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**DECISION**



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

FILE: B-204998

DATE: April 6, 1982

MATTER OF: D Square Engineering Company

**DIGEST:**

A contracting agency's failure to obtain approval of an alternate source in time for award under a solicitation limited to approved sources has not been shown to be unreasonable where the solicitation informed offerors of the necessity that alternate items be evaluated by the responsible engineering activity and that because of the time needed to accomplish such an evaluation, award to an offeror whose product previously had been accepted might be necessary, and where the time taken to initially evaluate the alternate item is not unusual.

D Square Engineering Company protests the rejection of its proposal under request for proposals (RFP) No. DLA 900-81-R-4482 issued by the Defense Logistics Agency (DLA) for toggle switches. We deny the protest.

The procurement was conducted in accordance with the Department of Defense (DOD) High Dollar Spare Parts Breakout Program, which establishes uniform procedures relating to the procurement of spare and repair parts for military equipment. Under this program, items are screened and assigned a procurement method code (PMC) which indicates their procurement status. The toggle switch in this case was coded 1C, meaning that it is a competitive item but that it must be procured from approved sources only. DLA states that the reason for this designation is lack of an adequate data package for a formally advertised procurement.

The RFP provided that the procurement was restricted to the designated part numbers of two manufacturers-- Crouse-Hinds and Riverside Manufacturing Co. It also stated

that sources not currently approved could offer their switches for evaluation and approval, but that because of the time needed for the evaluation, current demands for the item might require award to an offeror whose product had been previously accepted.

Five offerors responded to the solicitation. Four of them proposed to supply the approved Riverside switch, while the fifth, D Square, proposed to supply a switch it manufactured. Since D Square's switch was not approved, DLA contacted D Square and asked it to furnish detailed technical data, including specifications and drawings, to allow for evaluation of its switch. D Square submitted a sample and technical information for evaluation on May 21, 1981. On June 8, DLA forwarded the sample and data to the Army Tank Automotive Command (ATAC) which is the cognizant engineering support activity, and in charge of the testing and approval of this item.

In early August 1981, while the evaluation of D Square's switch was still pending, the contracting officer was notified that the stock position for the item had become extremely critical. It was projected that the stock on hand would be depleted by October and that even assuming an immediate award, the Government would be in a negative supply situation of at least 165 units before receiving any shipments under the contract, since the RFP did not require delivery to commence until 150 days after award. At this time, the contracting officer had two purchase requests on hand for a total of 527 units.

After being notified of the critical stock situation, the contracting officer inquired as to the evaluation status of D Square's switch and learned that no decision on the acceptability of the switch had yet been made, nor did such a decision appear imminent. The contracting officer then concluded, pursuant to 10 U.S.C. § 2304(a)(2) (1976), that an immediate award for the 527 units called for in the two purchase requests (the RFP allowed for award of up to 850 units) was necessary. He determined that the exigency of the situation did not permit the delay incident to awaiting the evaluation of D Square's switch. Award was made to Riverside on September 21, 1981.

In October 1981, after the contract award, ATAC informed DLA that the information and sample submitted by D Square were insufficient to evaluate and determine the acceptability of D Square's switch.

D Square argues that the time taken by ATAC to determine that it needed more information was excessive. D Square contends its switch is in fact interchangeable with the approved Riverside switch, and that if it had been advised of ATAC's problem earlier, it could have supplied the necessary information and its switch could have been approved before the supply situation became critical. D Square also asserts that DLA acted improperly by not attempting to expedite ATAC's review.

At the outset, we note that our Office has specifically approved the PMC method of procuring spare parts by the use a system of approved sources. See Mercer Products & Manufacturing Co., B-188541, July 25, 1977, 77-2 CPD 45. Further, an agency can properly require a prospective offeror to furnish data and samples for examination and testing as a prerequisite to award where award is limited to approved sources. See 52 Comp. Gen. 546 (1973).

Concerning the length of time taken to determine that the information and sample submitted by D Square were not adequate for evaluation, and the alleged failure of DLA to expedite matters, the RFP specifically informed offerors that alternate items would require evaluation by the responsible military engineering agency and that because of the time needed to accomplish such an evaluation, award to an offeror whose product previously had been accepted might be necessary. Thus, D Square was clearly on notice that the required approval procedures might require more time than was available prior to contract award.

In addition, we have stated that the need for testing and the time involved in connection therewith is generally a matter within the competence of the procuring agency, and the agency's position will not be disturbed in the absence of clear evidence indicating the position is unreasonable. See Soft America, Inc., B-193759, July 12, 1979, 79-2 CPD 28. Although D Square clearly believes that the time required for ATAC's initial evaluation of its proposal was excessive, in our view, it has not shown that ATAC and DLA's contrary position is without any reasonable basis.

DLA states that the evaluation of alternate items is a time-consuming process and the four months which passed before ATAC replied to the request for evaluation of D Square's switch is not unusual. Further, although it is apparent that the testing of alternate items is within the purview of ATAC, over which DLA has no direct control, DLA did attempt to

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expedite ATAC's evaluation in this case by asking for a reply to its evaluation request within 21 days. While DLA could have continued to press ATAC for a reply, we do not believe that it was required to do so, nor is there any indication that ATAC's response would in fact have been expedited as a result. There is also nothing on the record which suggests that there was a deliberate delay to avoid an award to D Square. In fact, the contrary is true since the contracting officer delayed award for four months to permit the evaluation of the protester's switch. Consequently, under the facts and circumstances of this case, we find no basis to question the rejection of D Square's proposal.

As a final matter, DLA has advised our Office that ATAC is currently reviewing the technical requirements for the toggle switch procured under the instant solicitation and intends to develop a complete data package, including applicable approval testing criteria, which should allow for competition via formally advertised solicitations in future procurements.

The protest is denied.

*for* *Wilton J. Fowler*  
Comptroller General  
of the United States