

Hyer

DECISION



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

FILE: B-221375 **DATE:** April 3, 1986
MATTER OF: Pacific Sky Supply, Inc.

DIGEST:

1. Protest against geographic restriction (limiting procurement to firms able to perform contract at contractor facilities located in Pacific Theater defined by Department of the Air Force) is denied where military contracting agency establishes that restriction is necessary to meet its actual need for military operational readiness.
2. Protester, which cannot comply with proper geographic restriction and, thus, is not an actual or prospective offeror under the challenged request for proposals, is not an "interested party" under bid protest regulations for purposes of challenging provisions of the solicitation other than the geographic restriction.

Pacific Sky Supply, Inc. (PSS), protests the terms of request for proposals (RFP) No. F41608-85-R-9675 issued by the San Antonio Air Logistics Center, Kelly Air Force Base, Texas, for servicing aircraft engines in the Pacific Theater.^{1/} The protested terms include both a geographic restriction and source approval requirements. PSS contends that the terms are unduly restrictive of competition, ambiguous and exceed the Air Force's minimum needs. PSS further protests its late receipt of certain "bidding information."

Since our resolution of the geographic restriction issue against PSS is dispositive of the protest, we deny the protest in part and dismiss it in part.

^{1/} The RFP defines the Pacific Theater as including the countries of Japan, South Korea, Philippines, Thailand, Australia, Indonesia, Singapore, New Zealand, Hong Kong and Malaysia.

The RFP requires contract performance at contractor facilities located in the Pacific Theater. The work consists of repair, overhaul, modifications, testing, preparation for storage, and shipment of the Allison T-56 engines used on C-130 aircraft. The Air Force reports that the geographic restriction results from its overseas workload program, an Air Force strategy designed to: (1) improve combat capabilities in the European, Pacific and Middle East Theaters; and (2) increase political leverage in negotiations with United States allies. Under this strategy, the combat capability (operational readiness/sustainability) of overseas Air Force units is increased by moving logistics support for the engines closer to the unit's actual operating areas, by situating support facilities in the rear-areas of the respective theaters, while simultaneously maintaining a backup capability inside the continental United States (CONUS). Kelly Air Force Base is the CONUS backup for the T-56 engine. The strategy contemplates that the Theater capability will be used to:

". . . accomplish overseas that peacetime workload which makes the highest contribution to combat capability/or which exceeds the capability of the CONUS organic peacetime capability."

The strategy for the Pacific Theater specifically calls for the employment of contractors to work on those aircraft engines which can make the "greatest contribution to combat capability." The Air Force expects increased operational readiness from "reduced depot turnaround time, shorter transportation pipelines, reduction in transportation costs and the increased number of . . . [engines] available." The increased political leverage is expected to result from the availability of overseas workloads to use as setoffs and bargaining chips in negotiations with allies of the United States.

PSS contends that there is no reason why the engines cannot be serviced anywhere in the world. PSS points out that, because of the availability of air freight, "only a few extra hours would be required for delivery by a firm outside the Pacific Theater." As a result, PSS takes the position that a more rational restriction would be the contractor's proximity to an airport. PSS urges that the validity of its position is established by the fact that Pacific Theater work is currently performed at Kelly Air Force Base, Texas. On this basis, PSS concludes that the geographic restriction is unreasonable since it exceeds the Air Force's actual needs.

We have held that geographic restrictions are not unduly restrictive of competition where they represent the actual needs of the contracting agency and that the scope of a particular geographic restriction generally should be decided by the contracting agency since it involves consideration of the nature of the services being procured, past experience, market conditions and other factors, including the adequacy of competition. Descomp, Inc., 53 Comp. Gen. 522 (1974), 74-1 C.P.D. ¶ 44. Nevertheless, where it is established that the geographic restriction imposed exceeds the contracting agency's actual needs, the restriction will not be upheld.

We recognize that operational readiness is an actual military need justifying restrictions on competition. See Industrial Acoustics Co., et al., B-194517, Feb. 19, 1980, 80-1 C.P.D. ¶ 139; General Telephone Co. of California, B-189430, July 6, 1978, 78-2 C.P.D. ¶ 9. We also agree with the protester that the work called for can be performed in a proper facility regardless of location. However, the geographic restriction used here reflects the Air Force's concern that the facility be in close proximity to military units using the engines. While, in a civilian context, a solicitation requirement that a service (repair and return of an engine) be provided within a set time limit might be preferable to a geographic restriction that the service provider be located within a specified area, see, for example DOT Systems, Inc., B-193153, Mar. 7, 1979, 79-1 C.P.D. ¶ 160, we think that in a military environment, where factors such as hostile forces and weather may disrupt normal transportation, a geographic restriction, such as the one in this case, is not unreasonable. For example, since Air Force units generally are stationed overseas for combat should the need arise,^{2/} we do not find it unreasonable for the Air Force to conclude that its operational readiness is increased when it shortens the length and vulnerability of its supply lines. Consequently, we find the instant geographic restriction reflects the actual needs of the Air Force and is not subject to our objection.

^{2/} The RFP requires a 200-percent surge capability over routine production in the event of war during the term of the contract.

In its report, the Air Force raised the issue of PSS's intent or ability to establish a facility in the Pacific Theater by noting that ". . . PSS has not asserted that it is located within the Pacific Theater" PSS has not stated, in either its initial protest or its comments on the agency report, that it could or would provide the required services in the Pacific Theater consistent with the geographic restriction. Thus, since we conclude that the geographic restriction is proper, we find that PSS is no longer an "interested party" within the meaning of 4 C.F.R. § 21.0(a) (1985) for purposes of our consideration of the other issues which PSS has raised, since PSS can no longer be deemed an actual or prospective offeror under the challenged RFP. See Julie Research Laboratories, Inc.-- Reconsideration, B-219370.2, Sept. 17, 1985, 85-2 C.P.D. ¶ 294. Accordingly, we dismiss the remainder of PSS's protest.

The protest is denied in part and dismissed in part.

for *Stephen Sfor*
 Harry R. Van Cleve
 General Counsel