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**DECISION**



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P.L. II*

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

FILE: B-189985

DATE: December 16, 1977

MATTER OF: Jon B. Jolly, Inc.

**DIGEST:**

1. Agency's cancellation of solicitation after bid opening was proper where it was discovered at that time that item covered in solicitation was on Federal Supply Schedule from which agency was required to make purchases.
2. Cancellation of solicitation after bid opening to purchase item under Federal Supply Schedule was proper even though delivery schedule under FSS contract is longer since Government's needs would be satisfied.

Jon B. Jolly, Inc. (Jolly), has protested the cancellation of solicitation No. NASO 7-35216 issued by the United States Department of Commerce, National Oceanic and Atmospheric Administration (NOAA), after bid opening and the subsequent purchase of the item covered in the solicitation from a contractor listed on General Services Administration (GSA) Federal Supply Schedule No. OOSC 6624.

The record reveals that NOAA issued the instant invitation for bids (IFB) for the purchase of deep-sea reversing thermometers on July 17, 1977. After bid opening NOAA discovered through a notation on the General Oceanics, Inc. (General Oceanics), bid that the deep-sea reversing thermometers called for in the IFB were available under an existing GSA Federal Supply Schedule contract with General Oceanics. NOAA then canceled the solicitation and placed an order for the deep-sea reversing thermometers with General Oceanics under GSA contract No. GS-005-04378, item No. 6b-276.

Jolly protests the purchase of the reversing thermometers from General Oceanics because the terms of delivery specified under the Federal Supply Schedule are nonresponsive to the IFB since the IFB called for delivery within 60 days and the Federal Supply Schedule provides for delivery within 90 days. Additionally, Jolly asserts that NOAA in effect negotiated with General Oceanics after bid opening and that the Government has no right to cancel the solicitation and refuse to make an award to the low and responsive bidder and then make an award to a "nonresponsive bidder, GSA or otherwise."

B-189285

NOAA in its report to our Office states that it was required under the Federal Procurement Regulations (FPR) and Federal Supply Schedule No. OOSC 6624 covering laboratory equipment to purchase the reversing thermometers under the applicable GSA contract. NOAA states that section 1-2.404-1 of the FPR (1964 ed. circ. 1) allows the cancellation of a solicitation after bid opening where there is a compelling reason to do so and that the cancellation of the subject solicitation and the subsequent purchase of the thermometers from General Oceanics was proper.

For the reasons that follow, we agree with NOAA's decision to cancel the subject solicitation.

It has consistently been held that an invitation for bids does not import any obligation on the Government to accept one of the offers received, and that all bids may be rejected where it is determined to be in the best interest of the Government to do so. 37 Comp. Gen. 760, 761 (1958); Press Intelligence, Inc., et al., B-180091, June 7, 1974, 74-1 CPD 311. Our Office has recognized that the authority vested in the contracting officer to reject any or all bids and readvertise is extremely broad and ordinarily we will not question such action. See 49 Comp. Gen. 244, 249 (1969); Royal Silver Manufacturing Company, Inc., B-186422, June 13, 1977, 77-1 CPD 421. However, in exercising such authority, the contracting officer must not act in a manner which would compromise the integrity of the competitive bidding system. As was stated by the Court of Claims in Massman Construction Company v. United States, 60 F. Supp. 635, 643, cert. denied, 325 U.S. 866 (1945):

"\* \* \* To have a set of bids discarded after they are opened and each bidder has learned his competitor's price is a serious matter, and it should not be permitted except for cogent reasons \* \* \*."


Consistent with the policy set forth in the Massman case, subparagraph (a) of section 1-2.404-1 of the FPR provides that rejection of all bids after bid opening is permissible only where there is a compelling reason to do so.

B-18998.

In the instant case NOAA was required under 41 C.F.R. § 101-26.401-1 (1977) to make purchases from Federal Supply Schedules to the extent required by such schedules. Under Federal Supply Schedule No. OOSC 6624, NOAA was required to purchase the subject thermometers from General Oceanics, the GSA contractor. A purchase of the thermometers from a contractor other than General Oceanics would have violated the regulations and been outside the authority of the contracting officer. See 52 Comp. Gen. 530, 531-2 (1973). In view of the foregoing, we believe there existed a compelling reason to cancel the solicitation and that the subsequent purchase of the thermometers from General Oceanics under the GSA contract was proper. In the present case there is no possibility that the competitive system will be compromised since there was not a resolicitation but only a purchase of the item from the Federal Supply Schedule contractor as required by the RFP.

We construe Jolly's comment on the difference between 60-day delivery under the IFB and 90-day delivery under the Federal Supply Schedule to question whether the Government's needs would be satisfied under the longer schedule. We are not required to decide whether a 30-day difference in delivery could justify not using an otherwise mandatory Federal Supply Schedule contract. In this case it is clear that the using agency is satisfied with the longer delivery. This may represent a recognition that the IFB delivery schedule was more stringent than called for to satisfy the Government's need or a change in requirements. In either case, we find the cancellation of the IFB and use of the Federal Supply Schedule to have been a proper exercise of administrative discretion.

Accordingly, the protest is denied.

  
Deputy Comptroller General  
of the United States