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UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548



IN REPLY REFER TO: B-189176

OFFICE OF GENERAL COUNSEL

CNG 01965 APR 3 1979

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Philip J. Corso
Vice President of Marketing
Mars Signal Light Company
1224 Industrial Road
Naples, FL 33942

[Waivers of First Article Requirements by Defense Logistics Agency]

Dear Mr. Corso:

Your October 30, 1978, letter to the Comptroller General has been forwarded to this Office for reply.

In that letter, you point out that the Defense Logistics Agency mailed a letter to Senator Chiles in which they admit giving Julian A. McDermott Corporation (McDermott) and Federal Sign and Signal Corporation (Federal) conditional first article approval. You claim this conditional approval had not been admitted previously, nor was it shown to our investigator. You also point out that DLA states that first article requirements were waived for McDermott and Federal not because of the conditional approval given their first articles, but because their full production run items did meet specifications. You attached test reports to show that the full production items did not meet specifications.

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We have reviewed these materials, along with the December 12, 1978, letter (with attachments) from Counsel, DLA, to the Senate Subcommittee on Federal Spending Practices and Open Government. In that letter, DLA admits that it erred in making the statement that McDermott's and Federal's full production run items did meet specifications. The letter states that waiver of first article requirements for McDermott was based on a July 17, 1972, approval of a McDermott first article test report, and waiver of first article requirements for Federal was based on Federal's December 4, 1973, fulfillment of a condition attached to an October 5, 1973, conditional approval of its first article test report.

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The report from DLA also reviewed actions taken since you furnished DGSC a copy of the test report on McDermott items prepared for you by Harris Electronics Systems Division. On the basis of that report, DGSC requested testing of McDermott items by the Naval Weapons Station,

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Yorktown, Virginia. The Naval Weapons Station advised DGSC on June 2, 1978, that the McDermott samples did not meet certain requirements of specification MIL-L-45325c. On October 17, 1978, DGSC notified McDermott that under option (c)(1) of the contract warranty provisions, McDermott's contract price was reduced by \$4,035.20. McDermott has appealed this reduction to the Armed Services Board of Contract Appeals.

I appreciate your concern and the fact that your perserverance has contributed to the Government's effecting a price reduction in the contracts that were awarded, and in providing for corrective measures in the future. Therefore, it is with some regret that I have concluded it would serve little further useful purpose to reopen the matters for further audit investigation. It seems reasonable to expect that you will not be prejudiced in future DLA procurements of signal lights. Given the corrective actions that have been taken, the absence of any legal entitlement on your part to award of those contracts, the agency's admission of error and its promise to follow proper procedures in the future, we believe an audit at this time does not command a high priority.

Sincerely yours,

MILTON SCCOLAR

Milton J. Socolar
General Counsel