



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Building Systems Contractors, Inc.

File: B-266180; B-266184

Date: January 23, 1996

Alberto E. Vidal for the protester.

Frank W. Miller, Esq., and Paul D. Warring, Esq., Department of the Air Force, for the agency.

Susan K. McAuliffe, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protests alleging that solicitations' requirements for brand name equipment are unduly restrictive of competition and that agency's decision to bundle its requirements for equipment and services in the same procurements is improper are denied where solicitations' stated requirements reasonably reflect the agency's minimum needs.

DECISION

Building Systems Contractors, Inc. protests the terms of invitation for bids (IFB) Nos. F49642-95-B-0024 and F49642-95-B-0025, issued by the Department of the Air Force to replace the heating ventilating and air conditioning (HVAC) system, lighting system and air-conditioning system of two facilities located at Bolling Air Force Base (AFB). The protester challenges the IFBs' requirements for a brand name computerized energy management control system (EMCS) as unduly restrictive of competition. The protester also contends that consolidating ("bundling") the HVAC system installation services and the acquisition of an EMCS (which will control the HVAC and lighting systems) in the same procurements is improper; Building Systems contends that those requirements should be broken out into separate procurements.

We deny the protests.

The IFBs, as originally issued, required the manufacturer of the EMCS to be Landis and Gyr Powers, Inc. or an approved equal. Building Systems initially protested that the "or equal" language of the IFBs was meaningless since other solicitation requirements regarding installation and system compatibility specifically required the Landis EMCS. In response to the protests, the agency reexamined its needs and the solicitations' terms and deleted, by amendment to the IFBs, the "or equal" language. The Air Force determined that since Bolling AFB currently has the

Landis EMCS installed in 23 facilities on the base, and the Landis equipment operates on a proprietary communication protocol that allows needed communication and sharing of information between facilities, operator consoles, and remote telephone locations, it was necessary to limit the procurement to Landis equipment to ensure the required compatibility between facilities. The protester contends that the Landis brand name requirement unduly restricts competition and exceeds the agency's minimum needs; the protester suggests that a separate system for the two facilities in question, using another manufacturer's EMCS equipment, would also meet the agency's needs.

In preparing a solicitation for supplies or services, a contracting agency must specify its needs and solicit offers in a manner designed to achieve full and open competition and to include restrictive provisions or conditions only to the extent necessary to satisfy the agency's needs. Acoustic Sys., B-256590, June 29, 1994, 94-1 CPD ¶ 393. The contracting agency, which is most familiar with its needs and how best to fulfill them, must make the determination as to what its minimum needs are in the first instance, and we will not question that determination unless it has no reasonable basis. Id.; Corbin Superior Composites, Inc., B-242394, Apr. 19, 1991, 91-1 CPD ¶ 389. Specifications based upon a particular manufacturer's product are not improper in and of themselves, and a protest alleging that such requirements are unduly restrictive is without merit where the agency establishes that the requirements are reasonably related to its minimum needs. Lenderking Metal Prods., B-252035; B-252036, May 18, 1993, 93-1 CPD ¶ 393; Chi Corp., B-224019, Dec. 3, 1986, 86-2 CPD ¶ 634.

In a written "justification for brand name" issued by the agency in support of the Landis system EMCS requirement, and in the agency report responding to the protests, the Air Force states that its minimum need is for the EMCS in each of the two facilities (buildings 5681 and 5683) to be compatible, and be able to communicate, with all of the other 23 facilities on the EMCS network at Bolling AFB. The agency reports that direct communication, requiring a Landis EMCS in these two facilities due to the proprietary communication protocol of the Landis system, will allow the Air Force to gain various efficiencies and substantially lower life-cycle costs.¹ Establishing a duplicate EMCS system in the two buildings would be less efficient and more costly, according to the Air Force, due to higher operations costs, such as additional personnel costs from requiring monitoring and operation of the system from the individual buildings rather than from the central EMCS facility or other locations connected to the Landis network, and the possible loss of energy and maintenance savings related to the base's network monitoring of equipment performance problems. The Air Force states that duplicative databases

¹The agency reports that the use of the Landis EMCS network at the base resulted in fiscal year 1995 energy cost savings of approximately \$680,000.

or peripheral hardware devices and separate communication cables connecting the individual systems to the central EMCS facility (which would also require additional personnel training costs and the procurement of additional equipment, maintenance and updating services for another manufacturer's hardware and software, as well as the maintenance of an additional parts inventory), would not allow the agency to meet its needs.²

We think the agency's explanation of its minimum need for the fully compatible Landis EMCS equipment is reasonable; we have previously found that a single, base-wide, integrated EMCS may be a legitimate need furthering operation efficiency and cost savings. See Bironas, Inc., B-249428, Nov. 23, 1992, 92-2 CPD ¶ 365. The Air Force points out many advantages of having a single EMCS system including compatibility, cost savings from operations, less training, fewer spare parts inventory, less equipment, fewer maintenance contracts, less personnel, and the elimination of other duplicative efforts. Building Systems has not rebutted the agency's explanations, and the record provides no reason to suggest bidders would not be able to readily comply with the Landis equipment requirement³ (in fact, nine bids were received in response to the IFBs at competitive prices and without objection to the requirement), or that the protester has been prejudiced by the challenged solicitation term. We have no basis to conclude that the term is unduly restrictive.⁴

²In response to the protester's unsupported general allegation that limiting the EMCS equipment to Landis will result in higher costs to the agency, the Air Force reports that it received nine competitively priced bids (one of which was withdrawn) in response to the IFBs offering the Landis EMCS, seven of which offered prices lower than the government estimates for the procurements.

³The protester contends that it could have in fact complied with the Landis EMCS requirement had it been given more time to seek prices from Landis and prepare its bid prior to the amended time for bid opening. To the extent Building Systems challenges a lack of sufficient time to submit its bid, that contention is untimely and not proper for our consideration. Apparent solicitation improprieties must be protested prior to the time of bid opening. 4 C.F.R. § 21.2(a)(1) (1995). The protester's general statement to the agency prior to bid opening that it did not accept the terms of the amendment deleting the "or equal" language from the IFBs does not constitute a protest of the amended bid opening time. See BF Goodrich Co.--Recon., B-25836.4 et al., Mar. 28, 1995, 95-1 CPD ¶ 182.

⁴In its initial protests, Building Systems also challenged the IFBs' requirement for installation of certain equipment to be performed by the EMCS manufacturer, Landis. By amendment to the solicitations, the agency deleted much of the initially
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Building Systems also challenges the agency's decision to consolidate the procurement of the EMCS system and HVAC improvements in one contract; the protester contends that the requirements are severable and should be procured under separate contracts. The protester contends that breaking out the requirements would make the solicitations less restrictive on competition since the HVAC-related work constitutes the majority of work under the contracts and bidders for the HVAC work would not be hindered by the Landis EMCS terms discussed above. The Air Force reports that the consolidation of the requirements in the present procurements is necessary to meet its minimum needs since the EMCS and HVAC work are interrelated, and that breaking up the IFB requirements would result in inefficiency, work delays, and possible claims against the government.

Since bundled or consolidated procurements combine separate, multiple requirements into one contract, they have the potential for restricting competition by excluding firms that can only furnish a portion of the requirement. Better Serv., B-265751.2, Jan 18, 1996, 96-1 CPD ¶ _____. Our Office reviews such solicitations to determine whether the approach is reasonably required to satisfy the agency's minimum needs; the consolidation of requirements is unobjectionable where the agency provides a reasonable basis for using such an approach. See Resource Consultants, Inc., B-255053, Feb. 1, 1994, 94-1 CPD ¶ 59; Precision Photo Laboratories Inc., B-251719, Apr. 29, 1993, 93-1 CPD ¶ 359.

The agency reports that the EMCS and HVAC work requirements are interrelated in that the EMCS controls must be installed at the time and in conjunction with the installation of the related HVAC equipment, and that a single general contractor is needed to coordinate all phases of the statement of work. The Air Force states that having a single contractor install both the EMCS and HVAC equipment ensures the HVAC and EMCS systems will work together. Installing the control systems after installation of the HVAC system rather than at the time of installation would be inefficient, according to the agency, in terms of coordinating efforts and costs.

We are not persuaded by the protester's general contention that the consolidation of requirements is restrictive of competition or otherwise unreasonable. Building Systems does not refute the agency's explanation that a consolidated contract is necessary to meet the government's minimum needs. The record provides no basis

⁴(...continued)

required Landis installations, except for the installation of the EMCS which requires the use of Landis proprietary technical data and software. In light of our decision finding the requirement for the Landis EMCS reasonable and the proprietary nature of the software needed for installation, we find the requirement for installation of the EMCS by Landis unobjectionable; the protester does not show otherwise.

to object to the consolidation which, as the agency has shown, is reasonably related to meeting its minimum needs of ensuring a fully integrated system.

The protests are denied.

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