

DECISION

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

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FILE: B-215455

DATE: August 21, 1984

MATTER OF: Comdisco, Inc.

DIGEST:

Contracting agency admits that option was improperly awarded and has taken action to prevent similar improprieties in future procurements. Since equipment improperly purchased has already been delivered and installed, no corrective action is recommended by GAO in this case.

Comdisco, Inc. (Comdisco), protests the United States Navy's purchase of additional hardware (two different disk drive models) from IBM pursuant to the option clause of contract No. N00123-82-C-1074 between the Navy and IBM. Comdisco contends that the Navy improperly exercised the option because the Navy did not test the marketplace to determine if exercise of the option was the most advantageous method of fulfilling the government's needs, the contracting officer exercised the option to procure one disk drive which was not identified in the basic contract, and the contracting officer exercised the option to procure another disk drive which was scheduled in the basic contract but at a much lower price than the price indicated in the basic contract.

In its report to our Office on this protest, the Navy argues that Comdisco's protest should be dismissed as untimely. Regarding the merits of the protest, the Navy admits that it improperly purchased a disk drive that was not covered by the option clause of the basic contract. The Navy also admits that the contracting officer improperly renegotiated the option price for the other disk drive which was covered by the option clause. The Navy reports that it has notified the contracting activity of its concern about such improprieties and will take measures to insure that appropriate procurement procedures are followed in the future.

In view of the fact that the Navy has admitted that the contract modification was improperly issued for one disk drive which was not scheduled in the basic contract and for one disk drive which was scheduled but purchased at other

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than the option price, we sustain Comdisco's protest. We will not dismiss a protest as untimely under such circumstances. Servrite International, Ltd., B-210082, July 19, 1983, 83-2 C.P.D. ¶ 100. However, since the Navy reports that the equipment was delivered and installed before April 1, 1984, and that it has taken appropriate action to prevent similar improprieties in future procurements, we do not recommend any corrective action in this case. See Quest Electronics, B-193541, Mar. 27, 1979, 79-1 C.P.D. ¶ 205; Southwest Business Publications Company, B-213876, Feb. 10, 1984, 84-1 C.P.D. ¶ 167.

We sustain Comdisco's protest.



Acting Comptroller General
of the United States