

**DECISION**

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

*9036*

**FILE: B-190920**

**DATE: October 13, 1978**

**MATTER OF: Aeronautical Instrument and Radio Company**

**DIGEST:**

1. Responsibility for establishment of tests and procedures necessary to determine product acceptability is within ambit of expertise of cognizant technical activity and, therefore, GAO has no objection to requirement for both first article testing and 100-percent overhaul-type inspection found necessary by activity if surplus item is to be procured.
2. Failure of agency to amend solicitation, when it determined, due to urgency, it could no longer accept surplus items because of testing required, did not prejudice protester that could not offer newly manufactured item eligible for waiver of first article testing.

Aeronautical Instrument and Radio Company (Airco) has protested the award of a contract to Arvin Systems, Inc. (Arvin), under request for proposals (RFP) No. N00383-77-R-1930 issued by the Aviation Supply Office, Department of the Navy (ASO).

The RFP was issued to Republic Electronics Industries Corp. (Republic) and Arvin for furnishing receiver-transmitters (R/T), both firms being listed as recommended sources of supply. Upon its request, Airco was furnished a copy of the RFP.

Arvin submitted the only timely proposal, Republic submitted a "no-bid" and Airco's hand-delivered proposal was late. Airco also submitted a timely but unauthorized telegraphic proposal. Arvin's proposed unit price was \$17,497. The Airco telegraphic proposal revealed proposed prices of \$18,775 to \$20,295, depending on the quantity, for newly manufactured R/T's and \$14,950 to \$15,495 for

overhauled R/T's. Airco's proposal noted that "Refurbished material is offered in a like new condition."

Because of the possibility of monetary savings through the purchase of overhauled R/T's rather than newly manufactured units, a preaward survey was conducted on Airco which recommended no award. The reasons for this recommendation were that Airco:

"(1) had not provided a total list of used parts to be incorporated in the equipment, as requested, nor had DCACMA been able to identify all parts; (2) did not have an acceptable inspection system; (3) did not have assembled R/T units and could not verify the availability of all the required material; (4) had various subassemblies which carried different manufacturers' FSCM's (Federal Supply Code for Manufacturers); and (5) was unable to advise DCASMA of the identity of the manufacturer of certain components because there were no name plates or other identification so that part numbers and change letters could not be verified."

Despite the above recommendation, ASO technical personnel stated that award could be made to Airco if the units were subjected to 100-percent "overhaul-type" inspection by The Naval Air Rework Facility. The ASO personnel recommended that a \$350 evaluation factor to cover the estimated cost of the testing and inspection be included in the solicitation.

In view of the above, ASO determined that, notwithstanding the failure of Airco to submit a timely proposal, Airco should be admitted to the competition, pursuant to our Office's holding in TM Systems, Inc., 56 Comp. Gen. 300 (1977), 77-1 CPD 61. That decision held that where a late proposal under a sole-source solicitation offers and can be shown to meet the Government's requirements within the time constraints of the procurement, the

agency may either cancel the sole-source and procure under a competitive solicitation or amend the existing sole-source procurement to provide for competition. We believe the action taken here comports with that holding.

Accordingly, best and final offers were requested from both Airco and Arvin for used surplus R/T's; however, through an oversight, no price was requested for new material. The best and final request also advised of the 100-percent acceptance test requirement and the \$350 evaluation factor.

Airco's best and final offer proposed a unit price of \$15,143.90 for used material compared to Arvin's offer of \$11,389. Arvin also submitted a price of \$16,475 for new material.

With its best and final offer, Arvin urged ASO not to procure used surplus material because there were no ARN-105's available in surplus and the R/T's would have to be assembled from ARN-52's or ARN-86's. Further, there was no way to assure the components were not rejects and that they were the latest design. Also, it was alleged that the failure rate of R/T's composed of used modules was twice the rate of new equipment.

When ASO's technical personnel were shown this information, it was determined not to accept surplus material, primarily because it was thought that such material would not have a life expectancy equal to newly manufactured material. Because the 30-day acceptance period of the best and final offers had expired by the time this advice was received, new best and finals were requested of Arvin and Airco. However, through inadvertence, prices were requested on surplus material as well as new material. Airco's new best and final offer for surplus material was \$11,495 with no offer made for new material. Arvin's prices were \$13,500 and \$15,975 for surplus and new material, respectively.

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The contracting officer again contacted ASO's technical personnel concerning the acceptability of surplus material because of the possible savings of approximately \$4,500 per unit. The technical personnel advised that possibly surplus material would be acceptable, but only if it was required to undergo first article testing.

Because of the delays caused by the several best and final offers and the consultations with technical personnel, the need for the R/T's had become urgent. In view of the fact that first article testing would require 5 months, according to ASO's technical personnel, and Airco was not eligible for waiver of first article testing, the contracting officer determined to make award to Arvin for newly manufactured R/T's.

Airco's protest is based on contentions that there was no justification for requiring first article testing since the units were to be subject to 100-percent overhaul inspection and that ASO failed to advise Airco of this change in the requirements by amending the solicitation.

Our Office has consistently held that the responsibility for the establishment of tests and procedures necessary to determine product acceptability is within the ambit of the expertise of the cognizant technical activity. While Airco argues that the Government is fully protected by the 100-percent inspection, in D. Moody & Co., Inc., et al., 55 Comp. Gen. 1 (1975), 75-2 CPD 1, at page 15, our Office did not object to the requirements for first article testing, quality conformance inspection and tests and acceptance tests where, as here, the the agency found such tests necessary and there was no no probative evidence to the contrary.

Regarding the failure of ASO to amend the solicitation following the decision to require first article testing, we fail to see how Airco was prejudiced. Even if time had permitted an amendment,

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It would have been a useless act because only Arvin was capable of supplying the newly manufactured R/T's within the time constraints of the procurement. See Transcomm, Inc., B-190273, February 9, 1978, 78-1 CPD 113.

Finally, contrary to the allegation of Airco that ASO manipulated the procurement in such a way that it became urgent and award would have to be made to Arvin for newly manufactured items, we believe the record shows that the delays in the procurement were caused by ASO's attempting to open the procurement to more competition, not less.

Accordingly, the protest is denied.

  
Deputy Comptroller General  
of the United States