



COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON, D.C. 20543

B-178482

July 10, 1973

31162

Sellers, Conner & Cuneo  
1625 K Street, NW.  
Washington, D.C. 20006

Attention: Whilden S. Parker, Esquire

Gentlemen:

We refer to a telegram of April 20, 1973, sent to us by Ordnance Research, Incorporated (ORI), and your subsequent correspondence on behalf of ORI, protesting against the cancellation of invitation for bids (IFB) No. H00104-73-B-0794, issued by the United States Navy Ships Parts Control Center, Mechanicsburg, Pennsylvania, and the resolicitation of bids for the procurement of 47,000 MK-273-1 bomb igniters.

Section G of the IFB set forth the following transportation data:

1. Freight Description: Igniters, R01DN, Class C Explosive
2. UFC Number: 35615
3. NITC Number: 64040 Sub 2
4. DOT Explosive Class: C
5. Dangerous Article Reference: Agent Grazianos Tariff #25 Para. 73.106
6. Type Label: N/A
7. DOT Container Marking: Igniters Class C Explosives

\* \* \* \* \*

Four Bids were received and ORI's bid was low. After the bids were opened, however, the contracting officer sent a letter to each of the four bidders, the text of which follows:

Handwritten scribbles and lines at the bottom of the page.

7202.38

091395

Your bid, in response to the above, was opened in this office on 15 February 1973. During the course of the evaluation, it was discovered that the Explosive Class, as shown on page 21 of 45, Transmittal Data, was listed as Class 'C' in lieu of the correct, Class 'B'.

It is assumed that your bid price has been submitted on a Class 'B' explosive and the evaluation is proceeding as such. In the event this assumption is invalid, please contact the undersigned, in writing, no later than 20 Mar 1973.

All the bidders, except ORI, advised the contracting officer that their bids were based on the Class "B" explosive designation. ORI, by letter dated March 16, 1973, informed the contracting officer that its bid was "responsive to the IFB which specified a Class 'C' Explosive classification." ORI also stated that should the classification be changed to Class "B" additional shipping and handling costs would be incurred.

By a memorandum dated April 9, 1973, the contracting officer was given the authority to cancel the solicitation. The reason cited to support the cancellation was the faulty specification. On April 13, 1973, the contracting officer issued Amendment 002 which cancelled the solicitation and notified all bidders that the item would be readvertised.

In your letter of April 25, 1973, you state that since ORI was the low bidder, "the contract must be awarded to it 'unless there is a compelling reason to reject all bids and cancel the invitation,'" (citing The Masonry Construction Co. v. United States, 102 Ct. Cl. 699 (1945)). You also state that a change in the ORI explosive classification is not a compelling reason to cancel since "whether the igniters are classified as B or C is an insignificant matter having no effect on the item being procured and only a trivial effect on price." In this connection, you state that:

ORI's bid of \$786,827 for 47,000 igniters would be increased by only \$18,000 as a result of the change. This minor increase would still result in ORI's bid being lower than that of \* \* \* the next low bidder which was \$805,050 for 47,000 igniters.

The general rule with respect to the cancellation of invitations following the opening of bids is stated in 49 Comp. Gen. 584 (1970) at page 586 as follows:

Our Office has consistently held that, while the interest of the Government and the integrity of the competitive bidding system require that invitations be canceled only for the most cogent reasons, there necessarily is reserved in the contracting

B-178482

officials a substantial amount of discretion in determining whether or not an invitation should be canceled. We will, therefore, not object to the cancellation of an invitation unless there has been a clear showing of abuse of administrative discretion.

The Department of Transportation (DOT) regulations governing the transportation of hazardous materials, 49 CFR 173.52, establish three classes of explosives:

1. Class A explosives; detonating or otherwise of maximum hazard.
2. Class B explosives; flammable hazard.
3. Class C explosives; minimum hazard.

It has been reported that Class "B" explosives require significantly more stringent safety procedures in handling, storage and shipment than Class "C" explosives. Thus, while we stated in 52 Comp. Gen. 285 (B-176647, November 21, 1972), that the mere utilization in the IFB of inadequate, ambiguous or otherwise deficient specifications is not, itself, a "compelling reason" to cancel an IFB and readvertise, we are of the opinion that the utilization of inadequate specifications in an IFB which could lead to the existence of hazardous conditions during the manufacture and delivery of explosives does create a compelling reason to cancel an IFB.

Furthermore, we do not agree with your contention that an increase in ORI's bid of "only \$18,000" may be considered trivial, since ORI's bid was only \$19,223 lower than the second low bid. See 52 Comp. Gen. 544 (1973).

In view of the foregoing, your protest is denied.

Sincerely yours,

Paul G. Denbling

Acting Comptroller General  
of the United States