



Decision

Matter of: King-Fisher Company

File: B-256849

Date: July 28, 1994

Emerson B. Fisher and Richard P. Reichstein, Esq., Richard P. Reichstein, Ltd., for the protester. Craig E. Hodge, Esq., and Maj. Shawn T. Gallagher, Department of the Army, for the agency. Robert Arsenoff, Esq., and John Van Schaik, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Allegations of defective specifications are dismissed as academic where agency took prompt corrective action by amending the solicitation to correct alleged defects.
2. Allegation that solicitation improperly required independent laboratory certification of radio fire alarm system is denied where agency reasonably required the certification in order to comply with applicable safety standards.

DECISION

King-Fisher Company (KFC) protests the terms of request for quotations (RFQ) No. DAAD01-94-Q-0061, issued by the Department of the Army for a radio frequency fire alarm reporting system to be installed in buildings being constructed at the Yuma Proving Ground in Arizona to accommodate activities being transferred from another installation. The protester principally alleges that a certification requirement in the statement of work (SOW) is impermissibly restrictive of competition because it effectively limits competition to one vendor--Monaco Enterprises, Inc.

We dismiss the protest in part and deny it in part.

The RFQ was issued on March 7, 1994, as part of an effort to assess available sources among General Services Administration (GSA) Federal Supply Schedule (FSS) contractors for the acquisition and installation of the fire alarm system in question. In pertinent part, the SOW set

forth completion deadlines and required strict compliance with "Installation Fire Regulations."

The RFQ further required participating GSA schedule contract vendors to provide evidence of two forms of technical certification with their quotations. Specifically, paragraph 12a of the SOW required proposed radio frequency fire alarm reporting systems to be certified in the 406 to 420 Mhz UHF wave band by either Underwriters Laboratory (UL) or Factory Mutual Engineering and Research (FM); paragraph 12b required certification that the equipment in the system complied with Joint Frequency Allocation (J-12) for operation as a Frequency Modulated Fire Alarm Reporting System within the same UHF band.

On March 28--the date set for receipt of quotations--KFC filed this protest alleging that: (1) contract completion deadlines were not definite enough to prepare an intelligent quotation; (2) the "Installation Fire Regulations" with which the successful contractor had to comply were not set forth in the RFQ; and (3) the requirement in paragraph 12a of the SOW to provide evidence of UL or FM certification impermissibly restricted the system being procured to one manufactured by Monaco--the only firm with the required certification. In its comments on the agency report, KFC supplemented its protest by contending that (1) Monaco's estimated price of installing the system removed the procurement from the ambit of a GSA schedule purchase, and (2) the agency had colluded with Monaco by "telegraphing" its intention to require UL or FM certification with the quotations so that the firm could obtain early approval and, thus, become the only acceptable schedule vendor in the competition.

Subsequent to each set of allegations, the agency took partial corrective action which rendered certain of the issues advanced by KFC academic. On April 5, 7 working days after the protest was filed, the agency issued amendment No. 0004 to the RFQ which provided more definite completion

KFC filed this protest pro se and later retained counsel to assist in preparation of its comments. In the agency report, the Army withheld from the protester two documents--Tabs 7 and 9c--which were quotations from Monaco. We did not issue a protective order because KFC was not represented in the matter by counsel when the report was received. In KFC's comments on the agency report, newly retained counsel requested the documents. This request was late because it was not filed within 2 days of the protester's receipt of the agency report, as required by our Regulations. 4 C.F.R. § 21.3(f). In any event, there is nothing in the quotation which bears on the issues raised in the protest.

deadlines and eliminated the SOW reference to "Installation Fire Regulations." On May 18, 18 working days after the supplemental allegation regarding the inappropriateness of including installation in the GSA schedule procurement, the agency issued amendment No. 0005 removing installation from the RFQ.

Thus, the issues remaining for our resolution concern the UL/FM certification requirement. At the outset, we note that KFC has provided no details about the alleged collusion between the agency and Monaco to give that firm an advantage in the procurement. Our Regulations provide that protests must "[s]et forth a detailed statement of the . . . factual grounds of protest," and that failure to provide such information is a basis for dismissing the protest. 4 C.F.R. § 21.1. In this regard, a protester's unsupported allegations which amount to mere speculation are insufficient to form a basis for protest. Medical Serv. Corp. Int'l, B-252801, Apr. 19, 1993, 93-1 CPD ¶ 335. KFC's position regarding collusion is solely based on an inference that, because Monaco was the only firm to possess UL/FM certification when the RFQ was issued, the requirement was necessarily the product of improper consultations with that firm. This inference is inadequate to form a basis of protest and we, therefore, dismiss the allegation of collusion. Id.

Finally, as to the propriety of requiring UL or FM certification, the agency reports that the underlying reason for certification is to ensure that appropriate base line standards have been met to establish compliance with the Life Safety Code of the National Fire Prevention Association (NFPA) as well as other NFPA standards applicable by Army directives to procurements for the Yuma Proving Ground. The agency further states that it will be unable to occupy the buildings in which the fire alarm system is to be installed without UL or FM certification. The protester does not dispute these findings.

Given the impact of fire alarm equipment on the safety of personnel, and in the absence of any probative evidence from KFC to the contrary, we find that the Army here acted reasonably in seeking assurances from a source independent of bidders--in the form of certification from independent testing laboratories--that their proposed systems will work

²In a subsequent filing, KFC has suggested that removing installation from the schedule procurement will lead to a sole-source installation contract with Monaco. The agency reports, however, that it plans to have the system installed under an existing installation support contract.

safely and effectively. Accordingly, this aspect of the protest is denied. See Tek Contracting, Inc., B-254454, Jan. 6, 1992, 92-1 CPD ¶ 28.

The protest is dismissed in part and denied in part.³

/s/ Ronald Berger
for Robert P. Murphy
Acting General Counsel

³KFC claims that it is entitled to reimbursement of its reasonable costs of filing and pursuing the protest as the result of the corrective action taken by the Army. Our Bid Protest Regulations provide that a protester may be entitled to such reimbursement where corrective action is taken in response to a protest. 4 C.F.R. § 21.6(e) (1994). However, this does not mean that costs are due in every corrective action case; rather, we will find entitlement only where an agency unduly delays in taking corrective action in the face of a clearly meritorious protest. Special Sys. Servs., Inc.--Entitlement to Costs, B-252210.2, June 8, 1993, 93-1 CPD ¶ 445. Here, the agency took corrective action in 7 working days in the first case and 18 working days in the second case--well within the 25 working day time frame for filing an agency report. Such corrective action, taken early in the protest process, is precisely the kind of prompt reaction to a protest that our Regulations are designed to encourage and we, therefore, find the award of costs to be inappropriate in this case. Id.