solicitation which are apparent prior to bid opening or the closing date for receipt of initial proposals shall be filed prior to bid opening or the closing date for receipt of initial proposals. * * *"

The alleged improprieties in the solicitation were apparent prior to the closing date for receipt of proposals. Since CNC's protest on this point was not filed until after the closing date for the receipt of proposals, it is untimely and not for consideration on the merits.

CNC's protest under GSA contract No. GS-OOS-04155 stems from a misconception of Federal Supply Contracts. Apparently CNC believes that the placing of each purchase order under a Federal Supply Schedule contract is the award of a contract without competition.

GSA annually enters into a multitude of Federal Supply Schedule contracts. See 41 C.F.R. § 101-26.401, et seq. (1976). These contracts are awarded through competitive procedures and provide for the contractor to furnish the item called for upon the issuance of a purchase order by a Federal agency against the contract. Many of these Schedule contracts are mandatory for use by Federal agencies. 41 C.F.R. § 101-26.401-1. Others are optional for use. 41 C.F.R. § 101-26.401-5. Armed Services Procurement Regulation (ASPR) § 5-102.3 (1975 ed.) lists by Federal Supply Group the Schedules which are mandatory for use by the Department of Defense (DOD). ASPR § 5-103 further provides that DOD contracting officials shall order from certain Schedules which are not mandatory on DOD if, inter alia, the items to be ordered are identified by National Stock Number.


The use of the Schedule method of contracting is explained in 41 C.F.R. § 101-26.402. It reads in pertinent part:

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"§ 101-26.402-1 Schedule method of contracting.

"(a) The Schedule method of contracting is used, in the best interest of the Government to simplify the purchase processes for commonly used items which are readily available through the distribution systems of the respective industries without the necessity of definite quantity consolidated buying or handling through a Government warehouse system. Federal Supply Schedule contracts are entered into and Schedules thereof are prepared and issued by, or under assignment from GSA on a national, zone, regional, or other area basis, and are supervised by or under the general direction of GSA."

Accordingly, the protests are denied.


Deputy Comptroller General
of the United States