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Richard Feldman

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DECISION



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

FILE: B-189307

DATE: November 7, 1977

MATTER OF: Culligan Incorporated, Cincinnati,
Ohio--Reconsideration

DIGEST:

1. In view of broad discretion permitted contracting officer in deciding whether to cancel an invitation after bid opening, it is not abuse of discretion to accept only bid received and not cancel procurement where there was no deliberate effort by procurement activity to preclude bidder from competing, significant effort to obtain competition was made and award would be made at reasonable price.
2. Failure to meet Commerce Business Daily (CBD) publication requirements is not in itself sufficient basis to invalidate award.
3. Determination dealing with price reasonableness is a matter of administrative discretion which will not be questioned by GAO unless such determination is unreasonable or there is a showing of bad faith or fraud.

Culligan Incorporated, Cincinnati, Ohio (Culligan) requests reconsideration of our decision Culligan Incorporated, Cincinnati, Ohio, B-189307, September 29, 1977, 77-2 CPD 242 in which we denied its protest against an award to the only firm which submitted a bid. In our decision we noted that the procurement had been misclassified in the Commerce Business Daily (CBD) and that the Navy inadvertently failed to include Culligan on the bidders list or to send Culligan an IFB. Moreover, we stated that because Culligan did not rely on the CBD synopsis it was not prejudiced by the synopsis' failure to state the bid opening date.

In its request for reconsideration, Culligan again points out the deficiencies in this procurement: (1) the failure of the CBD synopsis to include a bid opening date; (2) the misclassification of the CBD synopsis; and, (3)

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the failure of the Naval Sea Systems Command (Navy) to maintain an adequate and current bidders list. We held that in view of the broad discretion permitted a contracting officer in deciding whether to cancel an invitation after opening, the deficiencies did not warrant such action where there is no evidence of a conscious or deliberate effort by the procurement activity to preclude the bidder from competition, a significant effort to obtain competition was made and award would be made at a reasonable price.

Culligan now contends that the Navy acted in an arbitrary and capricious manner in ignoring the deficiencies in this procurement. Culligan argues that the Navy's errors were too extensive and blatant to be ignored or to be within the ambit of contracting officer discretion. Essentially Culligan states that the failure of the Navy to adhere to the Armed Services Procurement Regulation (ASPR), which have the force of law, constituted an abuse of discretion.

We must emphasize that our decision did not ignore, excuse or condone the irregularities which existed in this procurement. The decision stated:

"* * * there may be sufficient justification for award to the only bidder if there is a significant effort to obtain competition, * * * a reasonably priced bid is received and there is no deliberate attempt to exclude a particular firm. Although the receipt of only one bid and the failure to solicit the protester in this case could justify a resolicitation, we cannot conclude that a contrary conclusion is an abuse of discretion."

Thus we specifically addressed the issue of whether the contracting officer abused her discretion in deciding not to cancel and resolicit the invitation. The focus of our analysis was not the failure of the contracting officer to adhere strictly to the regulations concerning CBD synopsis or bidders list. Rather, our decision was directed toward the discretion afforded the contracting officer in deciding whether or not to cancel a solicitation in light of a failure to fully comply with these


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regulations. We remain unconvinced that there was an abuse of the discretion by the contracting officer in this regard.

Culligan states that Navy did not synopsise this procurement in the CBD at least 10 days before issuance of the solicitation as required by A'PR 1-1003.2 (1976 ed.) and did not allow sufficient bidding time to permit bidders an adequate opportunity to prepare and submit their bids as required by ASPR 2-202.1 (1976 ed.). We have held that the failure to meet the CBD publication requirements is not in itself a sufficient basis to invalidate an award. B-178967, November 5, 1973.

Culligan also argues that the formula used to determine reasonableness of the price of the only bid received is flawed. In our decision we stated that the Navy informed our Office that the price was in line with the prior contract price, allowing for inflation. We have held that a determination dealing with price reasonableness is a matter of administrative discretion which our Office will not question unless such determination is unreasonable or there is a showing of bad faith or fraud. Royson Engineering Company, B-187327, January 27, 1977, 77-1 CPD 69. The protester has not alleged bad faith or fraud. Moreover, in our opinion Culligan has not shown the administrative determination to be unreasonable.

Accordingly, our prior decision is affirmed.


Deputy Comptroller General
of the United States