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Capital

DECISION



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

FILE: B-202841, B-203536 **DATE:** March 17, 1982

MATTER OF: Professional Helicopter Service

DIGEST:

Protests against IFB pilot qualifications, which protester says unduly restrict competition, are denied, since agency may impose criteria reasonably related to its needs. Even if fixed objective criteria used are to some extent inherently arbitrary, protester has not shown agency's belief that they are necessary is unreasonable.

Professional Helicopter Service protests that pilot qualifications set by the Geological Survey (USGS) in invitations for bids (IFB) 1005W and 1034W are arbitrary and unduly restrictive of competition.

The IFBs sought bids to lease helicopters to support mineral-resource assessment studies in connection with USGS geological mapping operations. The contracts awarded under IFB 1005W support USGS operations in parts of the states of California and Washington; the contract awarded under IFB 1034W supports operations in a portion of Alaska. The protester did not bid on either solicitation.

We deny the protests.

The disputed provisions are identical in the two IFBs. Contractors are asked to submit with their bids data showing that each pilot who may be employed under the contract meets the IFB pilot qualifications. The required data includes references from so-called "party chiefs" (leaders of geological survey teams) with whom each pilot has worked in the past. The specifications state that, in addition to holding valid Federal Aviation Administration (FAA) commercial pilot and medical certificates:

"Pilots shall have logged flying time as pilot-in-command of at least the following amounts:

1) Helicopter.....3,000 hours

a) At least 1,000 hours of the 3,000 hours listed shall have been in remote and rugged terrain similar to that of the contract area and shall include at least three (3) field seasons minimum of 200 hours per season of geological-mapping and surveying-type helicopter operations involving numerous landings and takeoffs at unprepared sites, at different elevations, under varied wind and weather conditions, and sometimes involving heavy timber or brush; all requiring a high degree of pilot skill.

b) At least 400 hours of the 3,000 hours listed shall have been in mountainous terrain.

2) Light turbine helicopters.....100 hours

3) Last 12 months..... 50 hours

4) Make and model, including any subsequent series..... 50 hours*

5) Make, model and series of helicopter offered last 60 days..... 10 hours

6) Make, model and series of helicopter offered last 30 days..... 5 hours

* NOTE: Pilot flight hour requirements in make and model may be reduced by fifty (50) percent if pilot shows evidence of satisfactorily completing (1) the manufacturer's approved ground school and flight checkout, or (2) refresher training, consisting of at least three (3) hours flight time with a factory check pilot in make and model used on this contract."

Also, the IFBs permit the contracting officer to require that a proposed pilot demonstrate his ability during a USGS supervised evaluation flight or "check ride."

The protester states that it does not object to USGS's use of high qualification standards; it objects to what it views as arbitrary paper standards. It complains of the use of logs to prove experience, instead believes USGS should rely on a mandatory check ride, and says that employers in the aircraft leasing business commonly require that new pilots demonstrate proficiency by flying a check ride during which their skills are evaluated by an experienced pilot who accompanies them. It objects to the use of references from party chiefs, arguing that since the party chiefs are not pilots they are not qualified to judge a pilot's skills.

According to the protester, the USGS standards do not measure a pilot's skill and ability to exercise sound judgment, but rather, prevent many skilled and able pilots who could meet USGS's actual needs from qualifying. The protester complains that some of the USGS pilot criteria are imposed only by USGS while others such as the 3,000 hour total experience requirement are double similar criteria used by other Government agencies, including the Forest Service for helicopter fire suppression contracts in the same geographical areas. The protester also says that divisions of the Department of the Interior, other than USGS, require only 1,500 hours of pilot-in-command experience and 200 hours of mountain time for comparable work. Consequently, the protester states, the USGS standards serve only to increase USGS contract costs by eliminating competition, with the result that USGS receives only 3 or 4 bids on contracts which the protester believes would normally attract 15 to 20 bidders.

USGS admits that the pilot standards are stringent. It says the standards were developed over a period of 24 years for use in helicopter-supported geological-mapping and surveying operations in Alaska. USGS explains that they are now being applied to all USGS procurements to support survey work in mountainous terrain regardless of location, and for this reason, were included in IFB 1005W.

This action was taken, according to USGS, because the work in the contiguous 48 states is considered quite hazardous, because several accidents involving pilot error have occurred during operation in the lower 48 states, and because Alaskan pilots have compiled a comparatively exemplary safety record.

According to USGS, helicopter supported mapping operations in mountainous terrain are similar regardless of location. It views the operations to be supported as requiring

pilot experience and skill of the highest level of any type of helicopter activity, and says that:

"Generally the rugged terrain, high elevations, variable weather, varied operating conditions, locally extreme thick brush and forests, dense swamps, extensive snow and ice fields, are common to [operations in both Alaska and the contiguous 48 states]. The helicopters are used in isolated areas and do not have ready communication with weather facilities or contact with other pilots or repair facilities. The geological-mapping requirements and other requirements for mineral-resource assessment studies are generally identical. * * *"

USGS also believes that the use of the Alaskan criteria will increase productivity because pilots with more experience will be able to accomplish more work effectively than would less experienced pilots. USGS adds that it has not encountered difficulty in obtaining pilots meeting the IFB requirements.

Procuring activities enjoy broad discretion in determining their needs because Government procurement officials, familiar with the particular conditions under which equipment or services are to be used or performed are in the best position to know the Government's actual needs and to draft appropriate specifications. Sparklet Devices, Inc., B-199690, June 4, 1981, 60 Comp. Gen. ____ (1981), 81-1 CPD 446, aff'd, B-199690.2, October 8, 1981, 81-2 CPD 285.

Nonetheless, a procuring activity may not impose requirements which exceed its actual needs, and when a protester challenges a specification as unduly restrictive of competition, it is incumbent upon the procuring activity to establish prima facie support for its restriction. Constantine N. Polites & Co., B-189214, December 27, 1978, 78-2 CPD 437; Sparklet Devices, Inc., supra. The restriction will be upheld in such cases if there is a reasonable basis for it. California Computer Products, Inc., B-193329, July 3, 1979, 79-2 CPD 1.

We consider the protester's specific complaints in this light.

First, regarding the protester's belief that USGS should not utilize logged time in determining pilot qualifications, we point out that it is generally appropriate for an agency to ask that a contractor furnish records bearing on responsibility. Federal Procurement Regulations (FPR) §§ 1-1.1205-1(a), 1-1.1205-3(b). The FAA considers a pilot's log a "reliable record" of the aeronautical training and experience used to meet the FAA's requirements for a particular certificate or rating and the recent flight experience required to maintain the FAA license. 14 C.F.R. § 61.51 (1981). We understand that it is generally common practice for pilots to keep a log describing their principal activities (including the date, place or points of departure and arrival, and time flown); and such a log provides a record from which a pilot's background can be reconstructed. We see no basis for objection to the use of logs, as such.

The protester also believes USGS should not be permitted to insist that pilots furnish references from "party chiefs" (geologists leading survey teams), for whom they have worked previously. We do not agree.

In making award, USGS must determine not only that any pilot experience requirements are met but that the prospective awardee is otherwise responsible. FPR § 1-1.1204-1. Even if the party chiefs may not be a good judge of a pilot's skills, as the protester contends, they may be able to shed light on specific problems they experienced which bear on the pilot's and thus, contractor's ability to perform the work required by the contract.

We see no basis for objection in principle, therefore, to reasonable USGS requirements for data (including references) regarding pilots a contractor intends to employ. Cf., e.g., United States Crane Certification Bureau, Inc., B-197433, April 2, 1980, 80-1 CPD 247 and School for Educational Enrichment, B-199003, October 16, 1980, 80-2 CPD 286 (permitting use of accreditation requirements in appropriate cases).

We also do not agree with the protester's contention that USGS's criterion are excessive and arbitrarily prevent offerors from furnishing pilots of proper competence who simply do not happen to meet all of USGS's "paper standards." We first recognize that the use of objective criteria to express USGS's subjective pilot experience needs divides pilots into the classes which are to some extent inherently arbitrary.

Whether the use of such fixed, objective restrictions is appropriate depends upon whether the restrictions selected are reasonably tailored to the need which is to be protected. Gerber Scientific Instrument Company, B-197265, April 8, 1980, 80-1 CPD 263. Put another way, whether the restrictions used are supportable depends on whether they are necessary or whether there are other alternatives which the Government could reasonably use to reduce the likelihood that persons will be arbitrarily excluded from competing. See, e.g., Burton K. Myers and Company, B-187960, September 14, 1977, 77-2 CPD 187.

As indicated, USGS's requirements have been a matter of concern to it for a number of years. USGS states that its Alaska requirements evolved over a long period of time and are believed as now written to provide reasonable assurance that USGS's needs for safe efficient operations will be met. Further, the record shows that the adequacy of USGS's requirements for operations in the contiguous 48 states has been the subject of debate within USGS and the Department of the Interior for some time.

USGS has not ignored the protester's view that a check ride procedure should be made; it has reserved the right in its criteria to require a check ride. It believes, however, that such procedures are not an adequate substitute for previous experience.

Moreover, the appropriateness of criteria such as these must be examined in light of the risk USGS seeks to minimize. It is clear from the foregoing that the conditions under which USGS will operate present particularly serious hazards, which are not encountered at all, or to the same degree, in many other types of helicopter operations.

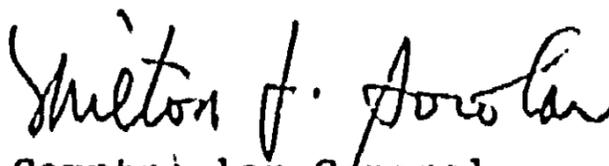
The hazards involved are underscored, we believe, by evidence the protester has offered showing that an accident has occurred under one of these contracts. The protester cites this evidence as showing that USGS cannot guarantee safety by imposing increasingly strict experience requirements each time an accident occurs. Whether this is correct or not, the fact that there continue to be accidents illustrates the importance of USGS's need to use means it views as appropriate to minimize the risks its work entails.

Further, USGS's criteria on their face address risks or needs USGS's experience shows are pertinent to its work. The criteria require that a pilot have substantial general experience (3,000 hours) including specific experience in operations related to USGS's needs: (1) 400 hours of

mountain flying experience and (2) three 200-hour seasons flying under conditions comparable to those he will face flying for USGS. It seems clear USGS attempted to tailor these criteria to its needs.

In our view, therefore, USGS has demonstrated prima facie support for the criteria it has selected. While the protester disagrees with USGS's choice of criteria, its disagreement relates to USGS's technical judgment. It is not the function of our Office to resolve technical disputes of this nature. Generally, our Office will not question an agency's technical judgment involving the exercise of discretion absent clear evidence that it has abused its discretion. Struthers Electronics Corporation, B-186002, September 10, 1976, 76-2 CPD 231. The protester has not shown that USGS abused its discretion in selecting its pilot criterion.

The protest is denied.

for 
Comptroller General
of the United States