DECISION

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

FILE: B-202497

DATE: August 24, 1981

MATTER OF: Arbor Laboratories, Inc.

DIGEST:

1. A contracting officer has broad powers of
    discretion in deciding when a solicitation
    should be canceled and GAO will not inter-
    fere with such a determination unless it is
    shown to be unreasonable. Agency's cancel-
    lation of solicitation after receipt of price
    quotations was reasonable where it was dis-
    covered at that time that items covered in
    solicitation were mandatory on Federal Supply
    Schedule.

2. Protester's argument that existence of a
    Federal Supply Schedule contract merely
    affects responsiveness of offerors is with-
    out merit since procurement was negotiated.

     Arbor Laboratories, Inc. (Arbor), protests the
cancellation of request for quotation (RFQ) No. 600649
issued by the United States Department of Justice,
Federal Bureau of Investigation (FBI). The RFQ was a
small purchase procurement for laboratory balances to
be used for research and training in the Forensic
Science Research and Training Center at the FBI Academy.

     For the reasons set forth below, we find Arbor's
protest to be without merit.

     On January 7, 1981, the Laboratory Division of the
FBI requested the purchase of the aforementioned
balances. The request was forwarded to the FBI's
Property Procurement and Management Section for pro-
curement action. After review of all information avail-
able failed to reveal that a Federal Supply Schedule
(FSS) contract covering the balances had been awarded
by the General Services Administration (GSA), an open
market negotiated procurement was initiated. A synopsis
of the requirements was published in the Commerce

Business Daily on January 23, 1981. Seven vendors
responded to the synopsis and RFQ No. 600649 was
issued on February 10, 1981.

On the due date for price quotations, February 24,
1981, Arbor submitted a quotation for its balances
and further stated that it had been awarded an FSS
contract for the balances. A subsequent check with
a GSA contracting officer confirmed the existence of
the contract and that its effective date was January 23,
1981, the same day that the synopsis of the procurement
was published in the Commerce Business Daily. Also,
the FBI was notified that it was a mandatory user of
the FSS contract provided the balances covered by the
contract fulfilled the FBI's needs. In the meantime,
a purchase order for the balances had been prepared
for issuance to the low quoter, American Scientific
Products (ASP). Following FBI confirmation of Arbor's
FSS contract, the purchase order was canceled prior
to transmission to ASP. Shortly thereafter, the RFQ
itself was canceled.

Arbor contends that although quotations from
offerors who did not hold an FSS contract had to be
rejected, award could have been made to an offeror
meeting the RFQ requirements who had an FSS contract.
According to Arbor, no cogent and compelling reason
existed for the rejection of all offerors. In Arbor's
opinion the FBI's cancellation of the procurement was
only for the purpose of waiting until one or more of
the "non-responsive" offerors could become a respon-
sive offeror when awarded an FSS contract. Arbor
goes on to argue that nonresponsive offers may not
be made responsive after having been opened notwith-
standing the reason for the failure to conform.

The FBI states that no determination of the
responsiveness of the offers was ever made. Rather,
cancellation of the procurement was based solely on
the discovery of the existence of the mandatory FSS
contract. The FBI points out that had it known an
FSS contract was in existence, the RFQ would not have
been issued, but that a purchase order would have
been executed against that contract.

In response, Arbor notes that at the time of
the FBI's decision to conduct an open market pro-
curement, the agency did not have available to it
any standing offers for balances from FSS firms.
Arbor argues, therefore, that in order to obtain
offers for the balances, the FBI had to issue the
RFQ. According to Arbor, the RFQ was the "vehicle"
the FBI used to obtain offers and the responses the
FBI received included both contracted and noncon-
tracted firms with respect to the FSS. In Arbor's
opinion, the subsequent existence of the FSS contract
should have merely affected the agency's evaluation
of the offers submitted under the RFQ.

We have long recognized that contracting
officials have broad discretion to determine whether
a solicitation should be canceled. See, e.g., 36
Comp. Gen. 364 (1956); 49 Comp. Gen. 244 (1969).
Our Office will not interfere with such a determina-
tion unless it is shown to be unreasonable. Nortec
Corporation, B-198232, September 19, 1980, 80-2 CPD
212.

Under the terms of 41 C.F.R. § 101-26.401-1
(1981) the FBI was required to procure from the
applicable FSS contracts and was prohibited from
soliciting bids, proposals, quotations, or otherwise
testing the market for the purpose of seeking alter-
nate sources to the FSS. Consequently, a purchase of
the balances from a contractor other than one having
an FSS contract would have violated the FSS regula-
tions and been outside the authority of the contract-
ing officer. See Jon B. Jolly, Inc., B-189985,
December 16, 1977, 77-2 CPD 474. From the record it
appears that this was entirely possible because Arbor,
the only offeror having anFSS contract at the time,
submitted the highest price quotation of all the
vendors responding to the RFQ. In view of the fore-
going, we find that the cancellation of the RFQ was
reasonable.

As to Arbor's contention that the existence of
an FSS contract affected only the responsiveness of
the offers submitted under the RFQ, it is fundamental
that the concept of responsiveness does not apply to
negotiated procurements. TM Systems, Inc., 56 Comp.
Gen. 300 (1977), 77-1 CPD 61. Moreover, an agency

does not issue an RFQ to make purchases from an FSS contract but, as noted above, merely reviews the contract and executes a purchase order.

Arbor's protest is denied.

Milton J. Socolar

Acting Comptroller General
of the United States