

DECISION



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

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FILE: B-216462

DATE: March 25, 1985

MATTER OF: ITC-Distribution & Control Division

DIGEST:

1. Subcontractor protest, of unduly restrictive specification contained in IFB for prime contract, is sustained, where agency admits that restriction protested was not "absolutely necessary."
2. Where IFB for prime contract contains unduly restrictive specification affecting competition at the subcontractor level, and protest against restriction is sustained after award, GAO recommends that agency consider modifying contract to allow subcontractor to compete.

ITC-Distribution & Control Division (ITC) protested prior to bid opening a solicitation requirement that "[s]witchgear and [circuit] breakers shall be manufactured by one manufacturer." The solicitation, invitation for bids (IFB) No. N62477-82-B-0359, was issued by the Naval Facilities Engineering Command (Navy) for repair of the Washington Navy Yard electrical distribution system. Award was made under the IFB while the protest was pending.

ITC, a small business and a potential supplier of switchgear, contends that the one manufacturer requirement is unjustified and only serves to eliminate small business switchgear suppliers from competing because none of them can also manufacture the circuit breaker components used in the switchgear.

ITC states that it is not seeking termination of the prime contract, but rather it only asks that the requirement in question be deleted from the specifications if the prime contractor awardee has not already purchased the switchgear in reliance on the requirement.

We sustain the protest.

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Potential subcontractors on a procurement have sufficient interest to challenge specifications as being unduly restrictive. Incorporated Door Systems Co., B-208407, Aug. 19, 1982, 82-2 C.P.D. ¶ 159.

In its response to the protest, Navy acknowledges that it "cannot claim that it was absolutely necessary to restrict the source of switchgear as specified." Nevertheless, Navy takes the position that a remedy is not appropriate at this time. It argues that the restriction, although not absolutely necessary, does serve to ensure the delivery of a safe product. Also, Navy argues that the fact that an award was made notwithstanding the protest was in large measure attributable "to the protester's obscure--at best--statement of the grounds for its protest."

We do not agree with Navy that ITC's protest was obscure, nor do we think that it remained obscure until after award. ITC's initial letter of protest, dated September 19, 1984, a copy of which was furnished to the Navy, reads in part:

"By requiring the switchgear and breaker to be manufactured by one company the specifications have eliminated all independent small business switchgear manufacturers.

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"We are, therefore, protesting the elimination of small business competition at the supplier level"

We are therefore of the view that Navy made award with knowledge of the basis of ITC's protest. Moreover, while Navy stated that the one manufacturer requirement serves to ensure safety, it also acknowledged that the requirement is not absolutely necessary. We thus must conclude that safety can be ensured without requiring that the switchgear and breaker components be manufactured by one manufacturer.

Therefore, the Navy should have amended the specification to remove the unnecessary restriction on competition. See generally Powercon Corporation, 56 Comp. Gen. 912 at 922 (1977), 77-2 C.P.D. ¶ 125 and cases cited therein.

As the protester appears to recognize, it is not practical to terminate the prime contract at this point. We therefore recommend that, if the prime contractor has not already purchased the required switchgear, consideration be given to modifying the prime contract, as urged by the protester.

for Harry D. Van Cleave
Comptroller General
of the United States