



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: T-L-C Systems  
File: B-223136  
Date: September 15, 1986

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### DIGEST

1. Where the contracting agency determines that its needs can be met by either upgrading or replacing an existing radio fire alarm system, and permits offers on either basis, protest that competition should be limited only to replacing the system, because only the manufacturer of the existing system can meet the upgrading requirements, lacks merit where the protester does not show that the agency's determination of its needs or method of meeting its needs is unreasonable.
2. Sealed bid procedures are not appropriate where the contracting agency requires discussions with offerors in order to determine whether to upgrade or replace an existing fire alarm system and the award will be based on technical factors as well as price.
3. Where protester merely disagrees with the contracting agency's requirement for a radio fire alarm system using AM tone modulation, which the agency contends is less likely to be affected by interference than an FM system, the protester fails to meet its burden of showing that the requirement is unreasonable.
4. Offeror is not prejudiced by solicitation requirement for Factory Mutual approval of a radio fire alarm system where offeror cannot comply with another material solicitation requirement.

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### DECISION

T-L-C Systems (T-L-C) protests the award of a contract to King-Fisher Company (King-Fisher) under request for proposals (RFP) No. M00264-86-R-0001 issued by the U.S. Marine Corps Development and Educational Command (Corps), Quantico, Virginia, for either the upgrading and modification (Lot I) or replacement (Lot II) of an existing Fire Alarm Reporting System. The protester basically contends that the RFP's specifications improperly favored a competitor.

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The protest is denied.

The RFP advised offerors that a contract award would be made on the basis of either Lot I or Lot II, whichever was the most advantageous to the government. Lot I required the upgrading of the existing King-Fisher fire alarm transmitter and receiver from an FM tone to an AM tone, and the replacement of the existing Eagle-Picher/Douglas Randall equipment with new AM tone equipment. Equipment proposed for Lot I was required to be compatible with the existing system. Lot II required the furnishing and installation of a completely new AM tone radio alarm transmitter and receiver system. With regard to contract award, the RFP advised that technical factors were substantially more important than cost. Only King-Fisher responded to the RFP by submitting an offer on Lot I.

The protester alleges that only King-Fisher's equipment could meet Lot I's specifications for upgrading the current system, resulting in King-Fisher obtaining a competitive advantage over its competitors that would have to offer an entire new system. T-L-C also contends that the Corps should have used sealed bid procedures limiting the basis for award to price and price-related factors. T-L-C further argues that the specifications for a replacement system also contained requirements--for a Factory Mutual approved system using AM tone modulation--that only King-Fisher's equipment could meet. T-L-C argues that because the specifications favored King-Fisher, T-L-C and other potential offerors were discouraged from incurring the expense of submitting proposals. T-L-C states that the fact that only King-Fisher submitted an offer confirms its contention that the specifications were unduly restrictive of competition.

Regarding the protester's contention that competition should have been limited to replacing the current system and not included the alternative to upgrade the existing system, the determination of the government's needs and the best method of fulfilling those needs is primarily the responsibility of the contracting agency. Tracor Jitco, Inc., B-220139, Dec. 24, 1985, 85-2 CPD ¶ 710. We will not question the agency's determination unless it is shown to be unreasonable. Id. The Corps determined that an upgrade of the current system, using equipment that is compatible to the system, would meet its needs, and that soliciting offers on the basis of either upgrading or replacing the system would result in adequate competition. The protester has not shown that the Corps' determination was unreasonable. The fact that King-Fisher might have been uniquely capable of offering to upgrade the current system did not mean that it should have been precluded

from competing on that basis. The government has no obligation to equalize a competitive advantage that a potential offeror may enjoy as a result of a prior government contract unless the advantage resulted from unfair motives or actions by the contracting agency. See Dynamic Instruments, Inc., 64 Comp. Gen. 553 (1985), 85-2 CPD ¶ 596.

With regard to T-L-C's contention that sealed bids rather than negotiation procedures should have been used, the Corps states that the solicitation was not appropriate for sealed bids because the evaluation and discussion of technical aspects of offerors' proposals was necessary to determine the most advantageous proposal to the Corps.

The Competition in Contracting Act of 1984 (CICA), 10 U.S.C. § 2304(a) (Supp. III, 1985), eliminates the previous statutory preference for formally advertised procurements (now "sealed bids") and allows agencies to use the competitive procedure, or combination of procedures, that is best suited for the circumstances of the procurement. CICA further provides that sealed bids are appropriate only if the award will be based on price or price-related factors only, and it will not be necessary to conduct discussions with offerors about their offers. Id. The basis for award here is not limited to price but includes technical factors relating to compliance with the specifications, the ability to provide qualified installers, and corporate experience; the agency also envisions needing to discuss proposals. The protester has not shown the agency's judgment to be unreasonable, and we therefore will not question the use of negotiated procedures as authorized by CICA. The Saxon Corp., B-221054, Mar. 6, 1986, 86-1 CPD ¶ 225.

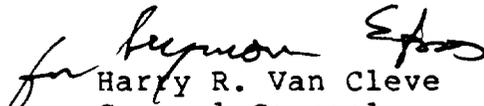
T-L-C has also alleged that only King-Fisher's equipment can meet the specifications under Lots I and II which require a Factory Mutual approved radio fire alarm system that uses AM tone modulation. T-L-C argues that only one system aside from King Fisher's has Factory Mutual approval and that system uses FM tone modulation.

When a protester challenges specifications as being unduly restrictive of competition, the burden initially is on the procuring agency to establish prima facie support for its contention that the challenged restrictions are necessary to meet the agency's minimum needs. If the agency establishes this prima facie support, the burden is then on the protester to show that the requirement complained of is clearly unreasonable. Ray Serv. Co., 64 Comp. Gen. 528 (1985), 85-1 CPD ¶ 582. The Corps, meeting its initial burden, states that an AM tone modulated system is required because it is less

likely to be affected by on-frequency interference that originates off the base. In this regard, the protester argues that an FM tone modulated system has its own advantages, but has not shown that the Corps' requirement for AM tone modulation is unreasonable. A mere difference of opinion between T-L-C and the Corps concerning the best of method of meeting the agency's needs is not sufficient to render the agency's method improper. See Hydro-Dredge Corp., B-215873, Feb. 4, 1985, 85-1 CPD ¶ 132.

We have held on numerous occasions that a requirement for items to have a specific testing laboratory's seal of approval is unduly restrictive, and that prospective contractors should be permitted to present other creditable evidence that their items conform to the established standards. E.g., Advance Machine Co., B-219766, Nov. 5, 1985, 85-2 CPD ¶ 526. Since T-L-C indicates that it can only supply an FM tone modulated system, however, T-L-C was not prejudiced by the requirement for Factory Mutual approval.

The protest is denied.

  
for Harry R. Van Cleve  
General Counsel