



**The Comptroller General  
of the United States**

Washington, D.C. 20548

## **Decision**

**Matter of:** Federal Labs Systems  
**File:** B-224258  
**Date:** February 4, 1987

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### **DIGEST**

1. United States Marshals Service's decision to limit a procurement for metal detectors for use in federal buildings and courthouses to the two sources which it reasonably finds can provide the most sophisticated equipment currently available is proper where it can be demonstrated that the acquisition is urgently needed to ensure the security of the federal judiciary.
2. Agency unnecessarily used national security exemption to justify other than full and open competition when it could have justified the limitation on other grounds under the Competition in Contracting Act of 1984.

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### **DECISION**

Federal Labs Systems protests the award of a contract for 221 walk-through metal detectors to Princeton Gamma Tech by the United States Marshals Service, Department of Justice, under invitation for bids (IFB) No. 86-7037A. Federal Labs contends that the agency improperly excluded it from this procurement.

We deny the protest.

The Marshals Service, faced with an increase in the threats upon federal judges, states that it initiated this procurement to obtain sophisticated equipment, capable of detecting weapons and explosives, to be placed in federal buildings and courthouses throughout the United States. Some of the detectors are to be placed in locations not presently having such security devices, and the rest are to replace outdated equipment. The contracting officer, with the concurrence of the agency's competition advocate, determined that this procurement should be limited to firms capable of supplying the Outokumpu "Metor 118" walk-through metal detector or the equivalent "Dynascreen WT-50," available from Princeton Gamma Tech and Philips Electronics Instruments, Inc., respectively. Accordingly, on September 22, 1986, he executed a

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"Justification and Approval for other than Full and Open Competition," based on 41 U.S.C. § 253(c)(6) (Supp. III 1985), the exception for national security interests. The contracting officer further determined that disclosure of this intended acquisition would threaten national security and consequently did not submit information on it for synopsis in the Commerce Business Daily.

The agency issued the IFB on September 22, 1986, to the above-named firms, with bid opening scheduled for September 25. Only Princeton submitted a bid by that date. Accordingly, the Marshals Service awarded a \$692,907.93 contract to Princeton on September 30. The head of the procuring activity subsequently determined that suspension of performance would adversely affect the agency's ability to carry out its mission; deliveries therefore have continued notwithstanding this protest.

Federal Labs Systems contends that it was improperly denied a copy of the solicitation and was thereby unreasonably excluded from this procurement. The protester argues that the agency should not have restricted this procurement to the two designated firms, but instead should have also solicited manufacturers or suppliers of similar metal detectors such as itself.

The Marshals Service responds that it decided to limit this procurement because it believed that only the two sources solicited could immediately furnish a product that satisfied its strict requirements to ensure the safety of the federal judiciary. The Marshals Service states that many subversive groups have indicated their intent to disrupt the operation of the federal judicial system, and there also has been a rise in the number of individuals who have demonstrated an inclination to harm particular judges. Given this climate, the agency states, it was necessary immediately to acquire the most sophisticated metal detection equipment available, so as to provide for the security of judges. The agency, after carefully examining the evaluations and tests of various types of detectors conducted by other federal agencies, most notably a July 1986 study initiated by the Department of State in connection with embassy security<sup>1/</sup> and a 1985 study conducted by the United States Capitol

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<sup>1/</sup> This study involved seven manufacturers, including the protester, whose equipment is approved by the Federal Aviation Agency for use in domestic airports.

Police, concluded that the Outokumpu Metor 118 and its counterpart, the Dynascreen WT-50, were the only metal detectors currently available that would satisfy its most stringent needs.

Under the Competition in Contracting Act of 1984 (CICA), an agency may use noncompetitive procedures to procure goods where it determines that its need for the goods is of such an unusual and compelling urgency that the government would be seriously injured unless the agency limits the number of sources from which it solicits bids or proposals. 41 U.S.C. § 253(c)(2). This authority is further limited by a provision that requires agencies to request offers from as many sources as practicable. 41 U.S.C. § 253(e). We have approved the use of noncompetitive procedures when the agency's decision concerning urgent and compelling circumstances has a reasonable basis. See Reliance Machine Works, Inc., B-220640, Dec. 18, 1985, 85-2 CPD ¶ 685.

We find that the Marshals Service could have properly justified this limited competition under the above exception. We are not persuaded by the protester's position that its equipment possesses or could have been modified to provide the same capabilities as those to which the procurement was limited. As demonstrated by the tests conducted by the other agencies, which included the protester's product, the solicited sources manufacture metal detectors that are able to discriminate between various metal items to a higher degree, and with greater reliability, than other products currently available. In the State Department test, they scored highest in seven out of nine evaluation categories and were rated "clearly superior" to all other manufacturers' products.


The record demonstrates that the Marshals Service had an urgent need to acquire these units, considering what it describes as a sudden rise in the number of threats to particular federal judges and a general increase in terrorist activity at the time of this procurement. In addition, some courthouses and federal buildings have no metal detectors at all. In such instances of urgency, the agency need only consider those sources which can immediately satisfy its requirements and not those which have the potential to do so. See Arthur Young & Co., B-221879, June 9, 1986, 86-1 CPD ¶ 536. Moreover, synopsis is not required when the urgency exception is invoked. 41 U.S.C. § 416(c)(2).

In our opinion, however, the agency unnecessarily relied on the national security exception to justify its decision to limit the competition. This exception to the requirement for full and open competition permits agencies to use noncompetitive procedures where "the disclosure of the executive agency's needs would compromise the national security unless the agency is permitted to limit the number of sources from which it solicits bids or proposals." 41 U.S.C. § 253(c) (6). As expressed in the legislative history, the intent of this exception is to permit the use of noncompetitive procedures where the general publication or dissemination of the agency's needs would jeopardize national security. S. Rep. No. 98-50, 98th Cong., 1st Sess. 22 (1983). Agencies relying on this exception also are required to solicit as many sources as practicable. 41 U.S.C. § 253(e). For example, a security classification does not automatically justify a sole-source award, and classified procurements should be competed among all contractors having the proper clearance. S. Rep. No. 98-50, supra, at 22.

While we do not dispute the agency's contention that the public disclosure of the design specifications for the metal detectors might provide subversive individuals or groups with valuable information, both the performance capabilities required and the salient characteristics of the equipment have been made public in the unclassified solicitation and the State Department report. Moreover, the fact that metal detectors are being used in federal courthouses is common knowledge. Thus, we agree with the protester that disclosure of this procurement to other firms would not have compromised the national security.

As indicated above, however, we find that the limited competition was reasonable on grounds of urgency. We suggest that the Marshals Service modify its Justification and Approval accordingly, since under the urgency exception, this document may be executed even after award. 41 U.S.C. § 253(f)(2).

We deny the protest.

  
Harry R. Van Cleve  
General Counsel