

DECISION



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

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FILE: B-218337.2

DATE: June 28, 1985

MATTER OF: Power Test, Inc.--Reconsideration

DIGEST:

Where, after award of a contract, an agency discovers that it unnecessarily restricted competition on a sole-source basis, the remedy followed by the agency, termination of the awarded contract for the convenience of the government and resolicitation on an unrestricted basis, was proper.

Power Test, Inc. (PTI), requests reconsideration of our dismissal as academic of an earlier protest filed by PTI. We dismissed PTI's initial protest against the award to Clayton Manufacturing Co. (Clayton) under request for proposals (RFP) No. DAAA09-84-R-0643, issued by the United States Army Armament, Munitions and Chemical Command, Rock Island, Illinois (Army), because, after award, the Army discovered that contractors other than Clayton could supply the solicited items and, therefore, terminated for convenience Clayton's sole-source contract. PTI now contends that instead of resoliciting its needs under an unrestricted procurement, the Army should make award directly to PTI which offered the items at a price lower than Clayton's under the original solicitation.

We deny PTI's request.

In September 1984, the decision was made by the Army to procure 32 drive shaft assemblies on a sole-source basis from Clayton. The assemblies were repair parts for a Clayton Engine Dynamometer (designed and manufactured by Clayton). Since no government drawings, specifications, or other descriptive documents existed to permit manufacture by other than the original supplier, the Army believed that procuring the item on a sole-source basis from Clayton was the only way of guaranteeing the required form, fit, function, reliability, performance and safety parameters. The proposed procurement was synopsized in the Commerce Business Daily as a noncompetitive acquisition from Clayton.

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The RFP was issued in October 1984 and included a purchase description for Clayton drive shift assemblies part No. P6967. Two offers were received: one from Clayton and the other, at a lower price, from PTI for its drive shaft assembly model 43174, which PTI claimed was identical to the Clayton part.

The Army conducted a technical evaluation to determine if PTI's offered assembly was in fact identical to Clayton's. It was determined that PTI's assembly was a part manufactured of 100-percent Dana-Spicer components. Although it was PTI's position that its assembly conformed "100 percent to Dana-Spicer part number 913236-1316" and was equal to Clayton's, comparisons between the specifications of the Clayton and Dana-Spicer assemblies indicated that dimensional discrepancies existed. The Army therefore could not conclude that the PTI assembly was equal to the Clayton assembly. Sole-source award was made to Clayton on March 12, 1985.

A subsequent investigation by the Army revealed that the apparent dimensional discrepancies between the Clayton and Dana-Spicer assemblies were attributable to an error in the drawings submitted by Clayton and that PTI's assertion was correct, i.e., Clayton's and PTI's assemblies are made from Dana-Spicer parts and conform to Dana-Spicer part No. 913236-1316. The Army then concluded that it had unnecessarily sole-sourced this procurement, that there was no urgent need for the assemblies, and that termination costs would be low. Therefore, the Army terminated Clayton's contract. Because of this action, we dismissed as academic PTI's protest against the sole-source award to Clayton.

Since the discovery was made after award to Clayton that more than one potential source existed, the Army followed the proper remedy by terminating Clayton's contract and opening competition to the maximum extent practicable. See Non-Linear Systems, Inc.; Data Precision Corporation, 55 Comp. Gen. 358 (1975), 75-2 C.P.D. ¶ 219; Scott Graphics, Inc.; Photomedia Corporation, 54 Comp. Gen. 973 (1975), 75-1 C.P.D. ¶ 302. Since the record indicates (and PTI does not dispute) that at least three and probably more companies

could supply assemblies which would satisfy the government's needs, we find the Army properly decided to resolicit its needs on an unrestricted basis.

for Seymour G...
Harry R. Van Cleve
General Counsel