



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Southern Technologies Inc.

File: B-239578; B-239578.2

Date: September 6, 1990

Gary LaPinsky for the protester.
Vasio Gianulias, Esq., Department of the Navy, for the agency.
John Formica, Esq., and John Brosnan, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Solicitation specifications requiring that distributed digital control system be the established product of a single manufacturer which has a permanent service organization are not overly restrictive where the agency is attempting to assure itself of the system's reliability and availability of service for the system.
2. Protest that competition could be enhanced if the agency had issued a solicitation comprised totally of performance specifications, rather than a combination of performance and design specifications, is denied where the protester fails to show that the specifications exceed the agency's minimum needs.

DECISION

Southern Technologies Inc. protests the terms of invitation for bids (IFB) No. N62472-87-B-0033 issued by the Naval Facilities Engineering Command for modifications to the boiler plant at the New London Submarine Base in Groton, Connecticut. The protester contends that several of the solicitation's requirements relating to a component of the boiler plant, the distributed digital control system, overstate the government's minimum needs and thereby unduly restrict competition.

We deny the protest.

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The IFB was issued on April 20, 1990. The solicitation provided for various modifications to the base's boiler plant, including the provision of the distributed digital control system consisting of control panels, cathode ray tube operator stations, transmitters, oxygen analyzers, smoke density meters, vortex flow meters, and variable frequency motor controllers. The system will regulate and control the base's boilers. The agency reports that the boilers perform the following four tasks critical to base operations: (1) provide steam heating for the base; (2) provide peak shaving power for the base; (3) act as a back-up power source in the event of a utility outage; and (4) act as the main power supply for nuclear submarines which dock at the base once the submarines have shut down their nuclear power.

Initially, the solicitation required that the control system be supplied by a firm which regularly manufactures at least 40 percent of the components which comprise the system. The solicitation also required that the system manufacturer have a minimum of 15 years experience in engineering and manufacturing boiler control systems, have at least 20 microprocessor based boiler control systems in satisfactory operation for at least 5 years, and have equipment substantially identical to that being solicited in at least 10 installations and operating under comparable conditions for at least 5 years. The solicitation further provided that the system manufacturer have a permanent service organization and that it support the system hardware and software with replacement parts for 15 years. Finally, the solicitation included detailed specifications describing the required system.

Southern's initial protest stated that the requirements concerning the overall manufacture of the system overstated the government's minimum needs and restricted competition by limiting sources to large manufacturers of system instruments and components, and by imposing unreasonably burdensome experience requirements. The protester also objected to the service requirements for the same general reason. Finally, the protester argued that portions of the specifications governing the control system itself were either proprietary to Honeywell, Inc. and/or overly restrictive. Specifically, the protester challenged paragraphs 2.3.10, "COMMUNICATIONS WITH FIELD MOUNTED TRANSMITTERS," 2.6, "BULK I/O MODULE," 2.11, "COMMUNICATION PROTOCOL," 2.13, "APPLICATIONS AND DATA PROCESSING MODULE," 2.14, "UNIVERSAL GATEWAY," and, 2.19.6 "OPERATING SYSTEM."

In response to the protest, the Navy issued amendment No. 0005, which removed the requirement that the system manufacturer have 15 years experience, and required that the proposed system itself exist in at least five installations that were made within the last 5 years, and were operational for at least 2 years. During this time period the system must have not experienced any mean time between failure of less than 6 months, and mean time to repair of more than 2 days. The amendment did not change the requirements for service and replacement parts support but it did delete specification paragraph 2.3.10, and alter specification paragraphs 2.11, 2.13, 2.19.6, and 2.21.2 in response to the protester's arguments.

Southern maintains that despite the amendment, a number of the solicitation's requirements continue to overstate the government's minimum needs. In this regard, Southern first argues that the solicitation provisions, which essentially require that the proposed system be the product of a single manufacturer that has been installed in five locations where its reliability has been proven, are overly restrictive. The protester contends that these restrictions unreasonably impact system integrator firms like itself which assemble control systems comprised of other manufacturers' equipment and have the specialized experience needed to produce a successful system. This would require the protester to subcontract for the control system work rather than do it itself. The protester also contends that there are no firms which manufacture systems that are capable of supplying the system required by the solicitation without integrating components of other manufacturers into their products to some extent.

An agency is required to specify its needs and select a procurement approach in a manner designed to promote full and open competition. See LaBarge Prods., Inc., B-232201, Nov. 23, 1988, 88-2 CPD ¶ 510. Restrictive provisions should only be included to the extent necessary to satisfy the agency's minimum needs. The contracting agency, which is most familiar with its needs and how to fulfill them, must make the initial determination of its needs in the first instance. That determination must be reasonable. Id.

Here, we find that the agency has offered a reasonable explanation for these requirements. The agency states that the requirement that the system be the product of a single manufacturer is necessary to ensure that it obtains a reliable, proven system. The agency explains that its experience shows that systems comprised of components obtained from various manufacturers and integrated into a

system by firms such as Southern, which are not established systems manufacturers, require repeated debugging, experience a great deal of downtime, are extremely expensive to maintain, are difficult to update, and often are not compatible with standard equipment and programs. The agency, pointing to the tasks critical to base operation for which the system is needed, asserts that because it has found integrated systems are generally not reliable, it needs the system to be the proven product of a single manufacturer. Further, the agency states that it has determined that at least five such manufacturers are capable of supplying a control system compliant with the solicitation.

As far as the specific reliability requirements are concerned, the provision which states that the system proposed be representative of one which currently exists in five installations is, according to the agency, designed to eliminate the possibility that a bidder is relying on a few exceptionally well maintained installations in demonstrating the reliability of the system. The requirement that the proposed system be representative of one that has been installed within the past 5 years and operational for at least 2 years, is, says the agency, aimed at ensuring that the system is a representative of current technology, has been debugged, and has been operational without experiencing any major breakdowns. Likewise, the agency states that in view of the critical nature of the system it needs the assurance of an established service organization and a guarantee of spare parts support.

Notwithstanding the agency's explanation, the protester insists that it can supply and maintain a system which it assembles of components from different sources that will perform as well and as reliably as that produced by any established systems manufacturer.

In view of the critical nature of the control system and its impact on the operation of the entire base, we understand the need of the agency for a dependable system that can be properly serviced and maintained. We think that the requirement in the solicitation that the system be the established product of a single manufacturer which has a permanent service organization is a reasonable way of expressing the agency's legitimate need. See Stewart & Stevenson Servs.; Cooper Indus., B-236187.2; B-236187.3, Nov. 29, 1989, 89-2 CPD ¶ 503.

In a recent case concerning a similar type boiler control system, we held that a requirement that the system be supplied, tested, and delivered by a single manufacturer was unduly restrictive. See Southern Technologies, Inc., B-239431, Aug. 31, 1990, 90-2 CPD ¶ _____. In that case we were concerned because the restriction applied to the supplier rather than to the system itself. Here, there is no similar requirement concerning the type of firm which supplies and delivers the system. The restriction properly attaches to the system itself which can be supplied by any source, i.e., a dealer or an integrator, as long as the system is itself the proven product of a single manufacturer. In this case, the agency essentially is requiring that the system be commercially available, a requirement we have found to be an acceptable means of minimizing performance risks. See Fein-Marquart Assocs., Inc., B-214652, Dec. 4, 1984, 84-2 CPD ¶ 616.

Concerning the specifications for the system itself, in amendment 0005 the agency deleted specification paragraph 2.3.10, and amended paragraphs 2.11 and 2.13, and explained the changes in its report. Since the protester has not mentioned these particular specification provisions further, we will not consider them. See IBI Security Serv., Inc., B-236462 et al., Nov. 14, 1989, 89-2 CPD ¶ 459.

The protester continues to argue that the term "BULK I/O MODULE" used in specification paragraph 2.6 represents terminology proprietary to Honeywell. The agency explains that the term refers to a computer with the capacity to collect, process and store large amounts of data which will not be used in the control loop, and states that the term is generic and neither proprietary nor representative of one particular manufacturer. Southern has not specifically refuted the agency's position other than to simply assert without explanation that the specification is proprietary. As such, we have no basis to question the agency's explanation.

Similarly, the protester argues that the term "UNIVERSAL GATEWAY" as used in specification paragraph 2.14 designates a feature which is proprietary to a particular source. Here, too, the agency disagrees, explaining that the term refers to a computer language translator which will allow the installed system to access other digital control systems with different communications systems and protocol. Again, Southern does not specifically refute the agency's position,

other than to assert without explanation that the term and specifications are proprietary and that if they are not they would not have to be so specific and detailed. Again, we simply do not find that the protester's position is convincing in view of the agency's plausible explanation.

Southern initially contended that specification paragraph 2.19.6, "OPERATING SYSTEM," was overly restrictive in that systems other than the OS/2 with IBM Presentation Manager or Microsoft Windows system specified would meet the agency's requirement. Southern proposed that the agency allow for the use of the "Unix" or "Ultrix" system. The agency amended paragraph 2.19.6 in response to the protest to allow for the use of either the OS/2 system originally specified, or the MS-DOS multitasking operating system with microsoft windows or its equivalent. The agency explains that the Unix or Ultrix system proposed by the protester is not acceptable, as it is not compatible with existing agency equipment which will continue to be used following the installation of the distributed digital control system.

In response to the amendment and the agency's position, the protester first states that the OS/2 and MS-DOS systems specified in paragraph 2.19.6 are not compatible. However, because the solicitation requires that either a OS/2 or MS-DOS system be supplied, the incompatibility of the systems is not relevant. Southern next states that "MS-DOS is not a multitasking environment." While the protester is correct, as far as the MS-DOS itself is concerned, the specification here calls for a MS-DOS system with microsoft windows or its equivalent. The addition of the microsoft windows feature results in a multitasking operating system. Further, we note that the protester does not rebut the agency's position that the Unix or Ultrix system is not compatible with existing agency equipment.

Finally, Southern apparently objects to the use of any design specifications in the sections of the solicitation relating to the control system, contending that competition could be enhanced if performance specifications only were used. An agency's use of design specifications provides a basis for determining that a solicitation restricts competition only where the specifications themselves exceed the government's minimum needs. Lanier GmbH, B-216038, May 10, 1985, 85-1 CPD ¶ 523. The protester, however, has made no showing that the requirements that it has complained of do not reasonably reflect the agency's actual minimum needs. We therefore have no basis on which to question the

agency's use of a combination of design and performance specifications in the sections of the solicitation relating to the control system.

We deny the protest.

for Robert P. Murphy
James F. Hinchman
General Counsel