

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

B-176854

January 2, 1973

Federal Manufacturing and Supply Corporation
Box 19717
Columbus, Ohio 43219

Attention: Mr. Harold E. Chadwick
President

Gentlemen:

Reference is made to your letter of August 22, 1972, and subsequent correspondence, protesting the cancellation of invitation for bids DSA-400-72-B-4914, issued by the Defense General Supply Center, Richmond, Virginia.

The solicitation was for 10 power transformers, to be manufactured in accordance with AVCO/Electronics Division Drawing 742748, dated March 29, 1962, as modified. At bid opening on February 17, 1972, your bid was found to be the lower of the two received. However, on March 30, 1972, your bid was rejected because you were found not to qualify as a regular dealer under the Walsh-Healy Act. You protested this action to the contracting officer, pointing out that you submitted a bid as a manufacturer, not a dealer. On June 8, 1972, your bid was again rejected, this time for failure of your firm to qualify as "a manufacturer or regular dealer of the supplies involved." You protested that decision to the contracting officer also, but before the matter was referred to the Department of Labor for resolution, the solicitation was cancelled due to a change in the specifications, and notice of the cancellation was sent to the bidders by letters of August 24, 1972. You challenge the cancellation, claiming that only "minor variations" were made in the specifications and that the changes would not result in any practical differences in performance since you understood what was intended by the original specifications.

41 USC
35 URC

Note 13 of the AVCO drawing specified that the transformers must "be capable of operating continuously for a period of 10,000 hours after an initial storage period of 2 years." The quality assurance section of the invitation for bids stated that when applicable "the completely fabricated end item shall be tested to determine compliance with specified requirements." On May 10, 1972, in connection with

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another contract awarded to you in 1970 that contained the same provisions, you questioned whether actual testing for the Note 13 requirement was desired, and pointed out that such testing would take more than three years. The record reflects that the Air Force engineering support activity was consulted, and it refused to eliminate the testing requirement. It recommended that "transformers be procured from qualified sources per AVCO Dwg. No. 742748" but that if qualified sources were not available, "then in order to expedite the procurement and on a one time basis * * * the manufacturer be required to certify that their transformers will meet the requirement of Note 13."

On the basis of the Air Force recommendation and because of the difficulties of contract interpretation encountered under the existing contract (awarded in a competitive procurement) with your firm, a new procurement item description (PID), citing two qualified sources of supply, was prepared. The invitation was then cancelled because of this revision to the PID.

Subsequently, the contracting officer determined that it was not feasible to draft adequate specifications to permit procurement of the transformers by competitive advertising. He also determined that nine transformers were needed immediately to alleviate a critical stock level of the item. Accordingly, an RFP was issued on August 28, 1972, calling for procurement of the original ten transformers plus the additional nine required on a public exigency basis. The RFP identified the transformer as AVCO part number 742748 or Moloney Electric Company part number CSY 742748-TF4TX01YY. Moloney submitted the sole offer in response to the RFP.

Upon receipt of your protest of the IFB cancellation, the contracting officer again consulted with the Air Force, which advised that the Note 13 testing requirement could be satisfied in future procurements also by a certificate from any qualified contractor. A new PID was then developed which eliminated the requirement to procure from specified sources. As a result the Air Force reports that it anticipates that award under the RFP will be made only for the nine units required on the urgency basis, and that other requirements will be readvertised on the basis of the new PID.

We believe that cancellation of the invitation for bids under the circumstances described herein was an appropriate exercise of administrative discretion. ~~ASPR 2.404.1~~ permits cancellation of an invitation after bid opening when specifications have been revised and there is a

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compelling reason to do so, and we have recognized that "administrative authority to reject all bids and readvertise is extremely broad." 49 Comp. Gen. 211, 215 (1969). It seems clear that, in view of the Air Force's initial refusal to eliminate the lengthy test requirement, procurement of the transformers within a reasonable time on a competitive basis so as to satisfy the needs of the Government was not practicable under the IFB specifications. Accordingly, at the time the IFB was cancelled, it appears that there existed a sufficiently compelling reason to warrant such action. The fact that you believed the testing was not required or that the test requirement was subsequently waived for future procurements does not affect the validity of the IFB cancellation.

For the foregoing reasons, your protest must be denied.

Very truly yours,

R.F.KELLER

Deputy Comptroller General
of the United States