

McLiffie



Comptroller General  
of the United States

Washington, D.C. 20546

140154

## Decision

**Matter of:** Xerox Corporation

**File:** B-236072.2; B-236073.2; B-236074.2;  
B-236075.2; B-236076.2; B-236077.2;  
B-236078.2

**Date:** November 29, 1989

### DIGEST

1. Specifications for photocopying services requiring new or newly manufactured copiers, equipment in current production and 1 dedicated service technician for every 40 copiers provided are not unduly restrictive of competition where the agency presents a reasonable explanation of why the specifications are necessary to meet its minimum needs and the record fails to show that the restrictions are unreasonable.

2. Protests that solicitations contain defective quantity estimates which exceed agencies' actual needs are denied where estimates were obtained from and verified by specific user agencies as realistic estimates of their copier needs based upon historical agency use and best estimates of future demand for copying services.

### DECISION

Xerox Corporation protests seven requests for proposals (RFPs) issued by the General Services Administration (GSA) for copy services for various federal user activities pursuant to GSA's cost-per-copy (CPC) program.<sup>1/</sup> The solicitations were for fixed-price, requirements contracts for copying services (the user activity will pay a fixed-price for each copy produced) for up to a 3-year period (including a 1-year base period and two 1-year option

<sup>1/</sup> The protested solicitations include RFP Nos. FCGE-89-D223-N, FCGE-89-D224-N, FCGE-89-0003-N, FCGE-89-0004-N, FCGE-89-0005-N, FCGE-89-0006-N and FCGE-89-0007-N. The user agencies to be serviced under these procurements include the Marine Corps, Defense Mapping Agency, Internal Revenue Service, National Aeronautics and Space Administration, and the Department of the Navy.

periods). Xerox contends that the RFPs' requirements for new or newly remanufactured copiers, equipment in current production and 1 dedicated service technician per 40 copiers are unduly restrictive of competition. Xerox also contends that the quantity estimates of the user agencies' anticipated copying needs provided in the RFPs are inaccurate because they exceed the user agencies' actual needs.

We deny the protests.

The RFPs specified the number of copiers that the user activities anticipated needing over the entire contract term; the copiers were separated into several categories--designated as "volume bands"--corresponding to expected monthly production.<sup>2/</sup> The RFPs generally anticipated award to one contractor per location.<sup>3/</sup> The RFPs also provided that if during the term of the contract any copier was found to be producing more or less copies than were originally estimated, the contractor could recommend replacement of that copier with one which satisfied the actual copy volume need.

Under the RFPs, among other things, contractors must install and remove copying machines, relocate machines if necessary, train agency "key" operators, maintain and repair the machines and provide all consumable supplies (except paper). The RFPs also set out certain performance requirements that copiers must meet and emphasized the importance of copy quality and the continued reliability of the equipment. In this regard, contractors are required to provide preventative maintenance service, to respond to service call requests to repair copiers within a 4-hour period (2 hours for certain critical copiers), and to provide substitute units where repairs cannot be made within 24 hours. CPC contractors are also required to stock backup equipment in each volume band and maintain an inventory of parts necessary to service the copier machines. The RFP basically called for award to the technically acceptable offeror with the lowest cost per copy.

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<sup>2/</sup> For instance, copiers in volume band I could anticipate 0-5,000 copies per month, band II 5,001-15,000 copies per month, band III 15,001-30,000 copies per month, and so on, as defined in the solicitations.

<sup>3/</sup> GSA informs us that in accordance with its determination of the best interests of the government, it has awarded contracts under each of the seven solicitations despite Xerox's pending protests.

The solicitation provisions specifically challenged here require contractors to (1) provide new or newly remanufactured copiers expected to perform to new copier standards (as opposed to used or refurbished equipment); (2) offer copier models that are in current production; and (3) dedicate at least 1 technical representative for the service of every 40 copiers provided under the contract. Xerox essentially argues that the requirements calling for new copiers, in current production, and designated technicians are unnecessary and redundant in view of the performance requirements set out in the RFPs. In this regard, Xerox contends that since the contractor must meet very definite performance requirements, after having been found technically acceptable and responsible, the contractor should determine what equipment and maintenance methods are necessary to provide the required copying services.

In preparing a solicitation for supplies or services, a contracting agency must specify its needs and solicit offers in a manner designed to achieve full and open competition. 41 U.S.C. § 253(a)(1)(A) (Supp. IV 1986), and include restrictive provisions or conditions only to the extent necessary to satisfy the agency's needs. 41 U.S.C. § 253a(a)(2)(B). The determination of the government's minimum needs and the best method of accommodating those needs are primarily matters within the contracting agency's discretion. CAD/CAM On-Line, Inc., B-226103, Mar. 31, 1987, 87-1 CPD ¶ 366. Thus, where, as here, the protester contends that particular provisions in a solicitation to acquire services unduly restrict competition, we will object only where the agency's requirements stated as necessary to meet its minimum needs lack a reasonable basis. See Eastman Kodak Co., 68 Comp. Gen. 57 (1988), 88-2 CPD ¶ 455.

GSA reports that the contested requirements are necessary to meet its photocopying needs since they provide the primary methods of insuring that the government will receive reliable service and acceptable copy quality throughout the term of the CPC contracts.

As discussed more fully below, we find that Xerox has not shown that the new equipment, current production and dedicated technician requirements which it challenges are unreasonable.<sup>4/</sup> On the contrary, we find that each of these

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<sup>4/</sup> While the protester's underlying premise is that the requirements are unduly restrictive because the agency is soliciting copying services, not copy equipment, we do not find that this is significant in view of the fact that the

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requirements reasonably relates to GSA's (and the ultimate user agencies') need for quality copying services and copier equipment that remains highly reliable over the term of the contract. Further, the record does not indicate, and the protester does not claim, that Xerox cannot meet these solicitation requirements or that adequate competition has not been achieved at reasonable prices. Xerox merely suggests that without these contested requirements it could offer used or refurbished copier equipment that it believes can meet GSA's minimum needs at a lower price. Although Xerox expresses its disagreement with GSA's determination of its needs and the needs of the user agencies, we have no basis upon which to question the propriety of the specifications since Xerox simply has not shown that these requirements, which were reviewed and confirmed by agency technical experts, are unreasonable.

As far as the requirement for new equipment is concerned, the record shows that GSA, based upon its own experience and what it found to be the generally accepted industry practice, reasoned that new equipment would best limit the incidence of copier malfunction and "down time." In response to Xerox's contention that the repair and replacement provisions of the RFP are sufficient to minimize equipment malfunction and "down time," GSA asserts that these provisions are "no substitute for having a copier which will not break down in the first place," especially in light of the sensitive and critical agency missions performed by the user activities. Under the terms of the solicitations, GSA notes, complete repairs need not be performed within the 2 to 4 hour response time provided in the RFPs, if for example there is a lack of replacement parts available. Thus, this may result in the loss of at least 2 days use of the copier. The record also contains industry studies which show that copier machines have life spans of 3 to 5 years. Since age increases the frequency of mechanical part failure and "down time," we find reasonable GSA's conclusion that any costs that may be saved by permitting contractors to offer used machines would be outweighed by the loss of copier use due to malfunction. In this regard, we previously have recognized that a requirement for new equipment is not unreasonable where, as here, used equipment poses a risk of unacceptable "down time" because reliability deteriorates as equipment ages. See CAD/CAM On-Line, Inc., B-226103, supra.

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agency has persuasively shown the restrictions are needed to meet its copying needs.

Concerning Xerox's objection to the current production requirement, GSA explains that this requirement is directed at preventing contractors from using discontinued, obsolete copier models. Since GSA's experience shows that parts frequently need to be changed in the copiers, GSA was concerned that it may be difficult to quickly obtain a sufficient number of replacement parts beyond the contractor's backup inventory for models not currently being produced. Thus, GSA determined that requiring current production models would better insure parts availability which would in turn prevent yet another potential cause of increased "down time." GSA further indicates that requiring current production copiers also helps to insure that up-to-date and state-of-the-art technology will be provided, which is especially important in light of the expected 3-year duration of the service contracts and the rapid advancement experienced in copier equipment technology. We think the record reasonably supports GSA's rationale for requiring current production models.

Further, as to Xerox's challenge of the RFPs requirement that CPC contractors dedicate 1 service technician for every 40 machines provided, GSA reports that this provision was included in the solicitations to obtain prompt response to reported malfunctions and for continued maintenance. GSA explains that this requirement is based upon its own unsatisfactory experience with copier service contracts that failed to designate a particular technician/copier ratio, as well as successful experience with contractors which have maintained this type of ratio. Further, industry technical literature contained in the record lists vendor service as one of the highest priority considerations in selecting a copier. GSA also states that since the actual number of copiers ordered per location can increase over the term of the contract, the use of a technician ratio allows for a corresponding increase in technical service representatives to minimize maintenance and service delays and limit interruptions to copier production. There is nothing in the record to show the agency's determination is unreasonable.

Finally, the record shows that several firms (none of which took exception to the requirements protested here) submitted timely offers at reasonable prices under each of the solicitations. In fact, prices were in line with, and in some instances were lower than, prices obtained under previous recent CPC solicitations.

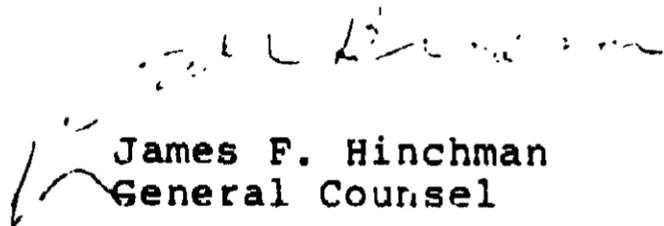
Xerox also protests that the quantity estimates stated in the solicitations are inaccurate because they exceed the user agencies' actual needs. In this regard, the protester essentially argues that since it was a recent contractor for

these services at one of the sites solicited here, it has its own historical information that reveals that actual copier usage is below that estimated in the RFP. In this regard, we initially note that our Office will not overturn an agency determination of its needs merely because an offeror believes its own calculations are more accurate than the contracting agency's. Cf. Range Technical Servs., B-231968, Nov. 14, 1988, 88-2 CPD ¶ 474.

GSA reports that the stated estimates were compiled from information obtained directly from the user agencies which has been verified by each activity as a true, realistic and accurate statement of its estimated needs. These estimates were based not only on historical usage but also upon each agency's determination of its anticipated demand for future copier services.

Although Xerox states that it has more accurate information regarding the user agencies' expected copying needs, we note that no formal documentation has been provided in support of these claims to override the credibility of the individual estimates provided by the actual user agencies themselves. The record also indicates that in the one instance where a user agency adjusted its quantity estimates, GSA amended the solicitation to reflect that new information. Further, the RFPs provide that if during the course of the contract a copier is found to be producing more or less than the amount estimated, the contractor can recommend that the copier be replaced with a different volume band machine. Thus, if the estimates do not ultimately reflect actual usage, the contractor has a mechanism to adjust its services accordingly. In any event, we have no basis to question the propriety of these estimates.

The protests are denied.

  
James F. Hinchman  
General Counsel