



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Robertson and Penn, Inc.

File: B-226992

Date: June 9, 1987

DIGEST

Protest that a contracting agency's minimum needs are overstated and restrictive of competition is denied where the protester is unable to show that the agency's determination that changed circumstances required an increase in the minimum capacity of the washing machines and dryers bidders could offer and an imposition of a restriction on the maximum age of the machines at the time of contract installation was unreasonable.

DECISION

Robertson and Penn, Inc. (RPI), protests any award under invitation for bids (IFB) No. DABT31-87-B-0022, a small business set-aside issued by the U.S. Army, Fort Leonard Wood, Missouri, for the rental and maintenance of commercial washers and dryers. RPI contends that the machine capacities required by the IFB specifications are restrictive because they exceed the government's minimum needs and limit the number of machine models that a bidder may offer. RPI also contends that the requirement that the machines be no more than 3 years old (measured from the time of manufacture) at the time of contract installation is restrictive because it precludes a bidder from offering used or reconditioned machines. Accordingly, RPI requests that the IFB be canceled and the procurement resolicited using revised specifications.

We deny the protest.

The agency maintains that the IFB requirements that the washers and dryers have minimum capacities of 2.46 and 5.5 cubic feet, respectively, and be no more than 3 years old at the time of installation are necessary and reasonable. Under the agency's current rental and maintenance contract with RPI, the machines are required to fall within a

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capacity range of 9 to 16 pounds. A capacity of 16 pounds is equivalent to 2.3 cubic feet. The RPI contract has, the agency states, resulted in complaints from users about the inadequate washing capacity. Users also complained that washers were often out of service for repairs. The users, most of whom are at the installation for training purposes, have only limited time for using the machines due to training schedules. Because it is impracticable to install additional machines (due to lack of hook ups and a restriction on the ratio of machines to personnel), the agency needs more capacity per machine to meet the requirements of the users. Thus, the agency states, the required minimum capacities set forth in the IFB do represent the government's minimum needs. Similarly, the restriction to newer machines is to reduce their "downtime." Further, according to the agency, the capacity requirements are not restrictive since at least three manufacturers make large enough machines. The agency also points out that seven firms had bid on the procurement.

RPI disagrees. It contends that the circumstances existing when RPI's current contract was awarded have not changed so as to require washers or dryers with larger capacities.^{1/} RPI does not believe that the agency's needs are any different from those of other military installations that use washers with a capacity of 2.3 cubic feet or less. Even if some complaints have arisen from users of the machines, RPI argues that the agency has a contract for washing and drying services which the personnel can use. RPI also complains that it will be placed in an uncompetitive position by the increased capacity requirements because it will have to sell its 2.3 cubic feet-capacity washers and purchase new "extra large" washers in order to be able to bid on this IFB. In response to the agency's report, the protester further argues that if the agency specified a capacity of either 2.45 or 2.44 cubic feet, bidders could offer cheaper "large" rather than more expensive "extra large" machines.

The protester also argues that the 3-year age requirement is restrictive inasmuch as it essentially precludes the use of used washers (used washers with a minimum capacity of 2.46 cubic feet are almost nonexistent), and does not permit the use of reconditioned washers (reconditioned washers generally would be more than 3 years old). RPI states that the age requirement does not allow bidders to compete on an

^{1/}We note that although RPI has not abandoned its position concerning the capacity of the dryer, its specific arguments relate only to the washer capacity.

equal basis since it is allegedly impossible to determine when any particular washer or dryer was manufactured.

Because contracting officials are most familiar with their minimum needs and the conditions under which they can be met, our Office will upset a contracting agency's decision regarding how to best fulfill those needs only upon a clear showing that the decision was unreasonable. T-L-C Systems, B-223136, Sept. 15, 1986, 86-2 CPD ¶ 298. The agency has determined that it needs additional capacity for its washers and dryers and that this additional capacity cannot be met by the addition of more machines. It has decided that this additional capacity can be acquired only by specifying machines that have larger capacities than those used under RPI's current contract and by attempting to curb the amount of time that the machines are out of operation by limiting the age of the machines.

While it is clear that the protester objects to the agency's conclusion here, it has not been able to show that in fact the agency does not need the additional capacity the relatively new larger machines would provide. The fact that personnel can use other laundry services (presumably at their own expense) or that other Army posts use smaller machines (we are not told whether the number of machines at these other posts is similarly restricted) does not in our view indicate that the agency's decision to use relatively new larger machines at Fort Leonard Wood is unreasonable.

The protester's objections seem to be centered primarily on the fact that it would not be able to offer the machines it has used under the incumbent contract.^{2/} In view of the agency's market survey which showed that machines from at least three different manufacturers could be offered, and considering the fact that seven bids were received under the IFB, there is nothing in the record to indicate that the specifications here have unduly restricted competition.

Finally, since the manufacturer's serial number inserted on its machine indicates the date of manufacture, we find RPI's

^{2/}The government clearly has no obligation to continue a competitive advantage that an offeror may enjoy as the result of a prior government contract. See T-L-C Systems, B-223136, supra.

argument that the date of manufacture is not ascertainable
to be without merit.

The protest is denied.

for Seymour E. Pross
Harry R. Van Cleve
General Counsel