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DECISION



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

FILE: 3-191320

DATE: May 12, 1978

MATTER OF: Colonial Ford Truck Sales, Inc.

DIGEST:

1. Where contract has been terminated for convenience protest of award of contract to non-responsive bidder is moot.
2. Agency reasonably determined that solicitation was unduly restrictive because it specified one manufacturer's part number which exceeded the agency's minimum needs in this case and hindered competition.

Colonial Ford Truck Sales, Inc. (Colonial) protests the decision of the Defense Logistics Agency (DLA) not to award a contract to Colonial under invitation for bids (IFB) DSA-600-77-B-0273, issued by the Defense Fuel Supply Center (DFSC), Alexandria, Virginia.

The IFB solicited bids for the supply of automatic transmission fluid, described as "Ford Motor Co. Part No. CLAZ-19582C." Octagon, which offered Exxon's qualified product No. 2P-640911, was determined to be the low responsive bidder for the entire quantity solicited and award was made to Octagon.

Colonial protested to the agency because unlike Colonial's bid, Octagon offered a product other than the Ford Motor Company part specified in the solicitation. When this protest was denied, Colonial protested to this Office on the same grounds.

The agency has since terminated the contract with Octagon for convenience and has stated its intention to resolicit its requirements with a less restrictive description accurately reflecting its minimum needs. Nevertheless, Colonial has continued to assert that award of the contract should be made to it under the original solicitation.

DLA asserts that Colonial's protest of the award to Octagon was untimely filed with this Office. However, we need not decide this issue because the contract with Octagon subsequently has been terminated and thus Colonial's protest has become moot. Nevertheless, Colonial timely protested the agency's determination to resolicit its needs rather than to award a contract to Colonial under the original solicitation.

DLA asserts that the solicitation contained specifications which were unduly restrictive of competition and thus the bids which the Government received were not reflective of the broader market available. DLA states that DFSC had intended to issue an IFB soliciting offers from suppliers whose products have been approved as meeting Ford Motor Company specification ESW-M2C35-F. However, due to an alleged cataloging error, the solicitation's specification listed Ford's own qualified product, rather than the Ford specification, under which numerous suppliers had qualified their products. DLA concluded that this restrictive specification resulted in a defective solicitation, when analyzed in light of DFSC's actual needs.

Colonial takes exception to the assertion that DFSC intended to issue a solicitation which called for offers on products qualified to Ford Motor Company specifications. Colonial points out that the item description in the subject IFB was not an isolated instance of a clerical error in stating DFSC's requirements, but was the description used by DFSC over the past sixteen years to purchase the same item. Colonial asserts that DFSC therefore should have known that the product called for was Ford Motor Company part number C1A219582-C.

Procurement agencies are required to state specifications in terms that will permit the broadest field of competition within the minimum needs of the agency. 32 Comp. Gen. 584 (1953). Even though the agency may have restricted past procurements to a

particular manufacturer's part, this fact does not justify the continuation of this restriction once it is determined to be unnecessary. In this case, the agency's determination that the specifications utilized in the original solicitation were unduly restrictive was reasonable because it found that any product "qualified" to the Ford Motor Company specification would be suitable for its needs. Consequently, we do not object to the agency's decision to resolicit its requirements rather than award to Colonial under the original solicitation.

Accordingly, the protest is denied.

R. F. Killen
Acting Comptroller General
of the United States