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D. H. [unclear]  
Proc. I.



**DECISION**

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

FILE: B-183541

DATE: October 4, 1977

MATTER OF: Mercer Products & Manufacturing Co.--Reconsideration

**DIGEST:**

1. Decision holding use of system of "approved sources" proper under ASPR § 1-313(c) for items falling within scope of that subparagraph of ASPR is affirmed.
2. Protest of procurements not mentioned during original protest will not be considered as untimely filed.

The Mercer Products & Manufacturing Co. (Mercer) requests that we reconsider our decision in Mercer Products & Manufacturing Co., B-188541, July 25, 1977, 77-2 CFD 45, in which we denied its protest against the procurement of spare parts from "approved sources" under Armed Services Procurement Regulation § 1-313 (1975 ed.). Mercer does not disagree with our conclusion that procurements involving items for which proprietary rights are not owned by the Government are properly restricted. It is noted, however, that "in none of the examples that we furnished your offices was there any question (excluding the Rockwell proprietary two cases) of the government having all the necessary blueprints." Further, it is contended that none of the examples cited to our Office involved "engineering critical" parts which may be properly restricted under subparagraph (c) of ASPR § 1-313. The general policy of the Department of the Air Force complained of does not involve "engineering critical" parts, but rather usually involves normal aircraft spares, the procurement of which should be governed by ASPR § 1-313(b) and not subparagraph (c).

With regard to the general policy, it is pointed out that even though the Government possesses adequate manufacturing drawings on the items in question, it nonetheless refuses either to use these drawings when procuring small purchases or to consider unsolicited quotes from manufacturers of proven competency who furnish the necessary technical data with their quotes. In this regard, Mercer refers to a pending procurement for bushings advertised in the July 5, 1977, Commerce Business Daily by the Warner Robins Air Force Base

under which Mercer submitted the pertinent technical data and a request for the right to submit a quote. By letter of July 8, 1977, Warner Robins rejected the Mercer request advising that an unqualified source would have to submit its item for first article testing before it would be permitted to bid on the item and that the urgent need for the procurement negated this possibility at the present time. Other procurements advertised in the June 28, July 22, and August 5, 1977, issues of the Commerce Business Daily are cited as examples of how the Air Force procures items not covered by ASPR § 1-313(c) in this manner by restricting the right to participate in the procurement to one or two firms.

The Mercer protest as submitted to our Office was against two specific procurements, one by the San Antonio Air Logistics Center and the other by the Oklahoma City Air Logistics Center, both of which involved technical data for which the Government did not own the necessary rights. Mercer further protested the right of the Department of the Air Force to use a system of "approved sources" at all. No distinction was made by Mercer between subparagraphs (b) and (c) of ASPR § 1-313.

In our decision we simply held that ASPR § 1-313(c) permits the use of the system of "approved sources" for items falling within the scope of that subparagraph. Use of such a system would obviously not be permissible for items falling under subparagraph (b), as is clearly stated in subparagraph (c). We further stated that while this system is permissible, it should not be allowed to prohibit the submission of and consideration of proposals from unapproved sources who can otherwise qualify under procedures set forth in Air Force Regulation 57-6. We also held that such a system comes into effect only where the Government does not have enough data to draw up a specification which may serve as the basis for a competitive procurement. Should the Department of the Air Force be proceeding in a manner contrary to the above, it would not be proper.

Finally, Mercer did not address any procurements by the Department of the Air Force other than the two involving the Rockwell proprietary data, and upon those we issued a decision. The only other procurements that Mercer specifically mentioned were several by the Defense Industrial Supply Center (DISC), which were not restricted to approved sources, and these Mercer found to have been made correctly. While Mercer contended that the Air Force was using the approved source system for similar or identical items to those being procured by DISC on an unrestricted basis, we were unable to agree with Mercer because the Air Force denied the spares it was procuring were similar or identical. No new evidence on this point has been produced.

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The protests against the specific Department of the Air Force procurements that Mercer now mentions may not be considered on their merits by our Office since they are untimely filed. The time that elapsed between the time that Mercer knew of the procurements and their nature and the time that Mercer protested them to our Office was more than 10 working days. See 4 C.F.R. § 20.2(b) (1977).

Accordingly, we affirm our prior decision.

However, the information furnished by Mercer will be considered in connection with our audit functions.

*R. Z. Kester*  
Deputy Comptroller General  
of the United States