



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

B-177288

DEC 29 1972

S. W. Electronics and Manufacturing Corporation  
Cherry Hill Industrial Center  
12 Fellowship Road  
Cherry Hill, New Jersey 08034

Attention: Mr. A. Z. Szczepkowski

Gentlemen:

Reference is made to your letter dated December 15, 1972, and prior correspondence, protesting against a proposed award of contract to RCA Corporation (RCA) under request for proposals (RFP) N00383-73-R-0007, issued July 14, 1972, by the Department of the Navy, Aviation Supply Office (ASO), Philadelphia, Pennsylvania.

The solicitation was issued to RCA and called for various step-ladder quantities of Radio Set Controls, C-4850/ASQ-85(v), RCA part No. 8328808-503, plus related data. The control radio sets are scheduled for installation in the F-14 aircraft. Pursuant to 10 U.S.C. 2304(a)(10), authority to negotiate a sole source contract with RCA had been issued June 15, 1972, based upon the contracting officer's "Determination and Findings" that the Government did not have the necessary specifications or drawings to permit competitive procurement. In this regard, RCA had previously been awarded two contracts for the subject item and had submitted final drawings under its first contract on May 18, 1972, for Government approval (Contract No. N00019-71-C-0190, awarded June 1971). These drawings were approved by the Navy on November 15, 1972.

Meanwhile, RCA submitted its proposal for this procurement on July 28, 1972, and in addition, your firm submitted an unsolicited proposal on that date, with a request that the procuring activity furnish your firm with a set of RCA drawings or a sample unit. By letter dated August 18, 1972, your firm withdrew its request for the RCA drawings or sample unit. However, by letter dated October 10, 1972, ASO rejected your proposal on the basis that, "While you have offered [the required] delivery beginning in 180 days, certain requirements not specified in the RFP, e.g. first article testing, would prevent you from meeting that commitment and would in fact delay delivery long beyond that point." A protest to this Office followed.

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You alleged that your firm could meet the required delivery date and that it was improper to require first article testing of your product since the RFP did not include this requirement. Further, you contended that your proposal was also improperly rejected because of alleged delivery difficulties on another contract with ASO, which you stated were not caused by actions of your firm. You also noted that no negotiations were held with your firm.

The contracting officer reports that since the procurement was issued solely to RCA and called for an RCA part number, the RFP did not specify first article testing. When your unsolicited proposal was received, the contracting officer states that he requested the technical representative at ASO to advise him whether the proposal could be evaluated and considered for award. Since your proposal had initially requested a set of RCA drawings or a sample unit, the technical representative investigated this possibility and learned that the RCA drawings had been delivered under Contract No. -0190 and were being reviewed by the Navy engineering group responsible for the approval of such drawings. That group reported back that approval of the RCA drawings could be expected shortly. Based on this information, the technical representative advised the contracting officer that the drawings were available and that a competitive procurement of the item was now possible. However, the contracting officer was advised that such a competitive solicitation would have to include a military specification (Military Specification MIL-C-23768A), Government furnished RCA drawings, appropriate handbooks and a model; that the solicitation would have to require that delivered articles be interchangeable with the displayed model which would be furnished to the successful bidder; that a first article sample unit would be required of any manufacturer other than RCA, and that such first article manufacturing and approval time would require an estimated 305 days.

The contracting officer further reports that total manufacturing lead time for these items, i.e., the lead time to the first delivery of production units, is estimated at 450 days inclusive of first article testing and approval time, and that this estimate presumes that each milestone in the testing and manufacturing schedule is rigidly set. He states that since these controls are required for installation in new production F-14 aircraft commencing in July 1973 and ending in June 1974, and there are no equipments available in the stock system to satisfy this need, and in view of the estimated manufacturing lead time stated above, plus the time needed to issue and award a new solicitation, he concluded that it would be unrealistic to expect these items from a new source before June 1974. Therefore, the contracting officer determined

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that a resolicitation of this procurement on a competitive basis could not be considered. Accordingly you were advised by letter of October 10, 1972, that your proposal could not be considered. In addition, a new "Determination and Findings" was written, dated November 2, 1972, covering negotiation of 100 of these items under the authority of 10 U.S.C. 2304(a)(2) (public exigency). Finally, the contracting officer states that your performance record under an existing ASO contract was not considered as a factor in connection with Navy's determinations under this procurement. Thus the contracting officer proposes to award the instant procurement to RCA and to prepare a competitive solicitation for the next procurement.

We have consistently held that the drafting of specifications to reflect the needs of the Government and the determination of whether an offeror can meet these needs are matters within the cognizance of the administrative agency, and we will not question administrative determinations on these matters unless it is clearly shown that such determinations are unreasonable. 49 Comp. Gen. 553 (1970); B-171634, March 11, 1971. Although you insist that your firm is technically capable of manufacturing the required items within the required time and without the benefit of a sample unit from the Navy, we find no basis to question the Navy's determination to the contrary. Under the circumstances, we do not find that the Navy improperly rejected your proposal on the basis that your firm could not meet the required delivery schedule. Accordingly, your protest is denied.

Very truly yours,

R.F. KELLER

Deputy Comptroller General  
of the United States