



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Tek Contracting, Inc.

File: B-245454

Date: January 6, 1992

Bruce Blank, for the protester,
Marilyn W. Johnson, Esq., and Paul M. Fisher, Esq., Naval
Facilities Engineering Command, Department of the Navy, for
the agency,
Sylvia Schatz, Esq., David Ashen, Esq., and John M. Melody,
Esq., Office of the General Counsel, GAO, participated in
the preparation of the decision.

DIGEST

Specification requirement for certification by testing laboratory, prior to installation, of satisfactory performance of a radio fire alarm system does not unduly restrict competition, where specification was reasonably based on agency's initial need to ensure compatibility between transmitters and existing receivers already installed under a previous contract and provide immediate, reliable fire alarm protection for agency personnel.

DECISION

Tek Contracting, Inc. protests the terms of invitation for bids (IFB) No. 06-91-4301, issued by the Department of the Navy for the supply and installation of radio fire alarm transmitters for the 3rd Battalion Barracks, Marine Corps Recruit Depot, Parris Island, South Carolina. The transmitters are to be used in sending fire alarm signals from the barracks to King-Fisher brand fire alarm receivers already installed at the fire station. The protester challenges the specifications as unduly restrictive of competition.

We deny the protest.

The solicitation, as issued on July 31, 1991, provides that the transmitters must be compatible with the existing station fire alarm system manufactured by King-Fisher. The IFB also requires the radio fire alarm system (transmitters and receivers) as a whole to be listed by Underwriters Laboratories (UL) or approved by Factory Mutual System (FMS) as

meeting specified National Fire Protection Association (NFPA) standards.

Prior to bid opening, Tek protested that the requirement for UL or FMS certification unduly restricts competition because it prevents Tek from submitting an "equal" to the King-Fisher brand transmitter. The Navy then determined to clarify its actual requirements in this regard. Accordingly, the agency has prepared and approved a Justification and Approval (J&A), and plans to issue an amendment, which specifies the procurement of only King-Fisher transmitters, on the basis that only King-Fisher transmitters are capable of interfacing, without modification, with the existing stock of King-Fisher receivers, and that no other brand of transmitters could meet the solicitation requirement for UL or FMS certification in time to satisfy the agency's immediate requirement for a reliable radio fire alarm system. The Navy noted that neither laboratory has certified a mixed system, such as one consisting of a King-Fisher brand transmitter and a receiver manufactured by a company other than King-Fisher. It determined that certification of a mixed system would require at least 11 months and that such a delay was unacceptable in view of the limited "reliability of our current system" and the need to assure "the ultimate safety of the individuals occupying these facilities." In addition, the agency concluded that installation of other than King-Fisher equipment would require extensive and time-consuming retraining of maintenance technicians and fire department personnel, and the stocking of an inordinate number of spare parts.

Tek questions the need for UL or FMS certification on the ground that, as indicated in the commercial literature of its manufacturer, the Digitize-brand transmitter Tek proposes to offer is compatible with the King-Fisher receiver. In the alternative, Tek contends that the agency should accept an FMS certification of compatibility furnished after installation of the new transmitter and based upon a post-installation inspection.

In general, determinations of the agency's minimum needs and the best method of accommodating those needs are primarily matters within the agency's discretion. Glock, Inc., B-236614, Dec. 26, 1989, 89-2 CPD ¶ 593. Where, as here, a specification is challenged as unduly restrictive of competition, we will review the record to determine whether the restriction imposed is reasonably related to the agency's minimum needs. G.H. Harlow Co., Inc., B-245050; B-245051; B-245051.3, Nov. 20, 1991, 91-2 CPD ¶ ____.

We find that the specification requirement for certification of the fire alarm system reasonably reflects the agency's needs. The Navy reports that it needs certification of the

entire system "by a nationally recognized testing laboratory such as UL or FMS" in order to assure the compatibility and reliability of the system. Since satisfactory performance of the system is vital to the safety of the building's occupants, we find no basis to question a requirement for independent certification. Certainly, we see no reason why, given the vital importance of the system, the Navy must rely only upon the unsubstantiated, unverified claims of the manufacturer concerning the performance of the equipment and its compatibility with the products of another manufacturer.

Although we have held that a requirement for a specific testing laboratory's seal of approval is unduly restrictive because prospective contractors should be permitted to present other creditable evidence that their items conform to the established standards, see Stabbert & Assocs., Inc., B-218427, June 17, 1985, 85-1 CPD ¶ 692, that line of decisions does not apply here. The protester challenges the certification requirement not on the basis that its mixed system could be certified by some other independent laboratory, but because its mixed system cannot be certified until after installation of the Digitize transmitters. As such, Tek was not prejudiced by the restriction to UL or FMS certification. See T-L-C Sys., B-223136, Sept. 15, 1986, 86-2 CPD ¶ 298.

Further, we find wholly unreasonable Tek's claim that it should be permitted to first install the transmitters and then to demonstrate their compatibility with the King-Fisher receivers and the overall compliance of the resulting system with the NFPA standards. First, although Tek denies that FMS approval of the installed system will require a period of 11 months after installation, it is not clear precisely how long the FMS approval process, if ultimately successful, would require. Moreover, significant delay and disruption, and potential contract administration problems, would result if FMS refused approval after its inspection. More fundamentally, we do not believe the agency is required to install any system so vital to the safety of the building's occupants without receiving independent confirmation, prior to installation, of satisfactory performance. An agency need not risk the safety of its personnel upon the performance of an untested system.

The protest is denied.


James F. Hinchman
General Counsel