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DECISION

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

FILE: B-208311 **DATE:** June 8, 1983

MATTER OF: Douglas County Aviation, Inc.

DIGEST:

1. Although a defaulted contractor may not be automatically excluded from competition, a defaulted supplier of air tanker services was not improperly excluded from competition where the services were urgently needed because of the start of the fire fighting season and the contracting officer limited his telegraphic solicitation to two firms that he considered qualified to commence the work within a matter of days.

2. The contracting officer acted reasonably in rejecting a defaulted contractor's unsolicited bid upon a telegraphic solicitation seeking to reprocure air tanker services because (1) the services were urgently needed, (2) the defaulted contractor's air tanker had failed inspection twice, and (3) acceptance of its bid could have caused unwarranted delay due to the possibility of repetitive reinspections of that aircraft. Moreover, the statutes and regulations governing Federal procurements are not strictly applicable to reprocurements in behalf of a defaulted contractor.

Douglas County Aviation, Inc., protests the failure of the Department of Agriculture, Forest Service, to accept its bid for the reprocurement of air tanker services pursuant to telegraphic solicitation No. 49-82-10.

We deny the protest.

The Forest Service awarded Central Air Services, Inc., the original contract to supply air tanker services for fire fighting at Rohnerville, California during the June 24 through October 11, 1982 season. When Central's air tanker did not pass inspection, its contract was terminated for default and a reprocurement contract was negotiated with

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the protester here, Douglas. When Douglas' aircraft also failed to pass inspection after two attempts, Douglas' contract was terminated for default.

On July 2, the day Douglas' aircraft failed its second inspection, the Forest Service issued a telegraphic solicitation for the reprocurement of the defaulted air tanker services to two firms, Aero Union Corporation and Hawkins and Powers Aviation, Inc. Although not solicited, Douglas learned of the reprocurement and, on the July 6 opening date, submitted a telegraphic bid of $937 per day. Aero Union submitted a second bid of $1,230 per day. The Forest Service rejected Douglas' low bid and awarded the reprocurement contract to Aero Union that same day.

Douglas protested that it should have been solicited for the reprocurement; that its low bid for the reprocurement was responsive; and that the rejection of its bid was therefore improper. Central, the awardee under the original IFB, separately protested the Forest Service's failure to solicit it for the reprocurement here in question, which protest we denied. Central Air Services, Inc., B-208499, December 4, 1982, 82-2 CPD 530.

The right of a defaulted contractor to participate in a resolicitation is not automatic and depends upon the circumstances of each case. Ikard Manufacturing Company, 58 Comp. Gen. 54 (1978), 78-2 CPD 315; Skip Kirchdorfer, Inc., B-192843, February 15, 1979, 79-1 CPD 111. We have already held that the circumstances of this particular reprocurement were such that it was not necessary for the Forest Service to solicit sources that it did not believe were capable of fulfilling its urgent requirements. Central Air Service, Inc., supra. We see no reason to hold otherwise in Douglas' case, which involved a more recent default and even more urgent circumstances, in that the cumulative delay resulting from the two defaulted contracts pushed the initiation of the 1982 contract well past the June 24 starting date of the Rohnerville fire season.

Further, we believe that the contracting officer acted reasonably in rejecting Douglas' unsolicited bid upon the telegraphic solicitation. As noted in his letter of July 8 rejecting Douglas' bid, the contracting officer concluded that even if its bid had been responsive "award would not have been made" because its tanker had been inspected twice and there was no certainty that it would pass if given another opportunity. In this regard, although Douglas

failed to furnish information identifying the air tanker it was offering in its telegraphic bid, Douglas states that it intended to offer the same aircraft that had twice failed inspection under the defaulted contract and that it had advised the contracting officer of this intent. Consequently, as the contracting officer states, he was faced with a situation where acceptance of Douglas' bid:

> "* * * would leave the Forest Service in the position of never being able to default a contractor who fails its contract inspection as long as the contractor continued to submit bids at the original contract price. Unless some other contractor were to bid lower than the defaulted contractor the Forest Service would have to repeatedly make award to the defaulted contractor, set yet another date for inspection, and keep reinspecting the air tanker until it passed or the fire season passed. In the meantime, the need for air tanker service would have to be met by issuing a series of interim short-term contracts at a significant cost in time and effort and at the risk there would be other air tankers available should the defaulted bidder ever give up bidding. In dealing with the critical need for air tanker services during the fire season such uncertainty can not be tolerated."

We have long held that when a reprocurement is for the account of a defaulted contractor, the statutes and regulations governing procurement by the Government are not strictly applicable. Hemet Valley Flying Service, Inc., B-191922, August 14, 1978, 78-2 CPD 117. Moreover, although Hemet involved an air tanker service contractor defaulted at the start of the forest fire season, we did not object to the Forest Service's direct award of the reprocurement contract to the second low bidder under the original solicitation, thereby eliminating the need for a solicitation and the possibility of the defaulted contractor bidding against it.[1] We do not believe that the contracting officer's attempt here to obtain the limited degree of competition possible under a telegraphic solicitation materially alters this situation by bringing into play the rules governing competitive Federal procurements

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[1]Incidentally, Douglas obtained its defaulted contract in this manner, through noncompetitive award after Central's default.

or otherwise requiring reconsideration of Douglas' air tanker.

In summary, we believe that the contracting officer's decision not to solicit Douglas was, in effect, an advance determination not to reconsider Douglas' air tanker. Given the circumstances that this was a reprocurement in behalf of a defaulted contractor, and taking into account (1) the urgent need for air tanker services, (2) the fact that Douglas' air tanker had twice failed inspection, and (3) the need to avoid the possible delay associated with repetitive rebids and reinspections of that air tanker during the fire fighting season, we believe that his determination had a reasonable basis.

The protest is denied.

for Milton J. Socolar
Comptroller General
of the United States