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DECISION



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

FILE: 2-186568

DATE: December 21, 1976

MATTER OF: Abbott Power Corporation

DIGEST:

Notwithstanding agency's agreement that specifications were unduly restrictive of competition, termination of contract would not be in the best interest of Government, since deficiency goes only to subcontractor selection, termination costs would be substantial, and termination would involve possible increased risk to life and safety of hospital patients.

Abbott Power Corporation (Abbott) protests restrictive requirements included in invitation for bids, Spec. No. 7542-AX, issued in regard to Veterans Administration (VA) Project No. 635-021, for modification of electrical systems in the VA Hospital, Oklahoma City, Oklahoma.

The solicitation called for bids for the performance of general construction, alteration and mechanical and electrical work, including the construction of a new switchgear room for the hospital. As part of the work, the contractor is required to install metal-enclosed interrupter switchgear. Abbott, intending to bid as a subcontractor, states that the interrupter switchgear specification was written around the product of one major electrical firm, and further objects to that part of the specification which provides that:

"To ensure a completely coordinated design, the metal-enclosed [interrupter switchgear] assembly shall be integrally designed and produced by the manufacturer of the basic switching components."

The gravamen of Abbott's complaint is that this specification unnecessarily restricts suppliers to major manufacturers because no "small business, independent electrical manufacturer" produces the basic switching components which it would have to manufacture to incorporate in any assembly it might offer.

B-186568

Although initially in opposition to the protest, VA now agrees that the specification used in the subject procurement was unnecessarily "written in such a way that it precluded products of some suppliers from consideration," and that it was consequently unduly restrictive of competition. VA further states that its Office of Construction does not approve the use of such specifications and is taking corrective action to assure that appropriate specifications are used in future procurements.

The Assistant Administrator of VA states that neither he, nor the contracting officer, was aware of the restrictiveness of the specification at the time the solicitation was issued or award made. He further states that the costs involved in terminating the awarded contract would be substantial, that significant portions of the work are well along in development, and that termination would seriously delay the correction of electrical deficiencies which involve possible risk to the life and safety of patients at the hospital. Moreover, the deficiency goes only to subcontractor selection. We are informed that the prime contractor has contracted with a supplier for the manufacture of the switchgear. In the circumstances, we do not believe it would be in the best interests of the Government to take any action in the respect to the contract.

Since it appears that VA is taking action to prevent a recurrence of the circumstances of this case, no further action by this Office is required.

R. J. K. 114
Deputy Comptroller General
of the United States