

last procurement was postponed until the article could be let to competition, there would be an 18-month delay in initial delivery which was not considered justified in view of the priority for the radios.

The increase in costs of AN/PRC-77 radio sets over AN/PRC-25 radio sets is justified by the Army Electronics Command based on the following considerations:

"(a) The AN/PRC-77 Radio Set contains more (and more highly complex) components than the AN/PRC-25 Radio Set.

"(b) The AN/PRC-77 equipment contains new components and significant changes to existing components both of which result in more complex circuitry and changed or new test specifications.

"(c) The new (or changed) components are being produced on a first-time basis which results in additional start-up costs and higher production costs (e.g. new tooling, new test equipment, plant rearrangement, additional production and other engineering costs as well as increases in material and factory labor costs)."

The contracting officer recognizes that RCA has a competitive advantage since it is the sole producer of the AN/PRC-77 radio sets. However, he emphasizes that such advantage is due strictly to the circumstances which have been set forth above.

As indicated above, the procurements for the AN/PRC-77 radio sets were negotiated under the authority of 10 U.S.C. 2304(a)(2). Section 2310(b) of title 10, United States Code, specifically provides that administrative decisions to negotiate under 10 U.S.C. 2304(a)(2) are "final." Therefore, no legal basis exists to object to the subject procurements. However, in view of the representations made by the procurement agency it would appear that AN/PRC-77 radio sets will be procured by the end of this year under competitive procedures.

Very truly yours,

FRANK H. WEITZEL,
Assistant Comptroller General of the United States.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., December 7, 1967.

B-161031

Mr. H. T. STARKAND,
*President, Decitron Electronics Corp.,
Brooklyn, N.Y.*

DEAR MR. STARKAND: Reference is made to your letter of August 30, 1967, protesting the August 16, 1967, modification of contract DAABO5-67-C-0170(E) with Radio Corporation of America (ROA), Camden, on the basis that the United States Army Electronics Command has on record a March 7, 1967, bid from your company lower than the modification price and that the modification cannot be justified on the grounds that there is an urgent requirement for the radio sets being procured or that there is a lack of data which would permit competition.

Contract DAABO5-67-C-0170(E) is a 2-year multi-year procurement for AN/PRC-77() radio sets awarded on April 28, 1967, to RCA, the equipment developer and sole current producer, on the basis that there was no procurement data available for competition and that the company as the developer of the radio was the only known source capable of furnishing the sets within the required time frame. The contract was awarded under the authority of 10 U.S.C. 2304(a)(2) and paragraph 3-202.2(vi) of the Armed Services Procurement Regulation (ASPR). The statute authorizes contracts to be negotiated if the public exigency will not permit delay incident to advertising. ASPR 3-202.2(vi) permits utilization of this authority when a purchase request cites an issue priority designator 1 through 6. The first-year requirement was assigned an 06 designator and the second year an 02 designator. Section 2310(b) of title 10, United States Code, specifically provides that administrative decisions to negotiate under 10 U.S.C. 2304(a)(2) are final. See B-161031, June 1, 1967, regarding the same procurement. Therefore, no legal basis exists to object to the "urgency" determination.

The August 16, 1967, modification of contract DAABO5-67-C-0170(E) did not provide for any more units than were contemplated by the contract. It merely