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**Comptroller General  
of the United States**

Washington, D.C. 20548

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# Decision

**Matter of:** Engineering and Professional Services Incorporated

**File:** B-262074

**Date:** November 21, 1995

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Joseph M. Buccieri for the protester.

Victor Klingelhofer, Esq., and G. Brent Connor, Esq., Cohen & White, counsel for Fortran Telephone Communications Systems, an interested party.

Nicholas P. Retson, Esq., and Michael J. O'Farrell, Jr., Esq., Department of the Army, for the agency.

Peter A. Iannicelli, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## **DIGEST**

1. Protest that invitation for bids (IFB) for a requirements contract to install office telephone systems at Army recruiting stations is not specific enough to permit bidders to prepare bids because it does not specify the exact number, size, and locations of telephone systems to be installed is denied because this information is not available with any certainty, and the IFB (1) describes the various sizes and features of systems that will be needed, (2) includes estimates of the quantities of each size system and key equipment that will be needed, (3) includes an up-to-date list of recruiting stations and their addresses, and (4) states that at least one system will be installed in each state.

2. Protest alleging that solicitation for telephone systems is unduly restrictive because its specifications can only be met by one manufacturer is dismissed where the protest does not include sufficient factual information (for example, a statement of which specifications are allegedly restrictive or the name of the firm whose product is allegedly described by the specifications) or any evidence establishing the likelihood that procurement laws or regulations were violated.

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## **DECISION**

Engineering and Professional Services Incorporated (EPS) protests invitation for bids (IFB) No. DABT23-95-B-0068, issued by the Department of the Army for delivery and installation of office telephone systems. The protester contends that: (1) the IFB is not specific enough to permit preparation of fixed-price bids and, therefore, the agency should issue a request for proposals and negotiate with

offerors for this requirements contract; (2) the specifications are unduly restrictive; and (3) the agency failed to respond to its request for technical clarifications. We deny the protest.

Issued on June 21, 1995, the IFB seek firm, fixed-price bids for delivery and installation of telephone systems in Army recruiting offices throughout the United States and Puerto Rico. The IFB contemplates award of a 1-year requirements contract with an option for an additional 1-year period. The IFB describes various features to be included in all telephone systems, including: speed-dialing, conference calls, certain ringing and dialing options, outgoing call restrictions, intercom capability, line illumination, transfer capability, call hold, and individual programming. Because the size of the telephone system will vary depending upon the size of the recruiting office, bids are to include prices for various-sized systems. EPS filed its protest prior to the July 31 bid opening date, and the agency extended bid opening indefinitely pending our resolution of the protest.

The crux of EPS' protest is that the specifications are inadequate to permit bidders to intelligently prepare their bids. Because of uncertainties concerning location, type, and number of the telephone systems to be replaced/installed, EPS contends that the agency should request competitive proposals and conduct negotiations to resolve uncertainties. The protester also states that offerors need to make site visits to ascertain the types of systems to be replaced and that the contractor will have to travel to unknown locations throughout the United States and Puerto Rico to install new systems. Consequently, EPS contends that the solicitation should be amended so that the contract will reimburse the contractor for all travel costs incurred for pre-award site visits and to install the new telephone systems, thus eliminating the "unreasonable amount of risk" for bidders under the IFB as written.

The contracting agency has the primary responsibility for determining its minimum needs and the best method of accommodating them, including the procurement format to be used. Jewett-Cameron Lumber Corp. et al., B-229582 et al., Mar. 15, 1988, 88-1 CPD 265. The use of requirements contracting is authorized by Federal Acquisition Regulation § 16.503(b), which states that such contracts may be used when an agency anticipates recurring requirements but cannot predetermine the precise quantity of supplies or services needed during a definite period. Sunrise Int'l Group, Inc., B-261448, July 21, 1995, 95-2 CPD ¶ 43. Our Office will not overturn the agency decision to use a particular procurement method unless the decision is shown to be arbitrary or unreasonable. See Jewett-Cameron Lumber Corp. et al., supra.

The contracting agency reports that it anticipates a recurring need for installation/replacement of commercially available telephone systems at recruiting stations, but that the locations and number of telephone systems that will be needed during the contract period and the amount of funding that will be available to replace existing systems simply are not known at this time. The IFB does include the agency's estimates of the quantities of each sized systems and key equipment that will be needed during the contract period. For example, even though different recruiting stations will require different sized telephone systems, the IFB states that an estimated 80 systems with 1 to 16 lines, 194 systems with 1 to 8 lines, and 41 systems with 1 to 24 lines will be needed. Moreover, even though the agency does not now know how many recruiting stations will require new or replacement systems or the locations where the telephone systems will be installed, the IFB notifies offerors that, at a minimum, at least one telephone system will be installed in each state. Furthermore, in response to the concerns raised by EPS, the IFB was amended to include the agency's most up-to-date list of recruiting stations and their addresses.

The contracting officer reports that the agency has successfully used this method of acquisition a number of times in the past to purchase various pieces of equipment and related service and maintenance. The agency also reports that a "multitude of sources" expressed interest in the procurement after it was synopsized in the Commerce Business Daily, and that it has identified at least six suppliers that can provide commercial equipment that will meet the recruiting stations' needs. Moreover, the contracting officer determined that discussions with offerors would be fruitless because, among other things, no amount of discussions would make the locations of possible installation sites any more definite. In sum, the agency states that a requirements-type contract is appropriate because it will allow the agency the flexibility to order what it needs and what it can afford during the contract period. As there is no indication in the record, and EPS does not argue, that the IFB's estimated quantities and list of recruiting stations are inaccurate or somehow could be made more precise--by means of a different contract format or discussions--and since this approach serves the agency's needs, we have no basis to object to the Army's decision to use a sealed bid requirements contract format.

To the extent that EPS essentially contends that the requirement for fixed-price bids is onerous, placing an "unreasonable amount of risk" on bidders since travel expenses (for site visits allegedly needed for proper bid calculation and for installing telephone systems) must be included in bid prices rather than being paid by the government on a cost reimbursement basis, the protest provides no basis for overruling the agency's decision. As previously stated, the contracting agency bears primary responsibility for determining the procurement format to be used. See Jewett-Cameron Lumber Corp. et al., supra. Risk is inherent in most types of contracts, especially fixed-price contracts such as this one, and the fact that a bidder, in computing its bid, must consider a variety of scenarios that might

differently affect its anticipated costs does not render an IFB defective. Sunrise Int'l Group, Inc., supra.

The protester also contends that the IFB's specifications are unduly restrictive because the technical requirements can only be met by one manufacturer's equipment. The agency responds that the IFB does not specify particular brand name products, that the specifications and required features are based upon the telephone systems currently in place and the needs of the various recruiting stations, and that such telephone systems are readily available on the commercial market. The agency reports that there are at least six potential telephone equipment suppliers whose commercially available equipment can meet the requirements.

Our Bid Protest Regulations require that a protest include a detailed statement of the legal and factual grounds of protest and that the grounds stated be legally sufficient. 4 C.F.R. §§ 21.1(c)(4) and 21.1(e) (1995). These requirements contemplate that protesters will provide, at a minimum, either allegations or evidence sufficient, if uncontradicted, to establish the likelihood that the protester will prevail in its claim of improper agency action. Robert Wall Edge-Recon., 68 Comp. Gen. 352 (1989), 89-1 CPD ¶ 335; Science Applications Int'l Corp., B-265607, Sept. 1, 1995, 95-2 CPD ¶99. EPS' protest does not indicate which specifications allegedly can be met by only one manufacturer's equipment or even the name of the particular manufacturer whose equipment is allegedly described by the specifications. Moreover, the record shows that, subsequent to EPS' filing this protest, the agency asked EPS to identify the manufacturer whose equipment allegedly was described by the specifications, but EPS refused to do so. Because the protest does not include sufficient factual information showing that the specifications may violate procurement laws or regulations, we have no basis to consider it.

Finally, the protester contends that the agency failed to respond to its requests for technical clarifications. However, the record shows that the agency communicated with the protester on several occasions regarding the protester's requests for clarification of certain technical specifications. Moreover, the record shows that, in response to questions asked by EPS and other potential bidders about various technical specifications, the agency amended the IFB in an attempt to clarify any uncertainties; regardless of whether EPS was fully satisfied with the agency's responses, the amendment did, in fact, address most of the questions asked by EPS.

The protest is denied.

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