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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

B-198952, B-199166,
FILE: B-199652, B-200494, DATE: June 9, 1981
B-200514
MATTER OF: Space Age Surveyors, Inc.

DIGEST:

1. Requirement that surveyors be licensed by state in which boundary surveys of national forests are to be conducted is not unreasonable where surveys may also affect rights of adjoining private landowners and are to be recorded or recordable under state law.
2. Geographic restriction requiring surveyors to have office or facility located within specified distance from survey site is unreasonable where actual requirement is for local knowledge and experience. We recommend that in future procurements agency permit offerors to demonstrate local knowledge as substitute or alternative to meeting geographic restriction.

Space Age Surveyors, Inc. (SASI), has filed several ~~protests with our Office~~ opposing geographic and state licensing requirements which the United States Forest Service uses in solicitations for surveying services. Because SASI's objections in each of these cases are virtually identical, we will consider this a single protest against a standard Forest Service practice and limit our consideration to a single decision dispositive of all of these questions. SASI's protests are denied in part and sustained in part.

The Forest Service is a largely decentralized organization with its principal functions performed by several regional offices. Each of the regional offices conducts its own procurements for surveying services. The several solicitations to which SASI

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objects are for the resurvey of national forest lands, including the restoration or placement of corner markers, the delineation of the boundaries between Federal and adjoining private lands, and the preparation of documentation for recording. The solicitations generally require that the surveys be conducted by surveyors licensed by the state in which the survey is to be conducted and limit eligible offerors to those survey or engineering firms which have offices or facilities within a specified distance of the job site. SASI objects to these latter two requirements. We will discuss SASI's objection to the licensing requirement first.

State Licensing of Surveyors

SASI contends that the Forest Service's requirement for its surveyors to be licensed by the state in which the survey is to be conducted is unnecessary because these surveys are being conducted for the Federal Government on Federal land and are therefore exempt from state law. In support of this argument, SASI points out that state laws generally exempt Federal officers and employees from these requirements.

Although we note that the states generally have both civil and criminal jurisdiction within the national forests, 16 U.S.C. § 480 (1976), we believe that SASI's objections may be answered by examining the Forest Service's determination of its minimum needs without delving into the complexities of Federal-State jurisdiction. We have held that agencies may demand necessary qualifications of their contractors so long as the requirement accurately reflects the agency's minimum needs and does not unduly restrict competition. School for Educational Enrichment, B-199003, October 16, 1980, 80-2 CPD 286. We will not object to restrictions or requirements in an agency's statement of its minimum needs as long as they are reasonable. United States Crane Certification Bureau, Inc., B-197433, April 2, 1980, 80-1 CPD 247; United States Crane Certification Bureau, Inc., B-194066, October 18, 1979, 79-2 CPD 269; Maremont Corporation, 55 Comp. Gen. 1362 (1976), 76-2 CPD 181; Johnson Controls, Inc., B-184416, January 2, 1976, 76-1 CPD 4.

SASI has not persuaded us that this license requirement is unreasonable.

We note at the outset that the parties with whom we are concerned here are independent contractors to the Government, rather than Federal officers or employees, and that the state law exemptions to which SASI refers are therefore irrelevant. Second, and more importantly, these procurements generally require that the surveys either be filed or suitable for filing with the state in which the survey is conducted, a requirement we consider reasonable insofar as these boundary surveys may affect not only the property rights of the Federal Government but also those of the adjoining private property owners. Furthermore, since the recording of surveys with the state is subject to state law, and the states generally require that records of boundary surveys and corner restoration or monumentation be prepared by surveyors licensed by the state, the Forest Service's requirement for its surveyors to hold such a license is reasonable.

Geographic Limitation

SASI contends that the Forest Service's geographic restrictions on the location of eligible offerors are arbitrary because "mountains are mountains" and are not unique to the western states covered in these solicitations. SASI argues, in effect, that any surveying firm with experience in mountainous topography should be qualified to perform this work regardless of the location of the firms' offices or facilities.

The Forest Service permits each of its regions to limit the geographical area from which contractors for professional services will be selected if, in the judgment of the contracting officer, it would be in the best interests of the Government to do so. This policy is limited by a requirement that the restricted area contain at least three qualified firms. In one of the procurements before us, for example, the Forest Service limited its consideration to offerors with a bona fide business within 200 miles of the job site which the contracting

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officer justified on the basis that local knowledge was needed and a greater area would result in too many proposals to evaluate. The Forest Service received 11 proposals under this restriction.

Agencies have considerable discretion to determine the required extent of competition consistent with the needs of the agency. We have upheld geographic limitations which were adequately justified and which did not unduly restrict competition. Security Assistance Forces and Equipment International, Inc., B-195196, B-195196.2, July 10, 1980, 80-2 CPD 24; Leo Kanner Associates, B-194327, November 5, 1979, 79-2 CPD 318; DOT Systems, Inc., B-193153, March 7, 1979, 79-1 CPD 160; Plattsburgh Laundry and Dry Cleaning Corp.; Nu Art Cleaners Laundry, 54 Comp. Gen. 29 (1974), 74-2 CPD 27. On the other hand, we have questioned restrictions which did not accurately reflect an agency's minimum needs. Burton Meyers Company, B-190791, May 10, 1978, 78-1 CPD 354.

The Forest Service describes its concerns here as follows:

"* * * The mere fact of a surveyors 'ability to survey in mountainous terrain' is not the intended issue in this matter. The peculiarities of an area (whether mountainous, bench land or flat land) are based on vegetative types, climatic effects on growth and decay of vegetation, monument and monument accessory identification (past and present nomenclature - local jargon), access, crew acclimation to the elevation of the proposed job site and most importantly, knowledge of the practices and idiosyncrasies of the original Government Land Office (GLO) surveyors who surveyed the area.

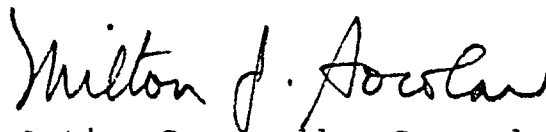
"* * * The job site surveyor has to have knowledge of the habits of the original GLO Surveyor he is retracing.

Such items as where to expect short cuts due to topography, nature and style of tree selection and scribing, sizes and expected markings on corner monument and accessories and precise care of taking and recording angles and distances all play an important role in successful recovery of the original evidence."

Although the Forest Service has persuaded us of the legitimacy of its concerns, we do not think they are accurately reflected by the use of geographic restrictions. We believe that the Forest Service's actual requirement is for surveyors with local knowledge and experience, rather than a requirement that they be from the immediate vicinity of the job site. The geographic restrictions needlessly exclude potential competitors which might well satisfy the Forest Service's actual requirements. We are therefore sustaining SASI's protest on this question, but will not recommend corrective action for these contracts because of the advanced stage of the work.

We recommend that the Forest Service consider the adoption in future procurements, as either a substitute or an alternative to the geographic restriction, of a provision allowing offerors to demonstrate their local knowledge in their technical proposals.

The protest is sustained in part and denied in part.



Acting Comptroller General
of the United States