DECISION

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

61429

FILE: B-185647 DATE: September 1, 1976

98093

MATTER OF: D. Moody & Co., Inc.

DIGEST:

Agency's position that only bids submitted by approved sources under QPL procurements can be considered responsive is overly restrictive interpretation of QPL requirements contained in ASPR § 1-1101 et seq. and would constitute QPL a qualified bidders list.

D. Moody & Co., Inc. (Moody), protests the rejection of its offer on line item Nos. 0001, 0003, and 0006 by the Warner Robins Air Logistics Center (Center) under request for quotations No. FD2060-76-20724. Moody offered newly manufactured goods (Moody was not the manufacturer) on item Nos. 0001 and 0006 and new, unused surplus goods on item No. 0003. While the items are apparently approved items, Moody is not an approved source for these items. Consequently, Moody was advised that its offer was unacceptable because of the Center's policy of accepting offers/bids from only approved sources on line items valued under $2,500, as was the case here. Moody contends that this policy is overly restrictive and violates the requirements of the Armed Services Procurement Act and implementing Department of Defense regulations which espouse the policy of free and open competition. Moody also contends that the rejection of its offer was arbitrary and capricious inasmuch as it is not feasible for any surplus dealer to prequalify for the many hundreds of thousands of aircraft parts which are purchased by the Government and which are available as surplus.

To correct this situation and to clarify procedures for considering nonmanufacturing sources, the Department of the Air Force proposes to add the following provision to its regulations thereby permitting an unqualified source the possibility of qualifying itself prior to bid opening:

> "(5) The offeror, who is not the manufacturer, notifies the procuring contracting officer (PCO) at least 10 days prior to the opening of bids or proposals that he intends to provide surplus parts manufactured by one of the approved sources listed below. The Government will determine on a case-by-case basis, whether or not surplus parts can be considered in view of the criticality of the part, and the extent of the evidence necessary for the offeror to establish that the parts conform to the applicable specifications."

The regulation into which the afore-quoted will be incorporated also states that approval information may be considered only if it is in the best interest of the Government to expend the time and manpower available to perform the product qualification. The time incident to the qualification process depends on the complexity of the item being procured, the manpower available to perform the qualification, and the urgency of the need for the item. The urgency of the requirement dictates not only the amount of time between bid opening and award, but also the time allowed for solicitation purposes. It is the position of the Department of the Air Force that the policy in question is necessary to assure the safe, effective operation of essential military equipment. The policy, it is asserted, does not violate procurement statutes and regulations, nor does it unduly restrict competition by requiring evaluation and approval of items prior to purchase. Finally, our letter B-185393 of February 23, 1976, to the Secretary of the Air Force is cited by that Office as evidence that we have condoned the policy which is protested by Moody.

Our letter B-185393 of February 23 regarded a protest by the Mercer Products & Manufacturing Co. (Mercer) against the rejection of its bid and against the Department of the Air Force policy of rejecting any bids from unapproved sources. In reply to the protest, the Department of the Air Force noted that it had incorrectly not stated in the invitation or in the notice placed in the Commerce Business Daily that award would be limited to approved sources, and we were advised that future corrective action would be taken. The policy of permitting only approved sources to bid, however, was stated to be in accordance with Department of the Air Force regulations. The protest was for the former reason sustained by the Air Force, although it was stated that the Mercer bid was not low. The case was closed by our Office on the basis that future corrective action would be taken by the Department of the Air Force and because Mercer's bid was allegedly not low. We note that the letter in question was

signed by an attorney of our Office, was thus not a decision, and therefore is not controlling in any manner upon our case law.

In view of our decision D. Moody & Co., Inc.; Astronautics Corporation of America, 55 Comp. Gen. 1 (1975), 75-2 CPD 1, we believe that the Department of the Air Force policy of requiring bidders to be approved sources even if they are offering approved products is restrictive of competition and that the policy should be discontinued. The insertion in its regulations of the above-quoted paragraph is an insufficient corrective measure.

The Department of the Air Force's overly restrictive interpretation of the QPL requirements would make a QPL a qualified bidders list. Our Office has held that such prequalification of bidders (as opposed to products) results in an unwarranted restriction on the free and full competition contemplated by the applicable statutes. 52 Comp. Gen. 569 (1973); 53 Comp. Gen. 209 (1973); 55 Comp. Gen. supra; Logicon, Inc., B-181616, November 8, 1974, 74-2 CPD 250.

Accordingly the protest is sustained. However, since award has been made to the low bidder no corrective action is possible. By letter of today we have requested the Secretary of the Air Force to take necessary corrective action to preclude a recurrence of such policies in future procurements of this nature.

R. F. Keller

Acting Comptroller General
of the United States