



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Delta Oaktree Productions

File: B-248903

Date: October 7, 1992

Oscar A. Kaufman for the protester,
Sandra G. Zimmerle, Esq., Department of the Air Force, for
the agency.
Christine F. Bednarz, Esq., and James A. Spangenberg, Esq.,
Office of the General Counsel, GAO, participated in the
preparation of the decision.

DIGEST

1. The General Accounting Office will not consider the applicability of the Service Contract Act to a given procurement where the Department of Labor has already determined that the Act applies and has issued a wage determination for the solicitation and the Department of Labor's position is not clearly contrary to law.

2. Agency's determination to procure graphic arts services on the basis of a single award is not objectionable where the services varied greatly in the level of difficulty and the agency reasonably feared that it would receive no reasonable offers for the more complex, time-consuming tasks if it allowed multiple awards.

DECISION

Delta Oaktree Productions protests the terms of request for proposals (RFP) No. F33601-92-R-0129, issued by the Department of the Air Force, for visual information graphic arts services at Wright-Patterson Air Force Base, Ohio.

We deny the protest in part and dismiss it in part.

The RFP, as amended, requires the contractor to provide the necessary personnel, equipment, tools, materials, and supervision to perform the specified visual information graphic arts services in support of the newly created Air Force Material Command (AFMC) headquartered at Wright-Patterson Air Force Base. AFMC is a merger of two predecessor commands, the Air Force Logistics Command, which fulfilled its graphic arts requirements through an in-house organization,

and the Air Force Systems Command, which fulfilled its graphic arts requirements by contract. The Air Force has retained the in-house capability and issued the RFP to satisfy any overflow requirements that may not be met in-house. The contract work is to be performed at an on-site facility.

The RFP contemplates the award of a requirements contract, incorporating Federal Acquisition Regulation (FAR) § 52.216-21, Alternate I, to achieve this purpose. See FAR § 16.505(d). The RFP also incorporates provisions implementing the Service Contract Act of 1965, 41 U.S.C. §§ 351-358 (1988), including a wage determination issued by the Department of Labor establishing the minimum wages to be paid to service employees. The RFP further provides for a single award to the lowest priced, technically acceptable, responsible offeror.

Delta first protests the determination that this procurement is subject to the Service Contract Act, which generally applies to any federal contract, "the principal purpose of which is to furnish services," and requires the contractor to pay its employees minimum wages and fringe benefits, as determined by the Department of Labor. 41 U.S.C. § 351.

We decline to consider the matter because the Department of Labor has already determined that the procurement is subject to the Service Contract Act, in response to the Air Force's Notice of Intention to Make a Service Contract, and has issued a wage determination for the solicitation. 29 C.F.R. §§ 4.3, 4.4 (1992). The Department of Labor, not our Office, has the primary responsibility for interpreting and administering the Service Contract Act, and a contracting agency may follow the Department of Labor's views on the applicability of the Service Contract Act unless they are clearly contrary to law--which is not the case here. 29 C.F.R. § 4.101(b); Associated Naval Architects, Inc., B-221203, Dec. 12, 1985, 85-2 CPD ¶ 652. Accordingly, if Delta wishes to challenge the applicability of the Service Contract Act to the present solicitation, the firm's proper course of action is to bring the matter before the Department of Labor's Wage and Hour Division Administrator for an official ruling. 29 C.F.R. § 4.101(g).

Delta argues that a single award is inappropriate because the RFP resembles both a requirements contract and a basic ordering agreement (BOA), and a BOA customarily employs a multiple-award format. Delta misconstrues this RFP--it clearly contemplates the award of a requirements contract, which in no way resembles a BOA. A requirements contract creates a binding obligation upon the government to order from a particular contractor all of its actual requirements for specific supplies or services during the contract

period, while a BOA is simply an understanding, not an obligation, that the government may enter into future contracts should the need for certain supplies or services arise. See FAR §§ 16.503, 16.703; Humco, Inc., B-244633, Nov. 6, 1991, 91-2 CPD ¶ 431, recon. den., B-244633.2, Apr. 2, 1992, 92-1 CPD ¶ 339; TVI Corp., B-224656, Dec. 9, 1986, 86-2 CPD ¶ 661. There is no procurement statute or regulation that dictates making multiple awards here. See Kenneth L. Latham, B-245137, Dec. 18, 1991, 91-2 CPD ¶ 559.

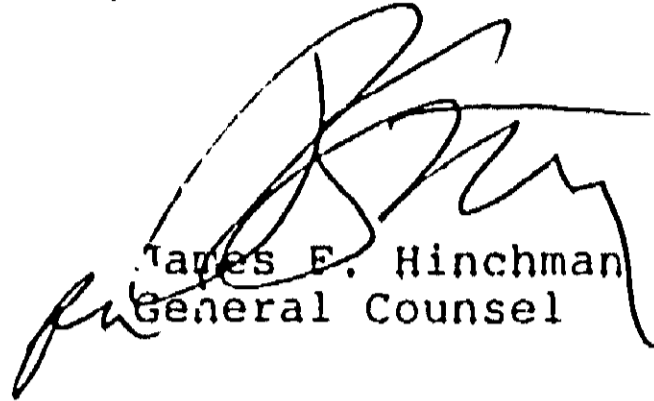
The protester appears to argue that the single award unnecessarily restricts competition since the solicited services, set forth in numerous line items in the RFP, are severable and capable of being performed by multiple contractors. Although a single award for a "total package" can restrict competition, see The Caption Center, B-220659, Feb. 19, 1986, 86-1 CPD ¶ 174, the decision whether to procure on a total package basis, rather than by separate procurements or awards for divisible portions of a requirement, is generally a matter within the procuring agency's discretion. IVAC Corp., B-231174, July 20, 1988, 88-2 CPD ¶ 75. We will not disturb an agency's decision that a single integrated contract is necessary to meet its needs unless that determination lacks a reasonable basis. Id.; Eastman Kodak Co., 68 Comp. Gen. 57 (1988), 88-2 CPD ¶ 455.

The Air Force states that the graphics services required under the RFP vary greatly in difficulty and that a multiple-award format carries the risk that the government might not receive any reasonable offers for the complex, time-consuming tasks. The agency sought to avoid this risk by the use of a single contract for all its simple, intermediate, and complex requirements, and to provide that the services will be performed at an on-site facility. The Air Force also notes that it previously procured both photography and graphics arts services in the same solicitation, but has divided these requirements in an effort to facilitate competition. We find no basis to object to the agency's determination to make a single award.

Finally, Delta alleges that the RFP gave the incumbent contractor an unfair competitive advantage. Delta does not detail the basis for this allegation and we consider it to have abandoned this issue, because it did not respond to the explanation contained in the agency report explaining why the incumbent has no unfair advantage. Mitchell Constr. Co., Inc., B-245884; B-245884.2, Jan. 17, 1992, 92-1 CPD ¶ 92. In any event, a competitive advantage gained by

virtue of a firm's incumbency is not an unfair advantage that the procuring agency must eliminate. Rolm Corp., B-214052, Sept. 11, 1984, 84-2 CPD 5 280.

The protest is denied in part and dismissed in part.



James F. Hinchman
General Counsel