



Comptroller General
of the United States

101:8293

Washington, D.C. 20548

Decision

Matter of: TLC Services, Inc.

File: B-254972.2

Date: March 30, 1994

Elizabeth Aviles-Rogers for the protester.
Timothy A. Beyland, Department of the Air Force, for the agency.
Charles W. Morrow, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that solicitation combining landscaping services and guardrail construction should be divided in order to alleviate the bonding requirements for the nonconstruction work is denied where consolidating the requirements into one procurement was reasonably necessary to meet the agency's minimum needs.

2. Contracting agency was required by the Miller Act, 40 U.S.C. §§ 270a-270f, to include performance and payment bond requirements in a procurement involving construction work in excess of \$25,000.

DECISION

TLC Services, Inc. protests the bond requirements in invitation for bids (IFB) No. F49642-93-B-0053, a total small disadvantaged business (SDB) set-aside issued by the Department of the Air Force for landscaping and guardrail construction at Andrews Air Force Base, Maryland.

We deny the protest.

The IFB, issued on August 13, 1993, contained requirements for bidders to furnish a bid guarantee in the amount of 20 percent of the bid price or \$3 million, whichever is less, and for the awardee to furnish a performance bond equal to 100 percent of the total contract price and a payment bond in an amount contingent upon the total contract price. In response to an earlier TLC protest, the Air Force eliminated the requirement for performance and payment bonds on the nonconstruction portion of the contract. Nevertheless, TLC again protested the bond requirements on November 15, asserting that the landscaping

should have been broken out and made the subject of a separate procurement. The Air Force received three bids in response to the IFB on November 16; TLC did not bid.

TLC objects to the bond requirements on the basis that the Air Force allegedly could divide its requirements in two--landscaping and construction--and thus eliminate the burden of bonds for the nonconstruction work.

The Air Force reports that the landscaping and construction work were consolidated in this IFB because of the interrelationship between the elements of the work and the nature of the work itself. The two requirements were combined under one contract in order to promote efficiency, cost savings, and prompt performance. The landscaping and guardrail work was required to be done concurrently, which gave rise to the need for one contractor to coordinate the efforts of the different required trades. For example, the Air Force reports that if the requirement were split, the government would have to coordinate scheduling of the work so that the contractors were not working at the same time, and that delays and damages caused by either contractor with respect to the other's work would have to be borne by the agency. Thus, the Air Force asserts that integrating the two requirements was necessary to meet the legitimate needs of the government.

The Competition in Contracting Act of 1984 generally requires that solicitations permit full and open competition and contain restrictive provisions and conditions only to the extent necessary to satisfy the needs of the agency. See 10 U.S.C. § 2301(a) (1988). While integrating several requirements into one procurement may have the effect of restricting competition, we have not objected to this approach where to do so is reasonably necessary to meet the agency's minimum needs. See Airport Markings of Am., Inc., et al., 69 Comp. Gen. 511 (1990), 90-1 CPD ¶ 543. Based upon our review of the record, we find that the Air Force has reasonably supported the need to integrate the landscaping and construction requirements into one procurement to allow for efficient and economical processing of the contract work. Id.

Instead of refuting the reasonableness of the consolidated requirement, TLC complains that the bond requirements for the construction work will restrict SDB participation. TLC argues that the Air Force may rely upon evaluating the bidders' responsibility and the default provisions of the contract in lieu of imposing bonds.

While in some instances an agency has the discretion whether to impose bonding requirements in order to secure fulfillment of the contractors' obligations, the Miller

Act, 40 U.S.C. §§ 270a-270f (1988 and Supp. IV (1992)), implemented by Federal Acquisition Regulation § 28.102-1, requires performance and payment bonds in any construction contract exceeding \$25,000. Here, the IFB reflects that the construction line items will substantially exceed \$25,000. Therefore, the Air Force was required by law to impose bond requirements for the construction work.

The protest is denied.

/ Robert P. Murphy
Acting General Counsel