



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: TLC Systems

File: B-277095

Date: September 2, 1997

Sidney Earley for the protester.

Frank J. Tokarz for Monaco Enterprises, and Emerson B. Fisher for King-Fisher Company, intervenors.

Vicki E. O'Keefe, Esq., and Jan M. Whitacre, Esq., Department of the Navy, 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

1. Agency may reasonably restrict competition for fire alarm reporting system to equipment of a particular manufacturer where this manufacturer is the only one that can provide Factory Mutual-approved equipment capable of interfacing with equipment already installed at the agency.

2. Where estimated value of procurement was beneath the simplified acquisition threshold of \$100,000, agency's use of simplified acquisition procedures was appropriate.

DECISION

TLC Systems protests the terms of request for quotations (RFQ) No. N63387-97-Q-5201, issued by the Navy Public Works Center, San Diego, California for installation of a radio fire alarm reporting system connecting nine San Diego area military base fire alarm systems with a central dispatch center. TLC contends that the RFQ, which requires King-Fisher radio transmitting and receiving equipment, is unnecessarily restrictive of competition since the equipment of other manufacturers would satisfy the agency's needs.

We deny the protest.

BACKGROUND

The Navy's goal in conducting this procurement is to acquire a fire alarm reporting system capable of relaying alarm signals from nine military bases around the San Diego area to a single receiver located in a central dispatch office. The local alarm systems on eight of the nine bases are wired; the ninth, the Marine Corps Recruit

Depot (MCRD), has a radio reporting system consisting of King-Fisher transmitters and receivers (located on the base).

The RFQ, as originally issued, did not specify King-Fisher equipment. It did require, however, that the system to be installed have been listed by the Underwriters Laboratories, Inc. (UL) or by the Factory Mutual System (FM) as a Public Fire Alarm Reporting System, in accordance with National Fire Protection Association (NFPA) Standards 72 and 1221. In addition, it required that the new receiver be capable of receiving transmissions from the King-Fisher transmitters already installed at MCRD. TLC complained to the agency and to our Office that these two requirements, taken together, limited offerors to offering the equipment of a single manufacturer, King-Fisher, since only King-Fisher offers a UL-listed or FM-approved Public Fire Alarm Reporting System incorporating King-Fisher transmitters. In other words, no "mixed" system consisting of King-Fisher transmitters and another manufacturer's receiver(s) has been approved by UL or FM.

After reviewing TLC's protest, the Navy concurred with TLC that the requirement for an integrated fire alarm system, as written in the solicitation, limited the competition to companies offering King-Fisher equipment. The Navy therefore prepared a Justification and Approval for Other than Full and Open Competition (J & A) and amended the RFQ to require King-Fisher radio transmitting and receiving equipment. The agency explained in its J & A that restricting the competition to King-Fisher equipment was justified since no known manufacturer, other than King-Fisher, could provide UL- or FM-approved equipment capable of interfacing with the King-Fisher transmitters already installed at MCRD.

ANALYSIS

TLC disputes the agency's determination that only King-Fisher equipment will satisfy its needs. The protester contends that Signal Communications (SigCom), whose equipment it installs, offers an FM-approved system which incorporates transmission boxes capable of receiving and decoding radio signals from King-Fisher transmitters and retransmitting them to a SigCom receiver. The protester concedes that the SigCom boxes are not FM-approved to interface with the King-Fisher transmitters, but argues that it could satisfy the agency requirement for FM certification by obtaining, after installation, an FM Site Approval Certification of Compatibility.

The Navy responds that FM "acceptance" of a system--which, according to the agency, is the proper terminology for what the protester refers to as Site Approval

Certification of Compatibility--is not equivalent to FM "approval" of a system, and that it requires an FM-approved system.¹

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) (1994), 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. G.H. Harlow Co., Inc., B-254839, Jan. 21, 1994, 94-1 CPD ¶ 29 at 3.

The Navy explains that FM acceptance of a system (as opposed to FM approval) will not meet its needs for several reasons. First, FM acceptance testing, by definition,² cannot be accomplished until after the equipment has been installed, which means that system activation would have to be delayed until after FM can accomplish its testing and issue a report.³ It also means that the agency would have to accept the risk that the system, once installed, might not pass the testing and would need to be replaced. In addition, the acceptance procedure involves significantly less testing than the approval procedure, according to the agency, and

¹The Navy also argues that TLC is not an interested party to protest the solicitation's terms since it is not a prospective quoter under the RFQ, which calls for the installation of a fire alarm reporting system. The agency bases this assertion on TLC's letterhead, which, according to the Navy, indicates that TLC is a manufacturer's representative or supplier. We see no merit to the agency's position given that the letterhead to which it refers represents that, in addition to serving as a manufacturer's representative and supplier, TLC performs installations and provides service.

²The FM guide defines acceptance as "confirmation that equipment or materials installed at a specific location are suitable for their intended use."

³It is unclear from the record how long it would take FM to complete its testing and issue its report. TLC has furnished a copy of a facsimile transmission from FM to SigCom, dated July 22, 1997, which states that FM foresees being able to do the on-site testing necessary to evaluate the compatibility of the SigCom Vision 21 equipment with the King-Fisher KFRA receiver and KF-1 and KF-2 radioboxes within a 1- to 2-week period, and that it would then take another 2 weeks to produce a report. The facsimile further states, however, that FM does not foresee being able to schedule the on-site visit until mid-September 1997--and that the time frame could change from the preliminary estimate. In other words, although it appears that FM would be able to issue its report within a month after commencing testing, it is unclear how soon it would be able to start the testing.

thus does not assure the same degree of system reliability. For example, approval testing would include tests of component and system operational capability across a broad temperature range whereas acceptance testing would only include ambient temperature(s) on the test date(s).

We think that the agency has demonstrated a reasonable basis for requiring an FM-approved system. First and foremost, we think that it is reasonable for the agency to require independent confirmation, prior to installation, of the satisfactory performance of a system vital to the safety of its employees. Tek Contracting, Inc., B-245454, Jan. 6, 1992, 92-1 CPD ¶ 28 at 3. In our view, the agency should not be required to accept the risk that the system, after installation, will fail to obtain FM acceptance. Further, we do not think that the agency should be required to delay activation of a critical safety system to allow the contractor to seek post-installation FM certification. See Tek Contracting, Inc., B-245590, Jan. 17, 1992, 92-1 CPD ¶ 90 at 4. Along the same lines, it seems to us reasonable for the agency to prefer a system whose performance has been demonstrated in a broad range of conditions, and not simply in the conditions that existed on the date of testing.⁴

TLC also argues that the agency should have used an invitation for bids (IFB), rather than an RFQ, to solicit its requirements. In essence, TLC contends that quoters' prices can be expected to exceed the simplified acquisition threshold of \$100,000, see Federal Acquisition Regulation (FAR) § 2.101 (definition of "simplified acquisition threshold"), and thus that the agency's use of simplified acquisition procedures--specifically, issuance of an RFQ instead of an IFB--was improper.

⁴The Navy offered two additional arguments in support of its position that only FM approval would satisfy its needs: that the cost of acceptance testing (estimated at \$15,000 to \$20,000) would increase the cost of the acquisition, and that the acceptance would address only the system configuration, as tested, meaning that any equipment substitutions, modifications, or upgrades to the system would "probably require" additional testing. We find neither argument persuasive, and thus relied on neither in reaching our conclusion that the agency had demonstrated a reasonable basis for requiring an FM-approved system. Regarding the first argument, it is the contractor, not the agency, that would bear the cost of acceptance testing. To the extent that these costs, which presumably would be reflected in the contractor's price quotation, render its price noncompetitive, the agency would be under no obligation to accept the quotation. Regarding the second argument, we see no reason that if a system such as the SigCom one proposed by TLC were installed, upgrades to any part of the system other than the King-Fisher transmitters installed at MCRD would require acceptance retesting since that is the only part of the system involving "mixed" equipment. Moreover, if an upgrade at MCRD were to involve the substitution of SigCom transmitters for the existing King-Fisher ones, there would be no need for acceptance testing (since both the transmitters and the receiver would be part of the FM-approved SigCom system).

The Navy responds that its estimate for the work to be performed was \$96,296,⁵ and that the only acceptable quotation that it received in response to the RFQ was for substantially below that amount. Given that the agency expected to--and did in fact--receive a quotation for under \$100,000 to accomplish the work called for in the solicitation, we see no basis to question the agency's use of simplified acquisition procedures to conduct this acquisition. See FAR § 13.103(a).

The protest is denied.

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⁵It should also be noted that this estimate included the cost of work to be performed at Miramar that was subsequently deleted from the solicitation.