

Hearn - PL



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: XID Corporation

File: B-228052

Date: November 23, 1987

DIGEST

Requirement that offerors have units in place in several United States locations for purposes of evaluating machine operation and maintenance network is not unduly restrictive of competition merely because it does not provide for consideration of units in international locations, where record shows that, due to differences in environmental and geographical conditions, domestic units are best means of establishing offeror's ability to meet the agency's minimum needs.

DECISION

XID Corporation protests that United States Marshals Service (USMS) request for proposals (RFP) No. RFP-87-7054, for quantities of walk-through metal detectors, is unduly restrictive because it requires offerors to have units in place in the United States for evaluation purposes. We deny the protest.

The USMS is procuring the metal detectors on behalf of the United States courts for use in federal court facilities. The RFP solicited offers for delivery and maintenance for 126 machines to be installed at 102 different locations within the continental United States. The RFP, as amended, solicited offers on a "brand name or equal" basis and designated the Meteor 118, or equal. It listed a number of salient characteristics, including the ability to operate in all the various power conditions within the United States and adaptability to changes in voltage, frequencies, and grounding conditions. Under the warranty provision, the successful contractor would be required to respond to a repair call within 24 hours after telephonic notification and have the unit operational within 48 hours of notification of system failure.

Award was to be made to the offeror whose proposal, conforming to the solicitation, was determined to be in the best interests of the government, price other factors

040688

considered. The RFP included two equally weighted technical evaluation factors: (1) compliance with the specifications and salient features; and (2) maintenance and performance capability. Evaluation of maintenance and performance, relevant here, was to encompass past performance (including timeliness of response, frequency of repair or calibration calls), and overall equipment downtime. In order to technically qualify under the solicitation, offerors were required to show that the units offered had been in continued use for, preferably, a year at commercial or government facilities accessible to the government, so that inquiry and assessment could be made regarding the maintenance performance of the equipment and of the contractor. Additionally, for purposes of this assessment, the RFP called for offerors to have approximately 20 units in operation in, preferably, 5 different locations within the United States, along with documentation of service to those units, and a map of their installation and management support organization showing a capability to respond to maintenance requests. The RFP explained that the USMS has no capability to service the X-ray screening systems and that because of the high level of security required in court facilities, a fast, effective maintenance service was essential.

XID submitted a proposal but, prior to the closing date, protested the requirement for units in service in the United States as overly restrictive and tantamount to a sole-source procurement. The protester states that it has not installed the required number of units within the United States (XID units apparently have been installed and are in service in only three locations within the United States), since the product it offers, the CEIA 02PN4, manufactured in Italy, is relatively new to the domestic market. The protester states that the equipment has been used extensively, and successfully throughout other parts of the world, and contends that the requirement for a proven track record within the United States is illogical since equipment that is successfully operating outside of the country should be successful within it, particularly since the domestic electronic environment is more stable than that in many foreign countries. XID emphasizes that it holds numerous service contracts and has demonstrated a proven track record for service and maintenance within the United States for equipment other than the offered equipment, including other walk-through metal detectors. XID maintains that in lieu of the contested requirement, it would be more reasonable to evaluate the equipment on its own merits.

The agency argues that the requirement for units within the United States with a maintenance track record is reasonably related to the need for a high level of security in federal

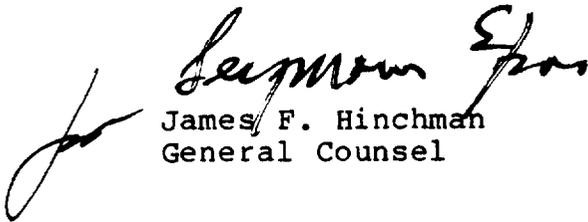
court facilities in the face of current threats and a projected case load of high threat trials. The agency states that their intention for the contested requirement was to establish a sample from which judgments of reliability and maintenance response could be drawn based on conditions most closely approximating the conditions under which the units will be supplied, i.e., diverse geographical locations within the United States with the environmental factors experienced in this country such as humidity, lightning frequency, and electrical supply. The agency maintains that, since it has no capability to service X-ray screening systems, the requirement for nationally installed units with documented service track records is essential for an accurate indication of the speed and effectiveness of an offeror's maintenance service.

We find the requirement unobjectionable. The USMS is intent on assuring that the ultimate awardee has an established capability--as demonstrated by an existing, dispersed maintenance network--to service the machines once they are installed. While information as to an offeror's international operations could be somewhat indicative of an effective maintenance network, we think a proven network spread throughout the United States reasonably could be deemed a better indicator of an offeror's ability to provide maintenance across diverse geographical areas within the United States. We conclude that the requirement for domestic units in service is reasonably tailored to the agency's need to obtain the most accurate information available as to an offeror's domestic maintenance capability, and serves the critical need for the protection of human life in federal court facilities. Our position here is consistent with our general view that where a solicitation requirement relates to human safety or national defense, an agency has the discretion to set its minimum needs so as to achieve not just reasonable results, but the highest possible reliability and effectiveness. See Marine Transport Lines, Inc., B-224480.5, July 27, 1987, 87-2 CPD ¶ 91; Doss Aeronautical Services, Inc., B-222914, Aug. 27, 1986, 86-2 CPD ¶ 232.

We note that the USMS did not apply the challenged requirement so strictly that offerors without the suggested number of domestic units could not compete at all. While XID received a reduced point score under the maintenance criterion because it did not offer what the agency wanted in terms of a proven maintenance network, the USMS did take into account the maintenance capability it found was indicated by XID's domestic units. This evaluation appears consistent with the RFP's evaluation scheme.

There also is no evidence in the record to support the protester's contention that the agency in effect conducted a sole-source procurement. The requirement was open to competition by all firms and, during the pendency of the protest, the agency awarded a contract to Astrophysics Research Corporation on an "or equal" basis, rather than to a firm offering the brand name specified in the solicitation. Six offers, including the protester's, were received, only one of which offered the brand name Meteor 118, the item XID asserts was the object of the agency's alleged sole-source intent.

The protest is denied.



James F. Hinchman
General Counsel