

**DOCUMENT RESUME**

02065 - [A1112098]

[Protest Alleging Solicitation Deficiencies and Bidder Nonresponsibility]. E-187990. April 18, 1977. 6 pp.

Decision re: Watkins-Johnson Co.; by Robert F. Keller, Deputy Comptroller General.

Issue Area: Federal Procurement of Goods and Services (1900).

Contact: Office of the General Counsel: Procurement Law I.

Budget Function: National Defense: Department of Defense - Procurement & Contracts (058).

Organization Concerned: Department of the Navy: Navy Ships Parts Control Center, Mechanicsburg, PA; Thomas Electronics, Inc.

Authority: B-186873 (1977). B-185330 (1976). B-185331 (1976). B-185776 (1976). E-184157 (1976). B-187517 (1976). B-186958 (1976). B-185955 (1976). B-186166 (1976). E-185363 (1976). A.S.P.R. 3-801.2(c). 4 C.F.R. 20.2(b)(1).

Protestor against a Navy contract award for cathode ray tubes alleged deficiencies in solicitation, delay in notification of amendment, mishandling of proprietary data, and nonresponsibility of the successful offeror. The protest was denied on the grounds of untimeliness and lack of support for allegations. (HTW)

02065

02065

**DECISION**



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

*P.L. I  
Pettit*

**FILE: B-187990**

**DATE: April 18, 1977**

**MATTER OF: Watkins-Johnson Company**

**DIGEST:**

1. Protest concerning deficiencies in solicitation and message amendment thereto, filed subsequent to next closing date for receipt of proposals, is untimely and will not be considered on the merits.
2. Delay in notifying protester of message amendment to solicitation was not prejudicial where protester was provided with information in amendment in ample time to submit timely proposal.
3. Where agency denies protester's allegation of mishandling of proprietary data, and there is no other relevant probative evidence, allegation is not supported.
4. Protest which questions successful offeror's ability to comply with agency's delivery schedule relates to successful offeror's responsibility and is not for review by GAO.
5. Protest contending that agency made award solely on basis of price, without regard to delivery and critical stock situation, questions agency's administrative determination that contractor is responsible offeror. Where, as here, there is no showing that administrative determination was improperly made, GAO will not review affirmative responsibility determination.
6. Protest alleging that award was not in Government's best interests is denied where record shows that successful offeror did not lack previously demonstrated ability, award was made at price most advantageous to Government, and contract awarded contains stringent quality and testing requirements.

Watkins-Johnson Company (WJC) has protested the award of contract No. NO0104-77-C-3550 by the Navy Ships Parts Control Center (SPCC), Mechanicsburg, Pennsylvania, to Thomas Electronics, Incorporated (Thomas), for the manufacture of Cathode Ray Tubes (CRT), National Stock Number (NSN) 1H 5960-00-050-9130, as a result of request for proposals (RFP) No. NO0104-76-R-5668.

The Navy reports that it has procured CRT, under the same NSN and the same basic specification (Kaiser Aerospace and Electronics Corporation (Kaiser) Specification 3092 under Kaiser Drawing No. PS-4551-5) since 1964. Numerous vendors, including Kaiser, Sylvania and WJC, have been approved and have been awarded contracts for this material. Thomas, the actual manufacturer, qua subcontractor, under the contracts awarded to Kaiser and Sylvania, "has been an approved source since 1964 by both the cognizant technical agency, Naval Air Systems Command, \* \* \* and by the original equipment manufacturer [OEM] \* \* \*, Kaiser Aerospace." WJC did not become a supplier for the CRT until 1972.

SPCC issued the RFP for 507 CRT, under the above NSN, on July 12, 1976, with a closing date for receipt of initial proposals of August 2, 1976, which was subsequently extended to August 24, 1976. SPCC acknowledges that the RFP specification inadvertently cited "Type WJ 3409 Watkins-Johnson (14482 FSCM)," an incorrect restriction, rather than the appropriate Kaiser specifications. WJC's proposal, the sole offer, was deemed unacceptable because it was conditioned with indefinite delivery and the offered price of \$516 per unit was not considered fair and reasonable on the basis of previous competitive CRT procurement. SPCC held a prenegotiation conference at WJC on October 19, 1976, as a result of which WJC was directed to submit a revised proposal for quantities of 750 and 1,000 CRT and to provide supporting data to explain proposed labor-per-unit and direct-material shrinkage rates. The following day, however, SPCC suspended negotiations with WJC.

On October 22, 1976, SPCC issued a message amendment to the RFP, which requested price and delivery on quantities of 507, 750, and 1,000 CRT and included necessary testing and specification charges, to five qualified suppliers, with a closing date of November 10, 1976. Four offers, including those of WJC and Thomas, were received. SPCC issued a request for best and final offers on November 11, 1976, requesting proposals on a firm quantity of 1,000 CRT and an option quantity of 100 percent, with a closing date of November 19, 1976. SPCC received four offers, all of which complied with the required delivery schedule; the offerors' unit prices, related costs, and extended totals for 1,000 units were as follows:

B-187990

<u>Offeror</u>	<u>Unit price</u>	<u>First article cost</u>	<u>Tooling cost</u>	<u>Total extended</u>
Thomas,	\$311.00			\$311,000
Raytheon Co.	339.50			339,500
General Atronics	355.00	\$6,200 total	\$3,250 total	364,450
Watkins-Johnson	377.00			377,000

Award was made to Thomas, the low responsible offeror, on November 19, 1976, and the other offerors were notified of the award on the same day.

WJC essentially contends that the award to Thomas is not in the best interests of the Government. More specifically, WJC asserts the following grounds in support of its protest:

1. WJC was encouraged to expend costly efforts to locate suitable glass sources and to resolve the procurement specifications by assurances that it would be awarded the contract.
2. WJC provided costly proprietary design/procurement information, including cost data, which would not have been provided in a competitive procurement, and suspects that this information was improperly handled by the agency and may have been inadvertently transmitted to its competitors.
3. SPCC made the award solely on the basis of price, without regard to the agency's delivery requirements and CRT stock supply.
4. Thomas, as a result of its lack of previously demonstrated capability to perform and proposed glass supplier, will be unable to meet the required delivery schedule.

Initially, WJC asserts that from July 12 to November 24, 1976, costly efforts were expended at SPCC's behest to prepare for performance, under assurances that the company would be awarded the contract. In retrospect, WJC questions why, if its proposal was unacceptable, SPCC proceeded to open negotiations and give indications that an order would be placed when agreeable prices were reached. WJC claims that as a result of the parties' October 19, 1976, meeting, the Government intended to proceed to contract after

WJC submitted "a small amount of additional data." In support of this assertion, WJC cites as evidence of the Government's intent the fact that the company proceeded at the verbal request of SPCC personnel to establish a foreign glass supplier and was subsequently charged a cancellation fee by the supplier on the resultant order. Furthermore, at some time after October 28, 1976, SPCC verbally placed an order with WJC for tooling; the order covered only tooling from an outside vendor, which would be required as part of the instant procurement. In essence, WJC protests the fact that SPCC discontinued negotiations and amended the RFP to solicit further proposals, rather than making a sole-source award to it.

SPCC, however, takes the position that at the conclusion of the parties' meeting in October WJC was requested to submit substantial data and information "in order to develop a basis for continuing negotiations." Lack of technical or cost data from WJC was one of the major factors in suspending negotiations. Additionally, the contracting officer determined that WJC's initial unit price of \$516 per unit was not fair and reasonable. We have consistently held that price reasonableness is a determination for the contracting officer, with which our Office will not interfere in the absence of a clear showing of abuse of discretion. California Stevedore and Ballast Company, B-186873, January 24, 1977, 77-1 CPD 47; Park Manufacturing Company, et al., B-185330, B-185331, B-185776, April 16, 1976, 76-1 CPD 260; J. H. Rutter Rex Manufacturing Company, Inc., B-184157, February 23, 1976, 76-1 CPD 122. Under these circumstances, the contracting officer was required, pursuant to Armed Services Procurement Regulation (ASPR) § 3-801.2(c) (1976 ed.), to:

"\* \* \* (i) determine the feasibility of developing an alternate source of supply, or (ii) take any other action within his authority. \* \* \*"

Consistent with this requirement, the contracting officer issued the message amendment to the RFP to five prospective offerors, including WJC and Thomas, on October 22, 1976. WJC asserts that it did not receive the message amendment and first learned that the procurement was to become competitive from a LMX dated October 28, 1976. SPCC subsequently retransmitted the message amendment via Telex on WJC's direct line. Although the record is unclear as to the circumstances and reason for the delay in notifying WJC of the amendment to the RFP, we find that WJC was not prejudiced by any delay because it was provided with sufficient information in ample time to submit a proposal.

In view of the foregoing, WJC's protest concerning deficiencies in the initial RFP and materials incorporated therein by the message amendment, in order to be timely, should have been filed not later than the next closing date for receipt of proposals, i.e., November 10, 1976. 4 C.F.R. § 20.2(b)(1) (1976). Because WJC filed its protest with our Office on December 8, 1976, this ground of the protest is untimely and will not be considered on the merits.

The protester additionally asserts that proprietary design/procurement information, including cost data, furnished to SPCC was improperly handled by the agency and may have been inadvertently transmitted to other offerors. WJC states that it gave SPCC negotiators proprietary cost and technical data concerning the specifications of the glass bulb. The agency denies that WJC furnished any proprietary design and cost data and, consequently, that there was any mishandling. Without any other probative evidence on the issue, we are unable to conclude that there was any mishandling as alleged.

WJC also states that from its experience, Thomas' glass bulb supplier has been forced to shut down in previous years during extremely cold months, recently shut down for 2 weeks due to natural gas shortages, and expects to be shut down until the extreme weather ends. In short, WJC questions the ability of Thomas' proposed glass supplier and, concomitantly, Thomas' ability to perform in compliance with SPCC's delivery schedule. In this regard, WJC's protest raises the issue of whether Thomas should have been determined to be a responsible offeror. Our Office has taken the position that a protest concerning proprietary data which directly or indirectly questions the responsibility of another concern is not for our review. Polared Electronics Corporation, B-187517, November 9, 1976, 76-2 CPD 396; see York Industries, Inc., B-186958, November 29, 1976, 76-2 CPD 453, aff'd B-186958, January 10, 1977, 77-1 CPD 17; Galbraith-Pilot Marine Corporation, B-185955, B-186168, December 15, 1976, 56 Comp. Gen. \_\_\_\_, 76-2 CPD 488. Consequently, we will not consider this ground of the protest.

Similarly, WJC contends that SPCC made the award to Thomas solely on the basis of price, without regard to the agency's delivery requirements and critical CRT stock supply. After careful review of the record, we do not find WJC's position in this regard to be persuasive. SPCC expressly found that all best and final offers complied with the agency's required delivery schedule, the contracting officer took delivery into consideration in reviewing the offers preparatory to making award, and waiver of first article and Group D Life tests has been authorized for the first 100 units in order to alleviate SPCC's critical supply situation. Absent a showing of fraud, or when

B-187990

the solicitation contains definite responsibility criteria which allegedly have not been met, our Office does not review affirmative responsibility determinations. Randall Manufacturing Company, Inc., B-185363, January 26, 1976 76-1 CPD 44. In view of the foregoing, we have no reason to believe that the administrative determination of Thomas' ability to perform was improperly made.

Finally, WJC contends that in view of Thomas' lack of previously demonstrated ability and proposed glass bulb supplier, the award does not appear to be in the best interests of the Government. In contrast, SPCC states that Thomas, a certified CRT vendor since 1964, has been awarded many orders and has current orders from Kaiser, the OEM. In challenging the competitiveness of the solicitation, WJC itself complained that "Thomas Electronics is already the largest special purpose CRT manufacturer in the country \* \* \*." Consequently, we cannot agree that Thomas lacks previously demonstrated ability. Moreover, we note that the award was made as a result of competition rather than on a sole-source basis, at a price more advantageous to the Government than that offered by WJC, and the contract awarded contains stringent quality and testing requirements. We are, therefore, unable to conclude that award was improperly made to Thomas or that the award made was not in the best interests of the Government.

In view of the foregoing, WJC's protest is denied.

*R. P. Kistner*  
Deputy Comptroller General  
of the United States