DOCUMENT RESUME

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[Request for Reconsideration of Decision Finding an Air Force Requirement to Be Restrictive of Competition]. B-185647. May 11, 1977. 3 pp.

Decision re: D. Moody & Co., Inc.; by Paul G. Dembling (for Elmer B. Staats, Comptroller General].

Issue Area: Federal Procurement of Goods and Services (1900).
Contact: Office of the General Counsel: Procurement Law I.
Budget Function: National Defense: Department of Defense - Procurement & Contracts (058).
Organization Concerned: Department of the Air Force.
Authority: A.S.P.R. 1-1100. A.S.P.R. 1-313. 52 Comp. Gen. 546. 54 Comp. Gen. 1096.

The Department of the Air Force requested reconsideration of a prior decision which found restrictive of competition a requirement that a surplus dealer must acquire the status of an "approved source" in order to offer new and unused surplus items. Since the three bases advanced for reversal did not overcome the basic objection, that the procedure involves prequalification of a bidder offering a product that had already been qualified, the prior decision was affirmed. (Author/SC)

DECISION

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

FILE: B-185647 DATE: May 11, 1977

MATTER OF: D. Moody & Co., Inc.--Request for Reconsideration

DIGEST:

Prior decision holding restrictive of competition requirement that surplus dealer must acquire status of "approved source" to offer new and unused surplus items is affirmed since three bases advanced for reversal do not overcome basic objection that procedure, contrary to requirement for free and full competition, involves prequalification of bidder offering product that has already been qualified.

In D. Moody & Co., Inc., B-185647, September 1, 1976, 76-2 CPD 211, our Office found restrictive of competition the Department of the Air Force requirement that a surplus dealer-bidder must acquire the status of an "approved source" from the pertinent contracting activity in order to be permitted to make an offer in response to a procurement for newly manufactured, or new and unused surplus items, even though those item-models had already been approved by the activity in response to a request from the item manufacturer or dealer. We also held, by inference, that a proposed addition to the pertinent Department of the Air Force regulations that would allegedly correct and clarify the situation did not correct the restrictive nature of the requirement. Corrective action was therefore suggested.

The Department of the Air Force strongly disagrees with the conclusions of our decision and requests our reconsideration for three reasons: (1) The items in question are component parts for military equipment covered by paragraph 1-313 of the Armed Services Procurement Regulation (ASPR) (1975 ed.) and not by the qualified products list (QPL) provisions of ASPR; (2) Use of such procedure was explicitly approved in 52 Comp. Gen. 546 (1973), which is

controlling; (3) Changes made by Air Force Logistics Center (AFLC) /ASPR Supplement § 3-501 and the notice published in Note 33 of the Commerce Business Daily constitute sufficient corrective action.

We find the three bases for reconsideration insufficient to merit a reversal of our decision. We agree that the prequalification used in the instant solicitation was not the QPL procedure provided for at ASPR § 1-1100. However, both the ASPR § 1-313 and § 1-1100 provisions are aimed at prequalification of a product. In contrast, the procedure considered in our earlier decision and at issue here deals with prequalification of a bidder who is offering a product which has already been qualified. Any prequalification of bidders constitutes (with some exceptions not here applicable, see 54 Comp. Gen. 1096 (1975), 75-1 CPD 392) an unwarranted restriction upon the required free and full competition contemplated by ASPR and the applicable statutes.

We find 52 Comp. Gen. 546, supra, distinguishable. That decision involved a manufacturer who was not permitted to compete on a request for proposals because its product had not received qualification acceptance prior to the procurement. The decision does not apply to a party offering a product that has already been qualified.

The change in AFLC/ASPR § 3-501 requires any unapproved supplier to notify the contracting activity at least 10 days prior to bid opening or the date for receipt of proposals of his intent to supply surplus items and to submit various forms of proof of their acceptability. An application for approval could be rejected whenever the time and manpower expenditure involved in qualification was found not to be in the best interests of the Government. This provision is, in our opinion, still a requirement for prequalification which permits the rejection of a bidder/offeror without consideration of what he is offering, and as such is unacceptable. Note 33 merely implements AFLC/ASPR § 3-501, and does not affect the result.

The procurement statutes and regulations generally contemplate obtaining maximum competition consistent with the Government's real needs. We can understand that items or components may be required to have certain characteristics relating not only to the manufacturing

process but also to age, conditions of storage and similar consideration. However, these provisions should be applied with respect to all offerors equally.

Accordingly, the decision upon which reconsideration is requested is affirmed.

For the Comptroller General
of the United States