



S. 92-11

The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: TLC Systems  
File: B-225871  
Date: March 17, 1987

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### DIGEST

1. Where the contracting agency determines generally that specifications reflect government's minimum needs, record does not show otherwise, and protester refuses agency request to specify why specifications allegedly are ambiguous and unduly restrictive of competition, there is no legal basis for General Accounting Office to object to the specifications.
2. Agency decision to use negotiation procedures in lieu of sealed bidding procedures to acquire a fire alarm system is justified where technical discussions are essential and contract award will be based on technical considerations in addition to cost and cost-related factors.
3. A procurement need not be set aside for small business concerns where the contracting officer properly determines, based on the prior history of other unsuccessful similar procurements involving small businesses, that there is no reasonable expectation of offers from at least two responsible small business concerns.

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### DECISION

TLC Systems protests the specifications in request for proposals (RFP) No. F02600-86-R-0032, issued by the Department of the Air Force, Williams Air Force Base, Arizona, for the repair of the fire alarm panel at the receiving center and associated transmitters, and the installation of a digital radio-type fire alarm system. TLC contends that the specifications are ambiguous and unduly restrict competition; that sealed bidding rather than negotiation procedures should have been utilized; and that the procurement should have been set aside for small business concerns.

We deny the protest.

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The RFP requires that all electrical work conform to the requirements of the National Electrical Code and the RFP, and states that in case of discrepancies between the two the RFP specifications will govern. The RFP also requires that the fire alarm system to be installed meet National Fire Protection Association (NFPA) standard 72D and be capable of incorporating NFPA 1221, Class I Computer Aided Dispatching System, without revision to the main computer hardware, and that all equipment have Underwriters Laboratories (UL) or Factory Mutual (FM) approval.

#### RESTRICTIVENESS

TLC contends generally that the specifications are ambiguous and unduly restrict competition because no company's equipment can meet the specifications and also be approved in accordance with NFPA guidelines. TLC believes the RFP was drawn to favor the equipment of one manufacturer, Motorola Communications and Electronics, Inc., whose equipment TLC apparently believes comes closest to meeting all RFP standards and requirements. As evidence supporting this belief, TLC points to a market survey conducted by the Air Force to determine the existence of manufacturers capable of meeting the specification that, TLC speculates, included only Motorola.

The Air Force does not agree that the applicable NFPA standards are inconsistent with the specifications or that they otherwise are so restrictive that only Motorola can meet them, or that the requirements exceed the agency's true minimum needs. The Air Force indicates that its standards take into account the relative state-of-the-art technology and equipment involved and the fact that, compared to the alternatives, the system is intended to be more cost effective, reduce the number of false alarms, better protect government property, and lessen the risk to firefighters. Finally, the agency states that it requested, but TLC refused to provide, information on the portions of the specifications TLC found objectionable.

Preliminarily, our review of the results of the Air Force's survey (not released to TLC) shows that, contrary to TLC's speculation, four manufacturers were deemed capable of meeting the RFP requirements.

As for the merits, we find no basis for objecting to the specifications as unduly restrictive. Nothing on the face of the RFP suggests that offerors are being subjected to inconsistent requirements, and the agency specifically has found all RFP requirements to be proper and necessary. At the same

time, TLC has not specified the parts of the specifications or NFPA standards it finds inconsistent or improper; indeed, TLC refused to provide these specifics even in the face of an express Air Force request for this information, claiming that such specifics merely would enable the Air Force to tailor the RFP more closely to Motorola's equipment. In its comments on the agency report, TLC merely reiterated its general allegations, furnishing no evidence rebutting the agency's position. We therefore conclude that TLC has not shown that the RFP is unduly restrictive or otherwise deficient.

#### NEGOTIATED VERSUS SEALED BID PROCEDURES

TLC contends that the solicitation should have been issued as a sealed bid procurement set aside for small business concerns rather than as an unrestricted, negotiated procurement. TLC asserts that six other Air Force bases procured this type of system in 1986 using Air Force specifications and sealed bids, and that the Air Force is using a negotiated procurement in this case in order to limit competition. The contracting officer states that his decision to use a negotiated procurement is justified because technical discussions concerning technology, design, equipment and installation are essential, and award will be based on technical considerations in addition to price and price-related factors. --

Under the Competition in Contracting Act (CICA), agencies are required to obtain full and open competition and to use the competitive procedure or combination of competitive procedures considered best suited under the circumstances of the procurement; there is no requirement that certain procurements be conducted on a sealed bid basis. 10 U.S.C. § 2304(a)(1) (Supp. III 1985). In determining the competitive procedure appropriate under the circumstances, the agency need not solicit sealed bids if, among other factors, it will be necessary to conduct discussions with the responding sources about their offers. 10 U.S.C. § 2304(a)(2). The determination as to whether such discussions are necessary for a given procurement essentially involves the exercise of business judgment by the contracting officer. Essex Electro Engineers, Inc., 65 Comp. Gen. 242 (1986), 86-1 C.P.D. ¶ 92.

We find no basis for objecting to the Air Force's determination that this state-of-the-art fire alarm system procurement involves technical considerations such that discussions of technical proposals is deemed necessary. The fact that other Air Force bases may have procured fire alarm systems through sealed bidding does not establish that negotiated procedures are inappropriate. Again, this

determination is within each agency's judgment, and such judgments will not be questioned where, as here, there is no showing that the judgment is unreasonable.

#### SMALL BUSINESS SET-ASIDE

TLC contends that the procurement should have been set-aside for small business concerns. The contracting officer responds that the solicitation was not set aside because he had no reasonable expectation that offers would be obtained from at least two responsible small business concerns. The contracting officer states that in making this determination he took into consideration the failure of small business contractors to perform satisfactorily on two prior contracts for similar systems at other Air Force bases. The contracting officer then cleared his determination through the small business advocates at the base and command level, and the Small Business Administration procurement center representative.

The procurement regulations require that a procurement be set aside if the contracting officer determines that there is a reasonable expectation that offers will be received from at least two responsible small business concerns, and that award will be made at a reasonable price. Federal Acquisition Regulation, 48 C.F.R. § 19.502-2 (1986). In this case, although TLC believes several small businesses would be interested in this procurement were the RFP amended to correct the deficiencies alleged by TLC, we do not think the contracting officer unreasonably determined that, based on prior procurement history, there was no reasonable expectation that offers from at least two responsible small business concerns would be received given the specifications that, as stated above, TLC has not established are objectionable. Under these circumstances, we cannot find that the contracting officer abused his discretion in not setting aside the procurement.

#### OTHER ISSUES

In its original protest letter, TLC seems to question the bid and performance bond requirements and the agency's refusal to disclose its market survey. In its report, the Air Force takes the position that the bonding requirements and non-disclosure of the survey are consistent with applicable regulations. TLC has not refuted the Air Force's specific arguments on these issues in its comments on the report.

Therefore, we consider TLC to have abandoned these protest grounds. The Big Picture Co., Inc., B-220859.2, Mar. 4, 1986, 86-1 C.P.D. ¶ 218.

The protest is denied.

*for Seymour E. Foss*  
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General Counsel