



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

# Decision

**Matter of:** Bironas, Inc.  
**File:** B-249428  
**Date:** November 23, 1992

Larry W. Bironas for the protester.  
Steve R. Woods for H&A Engineers, Inc., and Douglas O. Smith for Johnson Controls, interested parties.  
Timothy A. Beyland, Esq., and Capt. Garth E. Terry, Department of the Air Force, for the agency.  
Sylvia Schatz, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

## DIGEST

1. Agency properly permitted offerors option of extending current manufacturer's system with compatible equipment--in addition to option of replacing current system with that of different manufacturer--even though it may give manufacturer of current system a competitive advantage since the equipment already installed would have to be replaced only by offeror electing replacement option; first option clearly is reasonable (and potentially least costly) means of meeting agency's need, and competitive advantage is not improper where it resulted from firm's prior contracts and not improper or unfair agency action.

2. Allegation that competitive advantage of current system manufacturer improperly was created by agency's piecemeal small purchase of additional equipment is without merit where agency initially procured the current system on a competitive basis and subsequent installation of additional equipment on a building-by-building basis was necessitated by the need to replace the old equipment that became inoperable, and the inability to obtain adequate funding to replace the entire system in one procurement.

## DECISION

Bironas, Inc. protests the terms of request for proposals (RFP) No. F22608-92-R-0039, issued by the Department of the Air Force for the installation of an energy management and control system (EMCS) at Columbus Air Force Base, Mississippi. The protester argues that the manner in which the agency has met its EMCS requirement over a period of several years has resulted in an insurmountable, improper

competitive advantage for one manufacturer, effectively precluding Bironas from offering its system under the current RFP.

We deny the protest.

#### BACKGROUND

The EMCS is used to monitor and control heating, air conditioning, and ventilation equipment and utility systems in several buildings on the Columbus base. The company that installed the original EMCS on the base went out of business in 1985, rendering the EMCS obsolete, in part due to the impossibility of obtaining replacement parts. In 1989, it was determined to replace this system with a standard commercial system. The agency (through Army Corps of Engineers invitation for bids (IFB) No. DACA01-88-B-0024) competitively solicited the requirement for a plant maintenance complex housing an EMCS that ultimately would be base-wide. Johnson Controls was the successful offeror, and its METASYS system was installed; it did not immediately extend to all buildings, due to funding limitations. Thus, some buildings still used the prior system, some had the new Johnson Controls system, and others had no system. In 1990, after lightning damaged or destroyed the old EMCS equipment in several buildings, the Air Force began an in-house effort to replace the old equipment with Johnson Controls equipment purchased under small purchase procedures on a piecemeal, building-by-building basis, again, due to sporadic funding.

In March 1992, funding was approved for replacement of all of the old EMCS equipment, the requirement in issue here. The solicitation, as issued on May 15, required the replacement of the old equipment with equipment compatible with and functionally equivalent to the Johnson Controls METASYS equipment. In response to complaints by Bironas that the compatibility requirement would exclude it and most other firms from the competition, the Air Force issued amendment 0003, which gave offerors the option of avoiding the compatibility requirement by instead replacing all existing EMCS equipment (both the old system and the new Johnson Controls system) with a completely new EMCS. Amendment 0005 subsequently was issued to clarify that 22 of the buildings covered by the RFP contained Johnson Controls equipment, 23 contained the old equipment, and 17 contained no equipment.

The protester argues that the RFP is restrictive of competition because (1) only Johnson Controls can satisfy the compatibility requirement, and (2) no other offeror choosing the replacement alternative can be price competitive with Johnson Controls, since replacement would entail providing equipment (that Johnson Controls would not have to provide)

for the 22 buildings already containing Johnson Controls equipment. Bironas' conclusion that this restriction results in an unfair advantage for Johnson Controls is grounded in its belief that the agency improperly created the situation by recently increasing the number of buildings with Johnson Controls equipment; the more buildings that contain Johnson Controls equipment, Bironas reasons, the less practical it has become for other offerors to choose the replacement option. Bironas therefore asks that the option allowing offerors to install a compatible system be deleted, and that the RFP require the installation of a completely new EMCS.

### ANALYSIS

Where a solicitation requirement is challenged as unduly restrictive of competition, we will review the matter to determine whether the alleged restriction is reasonably related to the agency's minimum needs; if so related, it generally is permissible. Tek Contracting, Inc., B-245454, Jan. 6, 1992, 92-1 CPD ¶ 28; T-L-C Sys., B-223136, Sept. 15, 1986, 86-2 CPD ¶ 298.

The RFP option allowing offerors to replace the existing EMCS with a system compatible with the Johnson Controls equipment clearly was reasonably related to the agency's minimum needs. In this regard, it is unrefuted both that a single, base-wide, integrated system is a legitimate government need since it will eliminate the need for different types of communication cables and monitoring terminals (thereby decreasing installation, maintenance, repair, and energy costs) and that the base already has in place a substantial amount of Johnson Controls equipment. Extending the current system into additional buildings--with either identical or compatible equipment--therefore is a viable option for meeting the requirement and, indeed, appears to be potentially the most cost effective alternative for the government. T-L-C Sys., supra.<sup>1</sup>

The fact that Johnson Controls will have a competitive advantage over Bironas as a result of the compatible system approach does not preclude the agency from permitting it, so long as the advantage did not result from unfair motives or action by the contracting agency. T-L-C Sys., supra. The essence of Bironas' protest is that Johnson Controls' competitive advantage is the result of the ongoing equipment

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<sup>1</sup>There is nothing inherently improper in a compatibility requirement where, due to existing equipment or other proper considerations, the agency has a legitimate need for equipment to be interoperable. DSP Tech., Inc., B-220593, Jan. 28, 1986, 86-1 CPD ¶ 96.

purchases since 1990, which Bironas believes were improper. In this regard, Bironas suggests that the agency purposely proceeded with these unannounced procurements using small purchase procedures despite knowing that doing so would lock out competitors for this whole system procurement.

Bironas' argument is without merit. While the Air Force certainly could not properly purchase portions of an EMCS for the purpose of ultimately limiting competition, the record shows that this is not what happened here. As discussed above, the Air Force initially conducted a competitive procurement for the purpose of establishing a single integrated EMCS in 1988. The agency did in fact subsequently install additional Johnson Controls equipment on a building-by-building basis after 1990, but this was necessitated by the need for replacement systems in buildings as the old equipment became inoperable, together with the inability to obtain adequate funding to replace the entire EMCS system in one procurement (obtained March 13, 1992). Since the agency already had installed the core of the Johnson Controls system as a result of the 1988 competitive procurement, it was reasonable, we think, for the agency to purchase additional Johnson Controls equipment when the building-by-building need arose and the funds became available.

Bironas points to the agency's continued installation of Johnson Controls equipment even after this RFP was issued as evidence that the agency was not acting in good faith. However, the record shows that the equipment for these installations already had been purchased before the RFP was issued, and that the agency merely proceeded to install it with in-house personnel. The record shows that two purchases were made after issuance of the RFP but, the Air Force explains, these were only for repair parts, not equipment for expansion of the Johnson Controls EMCS.

We find nothing improper in the agency's actions, considering its immediate needs to replace equipment and funding limitations; there certainly is no evidence that the Air Force acted purposely to ultimately limit competition on this procurement. In this regard, we will not attribute unfair or prejudicial motives to procurement officials on

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the basis of inference or speculation. ERC Int'l Inc.,  
B-244299, Oct. 1, 1991, 91-2 CPD ¶ 274. It follows that any  
competitive advantage Johnson Cont. may have in competing  
for this requirement is not the result of improper or unfair  
agency action, and therefore is unobjectionable.

The protest is denied.

  
for James F. Hinchman  
General Counsel