



Comptroller General
of the United States

Washington, D.C. 20548

91-2 CPD 112
PR

Decision

Matter of: Johnson Controls, Inc.

File: B-243605

Date: August 1, 1991

Douglas O. Smith, Esq., for the protester.
Barry D. Segal, Esq., General Services Administration, for the agency.
Jennifer Westfall-McGrail, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that requirement for integration of building management and control system (BMCS) to be installed in federal building to be constructed in Baton Rouge, Louisiana, with an existing BMCS located at federal building complex in New Orleans exceeds agency's minimum needs and is restrictive of competition is denied where agency demonstrates reasonable basis for requiring integration of the two systems.

DECISION

Johnson Controls, Inc. protests the specifications in invitation for bids (IFB) No. GS-07P-91-HUC-0026, issued by the General Services Administration (GSA) for the construction of a new federal building/courthouse in Baton Rouge, Louisiana. Johnson Controls objects to the specifications which define the minimum hardware and performance requirements for a computer-based management and control system to be installed in the building. The protester complains that these specifications, which require the successful contractor to integrate the controls of this project with an existing building management and control system (BMCS) located at the Federal Building Complex in New Orleans, Louisiana, are unduly restrictive of competition. According to the protester, integration of the Baton Rouge and New Orleans facilities can be accomplished only by the original controls manufacturer of the BMCS at the New Orleans facility since the manufacturer of that system used a proprietary data communications protocol that precludes interconnection of components from other manufacturers. The protester contends that the agency's minimum needs do not require integration of the two control systems.

We deny the protest.

The solicitation required the successful contractor to "furnish and install all equipment, accessories, wiring and instrument piping required for a complete and functioning [BMCS]." The IFB further indicated that the system installed was to be integrated with an existing BMCS consisting of a Central Processing Unit, multiple Color Graphic Command and Display Operators terminals, a graphic printer, and high speed printers, located at the Federal Building Complex in New Orleans.

By letter dated April 1, 1991, Johnson Controls notified the agency that it intended to file a protest with our Office objecting to the requirement for integration of the BMCS at the Baton Rouge building with the BMCS at the New Orleans facility unless GSA amended the IFB to delete the requirement prior to April 10. Since the agency had not responded in writing to its letter by April 10, Johnson Controls filed a protest with our Office on that date. On April 15, the agency issued amendment No. 2 to the IFB, which indicated, as follows, that the agency did not intend to delete the requirement for integration with the New Orleans BMCS:

"The New Orleans facility will be responsible for monitoring/controlling this building, therefore the control system must be interfaced with the existing system in New Orleans which shall include, but not [be] limited to utilizing database from new SCU's and integrating with the existing hardware and software per the specifications. It is [the] work of this contract to provide all the necessary hardware and software for this integration."

Despite the pendency of Johnson Controls's protest, the agency proceeded with bid opening on April 30. Three bids were received and opened. On June 28, the head of the contracting activity determined in writing and notified our Office that urgent and compelling circumstances significantly affecting the interests of the United States would not permit waiting for our decision on the protest and awarded a contract to Woodrow Wilson Construction Co., Inc.

INTERESTED PARTY STATUS

The agency argues that Johnson Controls is not an interested party to protest to our Office since it has not demonstrated that it is an actual or prospective bidder whose direct economic interest would be affected by the award of or failure

to award a contract, as required by our Bid Protest Regulations, 56 Fed. Reg. 3,759 (1991) (to be codified at 4 C.F.R. § 21.0(a)). The agency asserts that absent evidence that the protester has the ability and intends to bid on the solicitation as a prime contractor, we should regard it as merely a potential subcontractor and dismiss its protest. In the alternative, the agency contends that Johnson Controls is not an interested party to complain about the restrictiveness of the specifications since it was not precluded from submitting a bid by the allegedly defective provisions.

In response to the agency's first argument, the protester asserts that it has the necessary licenses, bonding capacity, insurance, and experience to bid as a prime contractor on the project in question; that it has in the past bid on similar projects and performed similar work as a prime contractor; and that it intends to submit a bid as a prime contractor, as well as to submit quotes to other prime contractors for the BMCS portion of the work only, if the specifications to which it objects are modified. The protester contends that its representations as to its qualifications and intentions should be sufficient to establish its status as an interested party given that the agency has presented no evidence to contradict those representations.

Absent evidence that the protester has misrepresented either its qualifications to bid under this IFB or its intention to do so, we have no basis upon which to question Johnson Controls's representations concerning these matters. We therefore decline to dismiss the protest on this basis.

With regard to its second argument, the agency contends that the requirements to which the protester objects did not prevent it from bidding since it could have submitted a responsive bid by arranging to subcontract for the BMCS work with the manufacturer of the system installed at the New Orleans facility, Landis & Gyr Powers, Inc.

In response, the protester denies that it could have satisfied the solicitation's requirements for installation of a BMCS by subcontracting for the work with Landis & Gyr. The protester contends that Landis & Gyr is in direct competition with it, and that it has been its experience that its direct competitors are unwilling to perform controls system-related work for it as subcontractors since doing so would require them to disclose proprietary information. Further, the protester notes, to the extent that it has received quotes for such work from its competitors, they are frequently noncompetitive and designed to undermine Johnson Controls's competitive position.

It is not necessary for us to determine whether Landis & Gyr would have been willing to perform the BMCS work for Johnson Controls to determine the latter's status as an interested party to protest to our Office. Whether a bidder or offeror is an interested party for the purpose of filing a protest is determined by the nature of the issues raised and the direct or indirect relief sought. Courtney Contracting Corp., B-242945, June 24, 1991, 91-1 CPD ¶ 593. Where a protester challenges the terms of a solicitation and the remedy sought is the opportunity to compete under a revised solicitation, it is an interested party to pursue the protest regardless of whether or not it submitted--or could have submitted--a bid or offer under the challenged solicitation, so long as the challenged requirement has compromised its competitive position. See id.; Corbin Superior Composites, Inc., B-242394, Apr. 19, 1991, 91-1 CPD ¶ 389. Here, the challenged requirement arguably did work to Johnson Controls's competitive prejudice since it precluded the firm from basing its bid on installation of its own, allegedly less costly, controls system. We are thus not persuaded that the protester lacks the requisite interest in this procurement to maintain the protest.

DIRECT INTEGRATION REQUIREMENT

Johnson Controls contends that the requirement for integration of the control system to be installed in the Baton Rouge courthouse with the system already in operation at the Federal Building Complex in New Orleans is restrictive of competition since the manufacturer of the BMCS at the New Orleans facility used a proprietary data communications protocol that precludes interconnection of components from manufacturers other than itself. The protester further argues that the agency's minimum needs do not require that the two systems be capable of communicating with one another.

Agencies are required to specify their needs in a manner designed to promote full and open competition and to include restrictive requirements only to the extent necessary to satisfy their minimum needs. Barrier-Wear, B-240563, Nov. 23, 1990, 90-2 CPD ¶ 421. The contracting agency, which is most familiar with its needs and how best to fulfill them, must make the determination as to what its minimum needs are in the first instance, and we will not question that determination unless it had no reasonable basis. Corbin Superior Composites, Inc., B-242394, supra. Here, we find that the agency has demonstrated a reasonable basis for the requirement that the two systems be integrated.

The agency explains that its goal in requiring integration of the Baton Rouge facility's BMCS with the New Orleans building's control system is to provide better service to its

tenant agencies with greater efficiency and at lower cost to the government. The agency contends that maintaining data on the two buildings in a single database will make it easier for the maintenance staff to retrieve and use the data and will result in better preventive maintenance planning and diagnosis of system errors. Further, according to the agency, significant cost savings can be achieved through the use of one centralized system since it will be less expensive to maintain and upgrade one system than two separate, independent ones and since only one stock of repair parts will need to be maintained. In addition, an integrated system will permit personnel at the New Orleans facility to supervise the Baton Rouge facility while maintenance personnel at the latter are not on duty, which will reduce the need for personnel at the remote site and thereby reduce salary expenditures. Also, the agency notes, if the new BMCS is integrated with the existing one, retraining of maintenance personnel will not be required. The agency further maintains that centralization of the control functions in the New Orleans office will increase its ability to respond to tenant requests for operation of building systems such as heating or air conditioning outside of normal duty hours since the New Orleans office--unlike the Baton Rouge office--has operating personnel on duty 24 hours a day, 7 days a week.

In response, the protester contends that having all of the management information in a single database is not reasonably a minimum need of the agency since, for the most part, different agency personnel will be operating the two different systems. In any event, the protester maintains, to the extent that the agency requires compatible formats or methods of presenting information, these requirements can be reflected in the specifications.

The protester also disputes the agency's assertion that integrating the two systems will result in considerable cost savings. The protester challenges the contracting officer's assertion that the cost of maintenance will be cut in half since there will be only one service agreement to be purchased, arguing that the cost of maintaining two systems cannot be the same as the cost of maintaining one, even if the two interface, and that there is no reason to believe that the cost of two contracts for two facilities would be more than the cost of one contract for two facilities. The protester also disputes the agency's assertion that if the two systems are integrated, only one stock of spare parts will need to be maintained. In addition, the protester maintains that it is not appropriate for the agency to consider the cost of retraining employees already familiar with the Landis & Gyr system in defining its minimum needs. The protester contends that the agency should instead require that bidders include the costs of training in their bids, and that if the costs of

additional training, when added to the cost of a competitor's maintenance and control system, serve to make the competitor's system more costly than the Landis & Gyr one, then the competitor's bid will not be low and it will not be selected for award.

The protester also takes issue with the agency's argument that integrated systems will reduce the need for operating personnel at the Baton Rouge site, thereby decreasing expenditures for salaries, and will enable GSA to improve the quality of its service to its tenant agencies by having personnel capable of responding to requests for heating and air conditioning on duty at all times. Johnson Controls concedes that there may be benefits from periodic remote operation of the Baton Rouge BMCS from New Orleans, but contends that an integrated system is not the only means by which remote operation of the Baton Rouge system can be achieved. The protester asserts that if the requirement for integration of the two systems were deleted, it could provide for remote operation of the Baton Rouge BMCS by government personnel in New Orleans by other unspecified means.

The record does not clearly establish that certain of the benefits and cost savings noted by the agency can be achieved only through integration of the Baton Rouge BMCS with the New Orleans system. For example, it is unclear whether the archiving of all information in a single database is the only means by which the agency can assure that reports generated from those archives will present their information in a sufficiently consistent fashion. It is also unclear whether the cost of one service agreement covering two facilities would be significantly less than the cost of two service agreements for the two facilities and whether the agency could in fact expect to maintain only one inventory of spare parts for the two facilities, given that they are located in different cities.

It is clear, however, that there are certain advantages to a system that will permit personnel on duty in New Orleans to operate the mechanical systems of the Baton Rouge building. The record shows that the capability of remote operation will reduce expenditures for personnel at the Baton Rouge building and will improve service to that location because of the 7-day, 24-hour availability of personnel at the New Orleans location. See LaBarge Prods., Inc., B-232201, Nov. 23, 1988, 88-2 CPD ¶ 510 (agency's minimum needs include the need to procure services on the most cost-effective basis).

The protester agrees that remote operation is desirable, but objects to the requirement for integration of the two systems to achieve it, arguing that remote operation can also be accomplished by other means. The protester, however, does

not support its assertion with any explanation of what method other than integration it would use to provide remote operation. Even assuming that an alternative approach exists, there is no evidence that it would achieve the agency's goal as effectively as direct integration of the two systems. For example, for remote operation to be accomplished without integration of the two systems, we assume that at a minimum the personnel in New Orleans would need to be thoroughly familiar with two different BMCS'. We think it is reasonable for the agency to conclude that its New Orleans-based mechanical engineers will be able to provide prompter, more efficient service to tenants of both the New Orleans and Baton Rouge facilities if they are required to be knowledgeable about only one system. Thus, we find that the agency has demonstrated a reasonable basis for requiring integration of the Baton Rouge BMCS with the New Orleans system to serve its goal of improving service and reducing personnel expenditures through remote operation of the Baton Rouge system.

The protest is denied.

James F. Hinchman
 JFH James F. Hinchman
 General Counsel

PROCUREMENT

Specifications

Minimum needs standards

Competitive restrictions

Geographic restrictions

Justification