

**DECISION**

24345  
**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

FILE: B-209476

DATE: March 1, 1983

MATTER OF: Radix II, Incorporated

**DIGEST:**

Solicitation requirement in procurement for energy monitoring and control system (EMCS) that offeror, rather than potential subcontractor, have comparable system in operation at time of proposal submission is not unduly restrictive of competition where agency, because of past performance failures, seeks to establish direct control over firm responsible for providing complex computer technology required for EMCS. Fact that only few offerors can meet the Government's needs does not warrant conclusion that provision is unduly restrictive.

Radix II, Incorporated protests provisions contained in request for technical proposals (RFTP) No. N62470-82-R-2300, issued by the Naval Facilities Engineering Command, Norfolk, Virginia, as the first step of a two-step formally advertised procurement for an energy monitoring and control system (EMCS) for two military installations. For the reasons discussed below, we deny the protest.

Radix, a potential subcontractor, contends that under the Navy's interpretation of a solicitation clause requiring that offerors have installed an EMCS with certain listed features, competition is unduly restricted to a "handful of preferred vendors" and small business concerns are unable to participate in the procurement even as subcontractors. The clause, contained in Section 01030 of the specifications, provides as follows:

"1.2 Proposers shall demonstrate that they have achieved that level of expertise only attainable through successful installation of large EMC systems. In particular, proposers shall have a demonstrable

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system in operation by the time of proposal submission. To be considered, the system must demonstrate and fully implement the \* \* \* features of this specification \* \* \*."

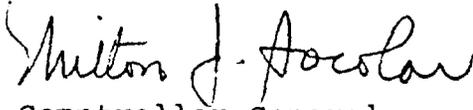
In support of its position, the protester explains that installation of an EMCS is usually accomplished by the combined efforts of two organizations--a high-technology firm capable of manufacturing and programming computers, peripherals and associated electronic hardware, and a firm to perform "routine" mechanical and electrical construction. Radix states that it meets the qualification requirements of the solicitation since it has several "fully functioning" EMCS units on line at various locations. However, as a small minority business concern, Radix is solely engaged in providing high-technology hardware and software for EMCS projects and does not itself perform construction work. Further, for economic reasons, Radix is unable to obtain bonding or enter into joint venture arrangements on any large scale EMCS project. Thus, Radix typically associates itself as a subcontractor with a general contractor which provides the bonding and acts as the prime contractor for construction and installation of the EMCS under Radix supervision. Radix complains that by interpreting the requirement as applying to the firm submitting the offer, that is, the prime contractor, the Navy requires each general contractor to have an EMCS in operation at the time of proposal submission, thereby "prequalify[ing]" the low-risk general contractors instead of assuring technical compliance by the high-technology subcontractors. Thus, the protester argues, the agency is restricting competition to several large firms having both the technology and construction capability to perform the project.

The Navy states that the qualification of offerors is necessary to preclude proposals from firms unfamiliar with highly complex EMCS systems, as has happened in the past. The agency indicates that numerous failures in EMCS procurements have occurred because contractors lacked the special expertise necessary to ensure the proper linking of field equipment with control functions through the command software. According to the Navy, it has often been left in a quandry, lacking the privity of contract with a high-technology subcontractor necessary to seek legal redress for system failures.

The determination of the needs of the Government, the methods for accommodating such needs, and the responsibility for drafting proper specifications which reflect those needs are primarily the responsibility of the contracting agency. Maremont Corporation, 55 Comp. Gen. 1362 (1976), 76-2 CPD 181; Johnson Controls, Inc., B-184416, January 2, 1976, 76-1 CPD 4. Further, it is proper for a contracting agency to determine its needs based on its actual experience. See Bowers Reporting Company, B-185712, August 10, 1976, 76-2 CPD 144. Though specifications should be drawn so as to maximize competition, we will not interpose our judgment for that of the contracting agency unless the protester shows by clear and convincing evidence that the agency's judgment is in error and that a contract awarded on the basis of such specifications would be unduly restricting competition be a violation of law. Joe R. Stafford, B-184822, November 18, 1975, 75-2 CPD 324. In this regard, we have recognized that any specification imposed in a solicitation, by its very nature, will restrict competition to some extent. Kleen-Rite Corporation, B-183505, July 7, 1975, 75-2 CPD 18.

The protester has not established that the qualification requirements are unduly restrictive or in excess of the agency's actual needs. As acknowledged by the protester, the record shows that the specification in question is based on the Navy's unsatisfactory experience with prior procurements of EMCS. In this regard, the protester does not dispute the reasonableness of the requirement that offerors have a demonstrable system in operation but contends that this requirement should be imposed on subcontractors only rather than prospective prime contractors. As the Navy points out, however, it is not in privity of contract with subcontractors and we see nothing improper with a requirement that the prime contractor have installed a system comparable with that being procured here, which is a rationally founded attempt to prevent further failures in EMCS procurements. As for Radix' contention that competition is unduly restricted to a handful of preferred vendors, we have held that even if only one firm can meet the specifications the Government does not violate either the letter or spirit of competitive bidding statutes so long as the specifications are reasonable and necessary for the purpose intended. Johnson Controls, Inc., *supra*.

The protest is denied.

for   
Comptroller General  
of the United States