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Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Tek Contracting, Inc.

File: B-245590

Date: January 17, 1992

Bruce Blank for the protester.
Paul M. Fisher, Esq., and Stephen T. Orsino, Esq., Department of the Navy, for the agency.
Behn Miller, Esq., and Andrew T. Pogany, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DECISION

Protest that solicitation requirement for certification of fire equipment by specified testing laboratories improperly restricts competition to one fire equipment manufacturer is denied where certification specification did not prejudice protester whose equipment was not certified by any independent laboratory.

DECISION

Tek Contracting, Inc. protests as unduly restrictive the equipment certification requirement in invitation for bids (IFB) No. N62467-91-B-4305, issued by the Department of the Navy to provide and install fire and radio alarm systems in four buildings at the Marine Corps Recruit Depot, Parris Island, South Carolina.

We deny the protest.

The IFB was issued on August 9, 1991; bid opening was scheduled for September 11.[1] Under the solicitation, bidders are to replace existing fire alarm systems in Barracks Nos. 589, 591, 599, and 601 with new interior radio alarm systems comprised of a building fire alarm panel, pull stations, audio-visual alarms, smoke detectors, heat detectors, and associated circuitry.

[1]Tek filed this protest on September 10; although the Navy proceeded with the September 11 bid opening, award has been withheld pending the outcome of this protest.

Under the IFB, each alarm panel must include a radio alarm transmitter capable of communicating an alarm signal to the Parris Island Fire Department's King-Fisher receiver. The IFB also requires, at paragraph 1.4 of section 16722, that all "[d]evices and equipment be . . . listed by Underwriters Laboratories, Inc. [UL] or approved by Factory Mutual Systems [FMS]," two nationally recognized testing laboratories which certify emergency and fire detection equipment's compliance with the National Fire Protection Association's (NFPA) published standards. Paragraph 1.4 also specifies that each bidder is to "[p]rovide each [fire alarm] system complete and ready for operation."

In its protest, Tek argues that this UL/FMS certification requirement unduly restricts competition to the King-Fisher manufacturer. Specifically, Tek questions the need for UL or FMS certification on the ground that, as indicated in the commercial literature of its manufacturer, the Digitize·· brand transmitter which Tek proposes to offer is compatible with the King-Fisher receiver. In this regard, Tek has provided evidence that the only radio fire alarm systems which have been tested by FMS are those containing radio transmitters and receivers produced by the same manufacturer.[2] Since no "mixed" manufacturer systems--that is, systems utilizing a transmitter and receiver produced by two different manufacturers--have been tested by UL or FMS, Tek asserts that it is improperly precluded from offering an alarm system using a non-King-Fisher brand of transmitter. As relief, Tek requests that the UL/FMS certification specification either be removed from the solicitation or, in the alternative, that the requirement be amended to permit FMS testing of a mixed-manufacturer system at the site of installation, after award.

In preparing a solicitation for supplies or services, a contracting agency must specify its needs and solicit bids in a manner designed to achieve full and open competition, 10 U.S.C. § 2305(a)(1)(A)(i) (1988), and include restrictive provisions or conditions only to the extent necessary to satisfy the agency's needs. 10 U.S.C. § 2305(a)(1)(B)(ii). We will not question the contracting agency's determination of its minimum needs and the best method of accommodating those needs unless it has no reasonable basis. Johnson Controls, Inc., B-243605, Aug. 1, 1991, 91-2 CPD ¶ 112.

Prior to this solicitation, the Navy conducted a competitive procurement to replace the Parris Island Fire Department's outdated hard wire fire detection system with a telemetry (radio/transmitter) system; since the King-Fisher Company

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[2]Apparently, UL does not test radio fire alarm systems.

won award, a King-Fisher receiver was installed.[1] In its agency report, the Navy concedes that the UL/FMS certification requirement precludes bidders from using non-King-Fisher transmitters in their proposed alarm systems; however, the Navy asserts that without the certification requirement, the Navy lacks any guarantee that a mixed-manufacturer fire alarm system will successfully perform in the event of a fire. Moreover, although the protester indicates that there may be other brands of transmitters which are technically compatible with a King-Fisher receiver, the Navy has presented evidence that technical compatibility does not guarantee compliance with the NFPA standards; the Navy states that in several past procurements, non-UL listed or non-FMS approved equipment--although technically compliant--failed to pass testing procedures conducted by UL or FMS at the site of installation.

In this case, it is clear that the Navy seeks some assurance from a source independent of the bidder that proposed fire alarm systems work safely and effectively. Given the impact of the fire alarm equipment on the safety of personnel, we find that the Navy's minimum needs reasonably require that the proposed fire alarm systems be certified by a recognized independent testing laboratory--such as UL or FMS. However, since the certification requirement here specifies only UL or FMS approval as acceptable certification, we believe the specification may be unduly restrictive since it prevents prospective contractors from presenting other creditable evidence that their proposed alarm systems comply with the established NFPA standards. See Stabbert and Assocs. Inc., B-218427, June 17, 1985, 85-1 CPD ¶ 692; Advance Mach. Co., B-217376, Oct. 29, 1985, 85-2 CPD ¶ 479; Advance Mach. Co., B-219766, Nov. 5, 1985, 85-2 CPD ¶ 526. Nevertheless, we deny Tek's protest against this requirement since the protester has challenged this requirement not on the basis that its mixed system has been certified by some other independent laboratory, but because its mixed system cannot be certified by FMS until after installation of the Digitize transmitters. As such, Tek was not prejudiced by the restriction to UL or FMS certification. See Tek Contracting, Inc., B-245454, Jan. 6, 1992, 92-1 CPD ¶ ___; T-L-C Sys., B-223136, Sept. 15, 1986, 86-2 CPD ¶ 298. Prejudice is an essential element of a viable protest; since Tek has demonstrated no prejudice as a result of the UL/FMS limitation, we deny its protest on this ground. See Association of Soil and Found. Eng'rs, B-209547, May 23, 1983, 83-1 CPD ¶ 551.

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[1]This receiver is wired to receive up to 500 transmitted signals; currently, Beaufort Naval Hospital is on this system with 18 transmitters.

With respect to Tek's contention that the UL/FMS certification should at least be modified to permit post-installation FMS approval, the record shows that FMS approval for a mixed-manufacturer fire alarm system is expected to incur from 4 to 6 months of testing.[1] Since the site of installation is currently occupied by Navy personnel and because the current hard wire alarm system must be replaced, we agree with the Navy's position that a post-installation FMS approval modification to this requirement would pose a severe life-threatening risk to the Navy. Under these circumstances, it is simply not feasible to obtain UL or FMS listing for a mixed-manufacturer system. See Tek Contracting, Inc., supra; G.H. Harlow Co., Inc., B-245050 et al., Nov. 20, 1991, 91-2 CPD ¶ ___.

The protest is denied.

James F. Hinchman
General Counsel

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[1]Although Tek contends that FMS testing is a rapid procedure, in the agency report, the Navy anticipated--based on past experience--that FMS testing would entail at least 11 months. Our Office contacted the manager of FMS' system approval division who stated that at a minimum, FMS testing requires 4 months. Additionally, contrary to Tek's assertions, the manager stated that the entire system--including its individual components--must be tested to acquire FMS approval.