



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: DGS Contract Services, Inc.

File: B-249845.2

Date: December 23, 1992

Rickie Day for the protester.
Maj. Bobby G. Henry, Jr., Department of the Army, Office of the Judge Advocate General, for the agency.
Scott H. Riback, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that solicitation for rental and maintenance of washers and dryers is unduly restrictive because it requires contractor to install and maintain machines that will be no more than 3 years old during the term of the contract is denied where record establishes that older machines malfunction more frequently and that requirement is therefore necessary to reduce the delay and inconvenience caused by inoperative machines.

DECISION

DGS Contract Services, Inc. protests the terms of invitation for bids (IFB) No. DABT10-92-B-0091, issued by the Department of the Army for the rental and maintenance of washers and dryers at Fort Benning, Georgia. DGS argues that the solicitation is unduly restrictive because it requires the contractor to provide machines which are no more than 3 years old during performance of the contract. DGS also argues that the solicitation contains a restrictive requirement relating to the addition and removal of machines during performance.

We deny the protest.

The IFB calls for the award of a firm, fixed-price requirements contract for the lease and maintenance of an estimated 900 washers and 850 dryers for a base year and two 1-year options. The contractor is required to maintain the equipment in a serviceable condition, repairing or replacing any malfunctioning machine within 24 hours of receiving notice that it has become inoperative. The solicitation provides that no machine may be more than 3 years old during the term of the contract. The IFB also requires the

contractor to add or remove machines in response to quantity modification orders issued by the Army.

DGS maintains that the 3-year age limitation exceeds the agency's needs, since the requirement that the contractor is to repair or replace malfunctioning machines within 24 hours already assures that there will not be excessive machine downtime. More specifically, according to the protester, the government's actual minimum needs are for operational machines regardless of how old they are; DGS argues that the 24-hour repair provision will meet this need by ensuring that any malfunctioning machines, regardless of their age, will be operational within 24 hours. DGS maintains that other military installations do not impose an age limitation.

The determination of the government's minimum needs and the best method of accommodating them is primarily the responsibility of the procuring agency, since its contracting officials are most familiar with the conditions under which supplies, equipment, and services have been employed in the past and will be utilized in the future. Westbrook Indus., Inc., B-248854, Sept. 28, 1992, 92-2 CPD ¶ 213. In this regard, agencies have taken a variety of approaches to avoid excessive downtime occasioned by this need for repairs when soliciting for the lease of washers and dryers. For example, in Westbrook Indus., Inc., *supra*, the agency required that machines installed for a 3-year contract be no more than 2 years old at the beginning of the contract because the agency's historical data showed that, at the installation in question, machines had a useful life of 5 years. In JLS Rentals, B-219662, Nov. 20, 1985, 85-2 CPD ¶ 570, the agency required the machines to be no more than 2 years old at the beginning of the contract period and at the beginning of each option period. We found these restrictions to be reasonable because the agencies had demonstrated that the age limitation related to their need for washers and dryers that experienced minimal downtime. In both cases, the agency's experience indicated that downtime and the need for repairs escalated significantly as the machines aged.

We also find the Army's equipment age requirements here to be reasonable. The requirement does not reflect, as the protester suggests, a concern that broken machines cannot be put back into service, but concern with overall machine downtime. DGS does not dispute that older machines break more frequently than newer ones, and data presented by the Army on the number of repair orders issued during performance of the 3-year predecessor contract bear this

out.¹ The data show that 687 repair orders were issued for the washers and dryers in 1990, 1,416 in 1991 (an increase of more than 100 percent over 1990), and 1,206 during the first 7-1/2 months of 1992 (a rate of increase of approximately 30 percent over 1991). Thus, we think the 3-year limitation is a reasonable means of minimizing the breakdowns that obviously occur with increasing frequency as the machines get older.

The requirement that the contractor repair or replace a malfunctioning machine within 24 hours does not solve the Army's problem, since it does not keep the number and frequency of repair orders to a minimum. Even where a malfunctioning machine is timely repaired or replaced, the Army must bear the delay and inconvenience of having an inoperative machine until the repair is completed. Further, the fact that other installations may not impose an age limitation does not affect the validity of the Army's method here; each procurement action is a separate transaction which is not relevant to the actions taken in any other acquisition. Shirley Constr. Corp., 70 Comp. Gen. 62 (1990), 90-2 CPD ¶ 380.

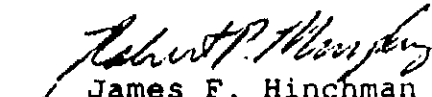
DGS also argues that the IFB requirement for the contractor to add or remove machines in response to contract modifications is improper. DGS explains in this regard that it will have to acquire new machines for this contract due to the 3-year age limitation, and will have to spread the cost of financing the new machines over the life of the contract in order to "balance" its bid. According to DGS, the provision permitting removal of machines during the contract term will result in undue financial hardship because it will not recapture the cost of a removed machine under those circumstances.

This argument also is without merit. We see nothing improper in a provision permitting the agency to adjust the number of machines based on logistical and personnel changes; this allows the agency to avoid paying for machines that it subsequently finds are not needed, and to obtain additional machines if and when the need for them arises. The fact that there is some financial risk to the contractor inherent in this provision does not invalidate it--agencies may structure a solicitation so as to impose financial risk upon the contractor. See Bean Dredging Corp., B-239952, Oct. 12, 1990, 90-2 CPD ¶ 286. In such cases, bidders are expected to take those risks into account and reflect those risks in their bid prices. In this regard, we note that DGS

¹The predecessor contract, under which DGS is the incumbent, also contains the 3-year age limitation.

has been the incumbent for this requirement during the last 6 years and should have sufficient historical information to enable it to structure its bid in light of this risk.

The protest is denied.


for James F. Hinchman
General Counsel