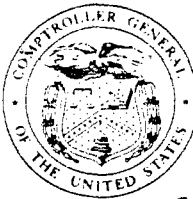


**DECISION**



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

*[Protest Against RFP Cancellation]*

FILE: B-198232

DATE: September 19, 1980

MATTER OF: Nortec Corporation

**DIGEST:**

1. Contracting officer did not abuse his broad powers of discretion in canceling RFP where it was discovered that specifications were defective in that they contained performance requirements impossible to achieve.
2. GAO will not object to contracting officer's determination to cancel RFP due to inadequate specifications, rather than negotiate specification problems with sole source offeror, where protester has not established that contracting officer's decision lacked a reasonable basis.

Nortec Corporation (Nortec) protests the cancellation of request for proposals (RFP) N00383-80-R-0940, issued by the Navy's Aviation Supply Office (ASO), Philadelphia, Pennsylvania, for ultrasonic flaw detectors.]

Initially, it was anticipated that the procurement would be accomplished through two step formal advertising, but when only one technical proposal submitted under step one (Nortec's) was determined acceptable, the contracting officer discontinued the two step formal advertising process and commenced negotiation with Nortec by issuance of the RFP, as permitted by Defense Acquisition Regulation (DAR) § 2-503.1(h). However, shortly after Nortec submitted its offer under the RFP, ASO canceled the solicitation through an amendment which stated that the "specifications are under review."

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[Nortec takes exception to the cancellation, arguing that the problems which ASO discovered in its specifications should be considered minor in nature and resolved by negotiation with Nortec rather than by cancellation of the RFP. Contending that its design concept represents a significant technological advancement, Nortec questions whether the Navy actually considered these features, and whether the cancellation resulted from undue influence from another supplier, Sonic Instruments, Incorporated (Sonic) (whose technical proposal had been found unacceptable under step one).] In this regard, [Nortec raises the possibility that the procurement may have been canceled to permit the purchase of purportedly obsolete equipment from Sonic.] Finally, Nortec states that [upon cancellation of the RFP it was orally informed that its offer would be held unopened; nevertheless, when its offer was returned, "the package had been ripped open and sent back inside an undamaged outer envelope", raising the possibility that its design approach and cost and pricing data may have been exposed to competitors.]

The procurement history, as provided by the contracting officer, states that the first contract for these items was awarded to Sonic as a result of a competitive solicitation requiring manufacture to a purchase description. Although extensive changes subsequently were made to the item by Sonic, the purchase description had not been updated to reflect these changes.

In 1972, procurement responsibility for the item was transferred from the Naval Air Engineering Center, Lakehurst, New Jersey (NAEC) to ASO. As a result of a request by ASO, NAEC prepared Purchase Description (P.D.) No. 92 to update the then-existing purchase description. ASO states that it assumed P.D. No. 92 constituted only an updating of the existing specification, i.e., that it largely described the flaw detector then in use--the Sonic C398 item. However, since ASO lacked design drawings, it concluded that two step formal advertising was appropriate instead of regular formal advertising.]

After rejection of Sonic's proposal as technically unacceptable under step one of the two step procedure, and during the period in which ASO was pursuing a sole-source procurement with Nortec under the RFP, Sonic requested a debriefing from ASO. During this conference, Sonic claimed for the first time that it was impossible to comply with the requirements of P.D. No. 92 concerning shock and weight. As a result of this allegation, ASO undertook a review of NAEC's purchase description and concluded that:

- (1) The 30 pound weight requirement may be unrealistic--if not impossible--to meet;
- (2) The value of the 30 pound weight requirement--even if achievable--may not be such as to outweigh the competitive benefits to be obtained from the acquisition of a heavier unit; and
- (3) The shock requirements were in fact impossible of achievement.

Moreover, it was then realized that P.D. No. 92 contained other "significant performance features" not available in the flaw detector currently in use. ASO concluded that even if the specification problems were quickly resolved and the purchase description revised, extensive first article and reliability and maintainability testing would be required of any supplier.

Since the Navy's need for the flaw detectors had become critical (there were 43 back orders for urgently required testers for repair activities that currently lacked this equipment, and lack of this equipment could result in grounding of aircraft at those locations), the contracting officer determined to procure 43 of the items from Sonic and to withhold the balance of the equipment pending NAEC's review of P.D. No. 92. The 43 items to be procured are the Sonic C398 item currently in use.

[With regard to the cancellation of an RFP, our Office has recognized that the criteria for cancellation of a formally advertised procurement prescribed in DAR 2-404.1 (1976 ed.) are applicable to cancellation of RFPs. A.B. Machine Works, Inc., B-187563, September 7, 1977, 77-2 CPD 177. DAR 2-404.1(b) provides in pertinent part:

"\* \* \* Invitations for bids may be canceled after opening but prior to award when \* \* \*

(i) inadequate or ambiguous specifications were cited in the invitation."

[A contracting officer has broad powers of discretion in deciding when a solicitation should be canceled, and our Office will not interfere with such determination unless it is shown to be unreasonable.] See A.B. Machine Works, Inc., supra; Semiconductor Equipment Corporation, B-187159, February 18, 1977, 77-1 CPD 120.

Under the circumstances of the instant case, we cannot conclude that the contracting officer's action was unreasonable or that he abused his broad powers of discretion in canceling the RFP. Here, the purchase description requires the item to weigh no more than 30 pounds and to perform normally even after being subjected to a shock test which includes dropping the equipment a total of 26 times from a height of 30 inches. [We believe the contracting officer reasonably concluded that neither proposal clearly demonstrated that those requirements would be met.] Sonic proposed to furnish a modified version of its Mark IV unit: the majority of Sonic's technical proposal consisted of the operation and service manual for that unit. This manual lists the weight of the unit as 37 pounds and did not address the shock requirement. Nortec, in its proposal, represented that its unit would meet the weight and shock requirements, but provided no explanation as to how they would be achieved. [In addition, as we have indicated, ASO concluded that P.D. No. 92 contained several "significant [new] performance features" which would require extensive testing before the item could be accepted from any supplier.] [It was on the basis

of these facts that the contracting officer decided to cancel the solicitation, purchase only enough of the existing Sonic testers to fulfill the agency's urgent requirements, and resolicit competitively when the problems inherent in P.D. No. 92 had been resolved.]

We believe the record supports the contracting officer's doubts as to whether either offeror could actually satisfy the Government's requirements as stated in P.D. No. 92 and whether that document in fact contained requirements which were realistic or represented the Government's minimum needs.

[With regard to Nortec's contention that the specification defects should have been resolved in the course of sole-source negotiations rather than by cancellation of the RFP, we have held that while it may be appropriate to make some changes in an RFP's terms or specifications by amendment rather than cancellation and resolicitation, substantial changes in the specifications may justify cancellation of the RFP.] Regardless of the particular fact situation, we have specifically stated that a decision to cancel and resolicit, rather than make changes in the specifications by amendment of the RFP, is likewise subject to objection by our Office only if it is clearly shown to be without a reasonable basis. See Semiconductor Equipment Corporation, supra; Environmental Protection Agency, Request for Modification of GAO Recommendation, B-184194, July 19, 1976, 76-2 CPD 50.

As previously indicated, [ASO first became aware rather late in the procurement process, when confronted with urgent requirements for the items,] that the specifications not only contained provisions impossible of compliance but that the purchase description contained features not currently available in items already in use that would necessitate unacceptable delays for reliability testing to determine their technical feasibility.] Confronted with the possibility that it might be satisfying its critical needs with articles which purported to advance the state of the art but had not yet been proven technically feasible, [we do not find that the Navy acted unreasonably in canceling the RFP to further review and revise the specifications.] Due to the urgency in the Navy's requirements, [we are not convinced that ASO could have resolved its concerns over these untested new features within an acceptable time frame, even if the RFP had been amended.]

While it is regrettable that the specification problems were not realized earlier in the course of the procurement, the record shows that this resulted not from bad faith on the part of ASO personnel but rather from the fact that a different activity had prepared the purchase description, and ASO had been under the erroneous impression that the purchase description largely described an item already in use.)

Finally, ASO states that it is unable to explain why Nortec's proposal was opened.) In this regard, the contracting officer advises that neither he nor the buyer ever saw Nortec's offer under the RFP, and that the bid opening clerk states to the best of her recollection that she mailed the proposal back to Nortec in an unopened condition. Whatever the facts of the matter are, we find no indication in the record to confirm Nortec's concern that its design concept or cost and pricing data may have been disclosed to competitors.

The protest is denied.)

A handwritten signature in cursive script, reading "Milton J. Jordan".

For the Comptroller General  
of the United States