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DECISION



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

FILE: B-204574

DATE: December 29, 1981

MATTER OF: Batch-Air, Inc.

DIGEST:

1. Where protest letter alleging improprieties apparent on face of solicitation was received after closing date for receipt of proposals but was preceded by telex message setting forth bases of protest, which was received prior to closing date, protest is timely.
2. Agency decision to procure by means of overall package approach rather than breaking out components for separate competitive procurements is matter for agency determination and is not subject to objection absent clear evidence that decision lacked reasonable basis.

Batch-Air, Inc. protests certain provisions contained in request for proposals (RFP) No. F34601-81-R-0482, issued by the Air Force. The solicitation is for the purchase of 18 - 707 used commercial Boeing aircraft, for the overhaul and subsequent installation of the 707 engines on existing Air Force aircraft, for other related design and engineering services, and for an additional quantity of overhauled spare engines.

Batch-Air objects to the RFP provision requiring award on an all or none basis. Batch-Air contends that the Air Force should break out the requirement for engine overhaul. Batch-Air also alleges that the period of time provided for proposal preparation was unjustifiably short, and that the agency improperly failed to partially set aside the procurement for small business. We find no merit to the protest.

The Air Force argues that Batch-Air's protest is untimely because it is based on alleged improprieties apparent on the face of the solicitation but it was not filed prior to the closing date for receipt of initial proposals as required by our Bid Protest Procedures at 4 C.F.R. § 21.2(b)(1) (1981). The agency states that Batch-Air's protest was filed by letter dated September 1, 1981. The closing date for receipt of proposals was August 31, 1981 at 3:00 p.m., Central Daylight Savings Time (C.D.S.T.). The September 1, letter, however, was preceded by a telex message setting forth Batch-Air's bases of protest. The telex message was time/date stamped at GAO at 3:01 p.m. Eastern Daylight Savings Time on August 31, 1981. Since that is 2:01 p.m., C.D.S.T., it is apparent that Batch-Air's protest was received by this Office prior to the time set for receipt of initial proposals; it therefore is timely and will be considered.

The Air Force reports that it considers separate award of any items to be impractical because of the interdependence and need for integration of the tasks involved. Specifically, the contracting officer states that what is required is the integration of commercial 707 aircraft components into the C-135 aircraft, and that each of these components requires an integration and design effort because of the dissimilarities between the aircraft and engine. The engine itself, in addition to overhaul, requires a design change and modification to the fire seal and plumbing. The contracting officer thus concludes that to assure that schedule and quality requirements are met, a single prime contractor must act as an integrator and control all overhaul and modification affecting the engine.

With respect to the requirement for spare engines, the agency argues that since the modified C-135 aircraft will require spare engine support as soon as they become operationally ready, the only feasible way to assure timely availability of the spare engines was to include them in the same buy with the initial aircraft and engine overhaul and modification. Additionally, the agency contends that because the modification documentation would not be available until after the completion of the first aircraft modification, there would not be sufficient time to develop a purchase request package and seek competition for the spare engines as a separate procurement.

Batch-Air argues, however, that each aircraft engine ordinarily is viewed as a separate unit for purposes of overhaul and modification and that work of this nature

customarily is provided by a number of contractors. Further, the protester alleges that the major engineering and modification effort required relates to the engine pylon assembly, which is not considered a part of the engine assembly, although it is the assembly to which the engine attaches. Batch-Air also contends that even if additional design engineering to adapt the engines and components to the C-135 aircraft is required, that engineering could be done by the prime contractor and provided to the engine overhaul facility for incorporation following the engine overhaul. The protester asserts that any such modifications would be minor and affect only the external parts of the engines.

Batch-Air further asserts that the alleged impracticality of severing the procurement and the alleged necessity for single contractor control amount to nothing more than a means of providing for single contractor responsibility and supervision purely for administrative convenience. Batch-Air also disputes the Air Force's contention that a separate procurement for the spare engines is not feasible. In this regard, Batch-Air notes that the first spare engine is required to be delivered more than one month prior to the time set for completion of the first aircraft modification.

We have recognized that the determination to procure by means of an overall package approach rather than by separate procurements for divisible portions of the total requirement is within the discretion of the contracting agency and will not be disturbed by this Office in the absence of clear evidence that it lacked a reasonable basis. Ronald Campbell Company, B-196018, March 25, 1980, 80-1 CPD 216; Burton K. Meyers and Company, B-187960, September 14, 1977, 77-2 CPD 187; 47 Comp. Gen. 701 (1968). In our view, Batch-Air has not made such a showing in this case.

We believe that the Air Force's position that the services being procured are interrelated and require overall coordination by a single contractor in order to assure integration of the tasks involved provides a reasonable basis for its decision to award one contract for all the services required. See Capital Recording Company, Inc., B-189319, February 15, 1978, 78-1 CPD 126. Further, we find nothing in the record to indicate that this decision was made purely for the administrative convenience of the Government. Rather, it appears that procurement by a total

package approach was viewed as the most logical and efficient method of procuring the various services required for the total reengining effort.

Moreover, with regard to the requirement for overhaul of the spare engines, we believe the Air Force could reasonably conclude that the most feasible way to assure the timely availability of the spare engines was to include them in the initial aircraft, engine overhaul and modification buy. While a separate procurement might have been possible, as Batch-Air claims, there are benefits to a total package approach in a procurement of this nature which the Government properly may take into account. We therefore find no merit to Batch-Air's contention in this regard. See Ampex Corporation, B-191132, June 16, 1978, 78-1 CPD 439; Capital Recording Company, B-188015, B-188152, July 7, 1977, 77-2 CPD 10.

We note that Batch-Air also suggests that this contract was not awarded on a fully competitive basis since only those companies having the capability to perform the entire effort were able to compete. The Government is not required, however, to cast its procurements so as to neutralize the competitive advantages which some concerns enjoy over others by virtue of their own particular circumstances. Ronald Campbell Company, supra.

In light of our conclusion that the Air Force's decision to procure on a total package basis is reasonable, we consider Batch-Air's contention that the time allowed for preparation of proposals was unjustifiably short to be academic. It is evident that Batch-Air was not in a position to compete for the entire requirement. Nor has it alleged that it could have been in a position to do so if the time for preparation of proposals had been longer. For the same reason, its assertion that the RFP should have included a partial small business set-aside is also academic. To be eligible to participate in the set-aside portion of a procurement, a small business concern must submit a responsive offer on the non-set-aside portion. Defense Acquisition Regulation §§ 1-706.6(d)(1); 7-2003.3(b)(1)(A) (1976 ed.).

The protest is denied in part and dismissed in part.

Larry R. Van Cleave
For Comptroller General
of the United States