



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

B-175951

JAN 4 1973

V. Keith Young, Esquire
Eleventh Floor, Suite 1111
Citizens National Bank Building
Orlando, Florida 32802

Dear Mr. Young:

Reference is made to your letter dated October 23, 1972, and prior correspondence, on behalf of Florida General Electronics Inc., protesting against the cancellation of invitation for bids (IFB) No. BAA15-72-B-0255, issued by the Edgewood Arsenal, Maryland.

The IFB was issued on March 3, 1972, for virgin butyl rubber body assemblies, 73,752 for the XM47 grenade and 14,048 for the XM48 grenade, and one set of molds necessary to produce these body assemblies at a rate of 10,000 per month (8-hour day, 5-day week, 20-day month). Bids were opened on April 7, 1972. Of the 15 bids received, the low bid was submitted by Florida General Electronics. The pre-award survey report recommended against an award to the low bidder. Thereafter, the contracting officer determined that it was not a responsible prospective contractor. The bidder applied for a certificate of competency; however, the IFB was canceled before that matter was resolved.

Paragraph 6.3 of the IFB specification provided:

Formula for rubber body compound. The following formula has been found to produce satisfactory bodies:

	<u>Parts by weight</u>
Butyl 268	100.0
Zinc oxide	5.0
Stearic acid	1.0
Hi Sil 215	40.0
Oncar 23-A	10.0
Dechlorene S	20.0
Sulfur	1.0
Tuex	2.0
MBT	0.5
	<u>179.5</u>

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Addition of titanium dioxide and carbon black has been found satisfactory to provide compound coloring (gray) specified in Fed-Std-595, color No. 36231. Use of this formula does not relieve the contractor from meeting the requirements of this specification."

On May 3, 1972, the contracting officer requested a legal opinion from the Chief, Legal Office, Edgewood Arsenal, regarding certain defects in paragraph 6.3 of the specification. On May 17, 1972, the contracting officer was advised by the legal office that there was sufficient justification for cancellation of the invitation because of inadequate specifications. The legal office, after coordination with the contract specialist and the engineer, determined that:

- "a. Dechlorene S is misspelled.
- "b. The chemical Dechlorane S was intended.
- "c. Dechlorene S is not a chemical.
- "d. Dechlorane S is a trade name for a patented chemical made by Hooker Chemical Company.
- "e. Dechlorane S is an obsolete chemical not currently manufactured and not commercially available.
- "f. The Government had superior knowledge, not communicated to the bidder, that Dechlorane S was not commercially available as the result of a previous procurement.
- "g. IFB DAAA15-72-B-0255 is the first solicitation for a large volume production quantity (87,800 each) of the XM47 and XM48 Grenade. The other three solicitations being for quantities of 2500 ea, 50 each and 4000 ea.
- "h. Under the circumstances presented, the successful low bidder would be entitled to rely on the Formula 6.3 of the specification and the commercial availability of Dechlorane S (See Aerodex, Inc. v. United States 417 F. 2d 1361 (1969) and cases cited therein."

The legal office advised that the cited defects in the specifications would be grounds upon which a contractor could file delay and

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other claims against the Government. Two previous producers have filed claims for delay and other costs incurred as a result of reliance on paragraph 6.3 of the specification. One of the claims had been settled by the contracting officer in 1970 and the other was pending when reports on the immediate protest were filed with our Office.

Based on above legal advice, the contracting officer determined on May 17, 1972, that the IFB specification was defective, that the cancellation of IFB was in the best interests of the Government and that the requirement would be readvertised under a revised specification.

The IFB subsequently was readvertised on June 7, 1972. Nine bids were opened on June 28, 1972, and it appeared that the second low bidder was Florida General. Revised paragraph 6.3 as contained in the new IFB provided:

"Advisory note. The following chemical ingredients have been found to produce satisfactory bodies on a limited quantity run of 2500 units using a 4-cavity mold and compression molding techniques:

<u>Ingredient</u>	<u>Approximate parts by weight</u>
Butyl 268	100.0
Zinc oxide	5.0
Stearic acid	1.0
Hi Sil 215	40.0
Oncar 23-A	10.0
Dechlorane S	20.0

Dechlorane S is a registered trade name of a Hooker Chemical Company product no longer produced by Hooker Chemical Company. Dechlorane S was used as a fire retarder.

Sulfur	1.0
Tuex	2.0
MBT	0.5
	<u>179.5</u>

The addition of titanium dioxide and carbon black were used to provide compound color (gray) as specified in Fed-Std-595, color no. 36231. This advisory note is furnished for information purposes only and is not a requirement of the contract. It is furnished with the understanding

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that the contractor is not required to follow the note, that the contractual requirements must be met regardless of whether or not the contractor uses the note, that the Government makes no warranty or representations that use of the note will result in supplies conforming to contractual requirements and the Government does not warrant the commercial availability of the above listed ingredients, nor that they are applicable for other molding processes, and the Government assumes no liability of any kind to the contractor or to others resulting from use of this note."

From our review of the record we are unable to conclude that the decision to cancel the IFB was an abuse of administrative discretion. The contracting officer made the determination to cancel the original invitation only after a careful consideration of all the information available to him, including the views expressed by the legal office and engineering personnel, which indicated that the original invitation contained inadequate specifications. Recently, in B-177123, November 27, 1972, we had occasion to state:

"Our Office has recognized that contracting officers are vested with a substantial degree of discretion in determining whether the Government's interests require that an invitation be canceled. See 50 Comp. Gen. 464, 469-470 (1970). And, we will not question an agency determination to cancel an invitation unless the discretion exercised constitutes an abuse of authority. See 51 Comp. Gen. 426, 428-429 (1972). Since we cannot conclude that the contracting officer's determination was patently unreasonable, no basis exists to question the readvertisement of the procurement."

The foregoing quotation has equal application to the immediate situation. We therefore will not disturb the cancellation action administratively taken.

You have contended further that if the first specification was defective then the second is equally defective and also should be revised and readvertised. The basis for this contention is that Government personnel knew of the cure cycle necessary to produce the grenade body assemblies and of the number of cavities that the molds should contain. However, this data was not included in the specification. You base this on the fact that during the course of the pre-award survey made under the original IFB, Florida General was advised

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that the cure time and number of cavities it planned to use were unsatisfactory. However, the specification is of the performance type under which the manner of performing is left to the judgment of the contractor. Further because the DFB required that the molds be capable of producing 10,000 bodies a month, the cure time for the ingredients placed in the mold would be critical in deciding the number of cavities in the mold. Information as to the cure time apparently can be obtained within the industry, and we note that Florida General obtained information in that regard from a rubber company. Technical personnel of the procurement activity had reason to conclude from data obtained from prior producers, one of which was a rubber company, that the cure time is longer than that represented to Florida General by the rubber company. Moreover, no concrete evidence has been furnished by Florida General or its rubber supplier to establish that its proposed cure cycle was valid. Therefore, there does not appear to be involved a situation where the Government alone has the technical knowledge or where the Government is committed to a single cure cycle. In the circumstances, we cannot conclude that the specification was deficient for failing to include data as to the cure time and number of cavities.

Accordingly, the protest is denied.

Very truly yours,

R.F.KELLER

[Deputy Comptroller General
of the United States