

DECISION

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

FILE: B-214052

DATE: September 11, 1984

MATTER OF: Rolm Corporation

DIGEST:

1. Where the protester contends that specifications unduly restrict competition, the agency must make a prima facie case that the specifications are reasonably related to its minimum needs. Once the agency has made such a case, the burden shifts to the protester to establish that the agency's determination of its minimum needs has no reasonable basis.
2. A solicitation's specifications to which only one firm responds are not unduly restrictive of competition when the procuring agency can establish that the specifications reasonably reflect the agency's minimum needs.
3. Protest that incumbent contractor will have a competitive advantage in future procurements because of its development of a support system in connection with prior contracts is denied because it has not been shown that the advantage will arise because of a preference or other unfair action by the procuring agency.

Rolm Corporation protests the specifications used by the Department of the Navy in request for proposals (RFP) No. N00604-84-R-A016 which invited offers to provide a 200-line telephone system for installation in a destroyer. Rolm contends that the specifications unduly restrict competition in that they are designed so that only AT&T Technologies, Inc. (formerly Western Electric) can meet them, thus implementing an alleged policy of procuring all such telephone systems from AT&T on a sole source basis.

Rolm further contends that the AT&T system actually will not meet the specifications and that the requirement should be resolicited after the specifications have been revised to reflect only the Navy's minimum needs.

We deny the protest.

The RFP solicited proposals to provide and install a telephone switching system described as Western Electric's "Dimension 2000 PBX or equal," and required that the system operate in ambient temperatures ranging from 32° to 120° Fahrenheit (F) and in relative humidity ranging from 10 to 95 percent. The RFP also required the contractor to have in place an integrated logistic support plan to provide parts and technical support after expiration of the warranty period, and that this plan provide for a full-time service desk at the contractor's facility to respond to requests for emergency assistance to the ship. The RFP was sent to 33 firms, but only AT&T submitted a proposal, although one other company stated that other commitments prevented its submission of a proposal.

The protester first complains about the temperature and humidity-related specification. In this respect, where a protester challenges a specification as being unduly restrictive of competition, the burden initially is on the procuring agency to establish prima facie support for its contention that the restriction is needed to meet its minimum needs. Once the agency establishes this prima facie support, the burden then shifts to the protester to show that the requirement complained of is clearly unreasonable. Mid-Atlantic Industries, Inc., B-202682, Aug. 26, 1981, 81-2 CPD ¶ 181. Moreover, if a specification requirement is reasonable and necessary, the fact that only one firm can comply with it does not indicate that a violation of the competitive procurement regulations has occurred. Gerber Scientific Instrument Company, B-197265, April 8, 1980, 80-1 CPD ¶ 263.

The Navy states that the temperature and humidity requirements are necessary to meet its minimum needs. The agency asserts that air conditioning is generally needed for a telephone switching system, and loss of air

conditioning aboard the ship because of maintenance problems or loss of power can occur as often as several times a week. During a loss of air conditioning, the temperature in the communications room can rise to more than 100° F due to heat from the adjacent engine and boiler rooms. If heating is interrupted when the ship is operating in cold climates, the temperature will sometimes fall to 40° F and cause condensation to form on the walls of the communications room, which is below the water line, and thus subject the system to high levels of humidity. Because the ship's backup communications system of amplified voice circuits and sound powered phones is of very limited use and would be unacceptable in combat situations, the Navy insists that the installed system must operate in the specified ranges in order to avoid excessive breakdowns. The Navy suggests that a proposal offering Rolm's 200-line digital system would have been rejected as technically unacceptable because it operates only in a range of 50° to 78.8° F and requires rigorous environmental controls.

While Rolm contends that the specification is too restrictive, it does not dispute the Navy description of the actual environmental conditions under which the system must operate. Rolm, however, presents two arguments from which, apparently, we are to conclude that the specification exceeds the Navy's minimum needs.

First, Rolm contends that one of its systems that does not meet the specifications has been operating satisfactorily for 2 years in another Navy ship. However, with no information as to the environmental and other conditions under which the Rolm system has been operating on another ship, the fact that it may have been working well provides no basis on which to challenge the specification at issue here.

Second, Rolm contends that an AT&T description of its own system proves that it will not operate under the conditions described by the Navy because, while the description states the system will operate in an ambient range of 0° to 120° F, it cautions that these are extreme limits and that the system should be installed in areas

where the temperature is maintained in a range of 65° to 95° F. Since the Navy report indicates the system will be installed in an area where the temperature frequently is outside the 65° to 95° F range, Rolm argues that the AT&T system would not comply with the operating specifications.

The AT&T description, however, does not state that the system will not work at the extreme ends of the specified temperature and humidity ranges. The description does state that the extreme limits are not desirable and that for "minimum" maintenance, the system should be installed in areas where the temperature is maintained in a range of 65° to 95° F. However, we think that it is clear that the Navy's specification does not contemplate the operation of a system at its extreme limits any longer than the sporadic losses of environmental controls may require, or a system that will require no more maintenance when operated at the extreme limits than it does when operated under normal conditions. During abnormal periods, it might well be that the need for continuous communications would offset any risks and additional maintenance that might result from operating at less than ideal conditions.

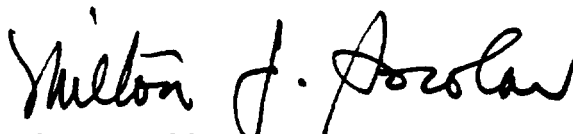
In our view, the Navy's description of the environmental conditions under which the system must operate establishes the required prima facie support for the temperature and humidity range specification, and Rolm has not established that these ranges are unreasonable. We therefore will not question the Navy's opinion that a system that cannot operate as specified would not give the agency the reliability it needs in its shipboard communication system. Moreover, we point out that the temperature and humidity ranges specified by this RFP are consistent with those listed in Military Specification No. MIL-E-16400G (NAVY), Amendment 1, Dec. 1, 1976, which applies to interior communication systems in sheltered environments, such as ships.

In view of our finding that the specification reasonably reflected the Navy's minimum needs, it is not necessary to discuss in detail Rolm's allegation that this procurement was, in effect, a sole-source procurement to implement a Navy policy to buy all similar requirements for the next 3 years from AT&T. The Navy denies such a policy existed. In any case, in this procurement, proposals were

solicited from 22 firms and there is no indication that if other proposals meeting the specification had been submitted, they would have been unfairly considered. Moreover, as pointed out above, the fact that not every potential competitor is able to meet a specification shows no impropriety if, as here, the specification reflects the agency's minimum needs.

Finally, Rolm contends the requirement that the contractor have in place an integrated logistics support system effectively excludes Rolm and all other potential offerors from future competitions because the Navy has taken steps to develop such a system for AT&T but not for the system of other potential offerors. This contention is without merit. The specification provision requiring the support system clearly places the burden for its development on the contractor, not the Navy. Moreover, any competitive advantage that AT&T might have in future procurements as a result of its having already developed the support system provides no legal basis for protest unless it can be shown that the advantage arose because of a preference or other unfair action by the procuring agency. Universal Alarm Services, B-214022, March 5, 1984, 84-1 CPD ¶ 267. The prior award of contracts based on legitimate minimum needs considerations does not constitute unfair action.

The protest is denied.


Acting Comptroller General
of the United States