



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

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October 19, 1973

Western Helicopters, Incorporated
Rialto Municipal Airport
1670 Airport Way
Rialto, California 92376

Attention: Mr. Alec Fergusson

Gentlemen:

This is in reply to your telefax message of July 24, 1973, and subsequent correspondence, protesting the decision of the Forest Service, U. S. Department of Agriculture, to rent an additional helicopter from Evergreen Helicopters, Incorporated, under contract No. 39-4299.

The record shows that you have a contract with Region 3 of the Forest Service, which called for you to base a 15 place turbine helicopter at Madera Canyon, Arizona, with a guaranteed availability period of May 1 to July 31, 1973. The contract provided for payment of \$350 for each day of the availability period, plus \$485 per hour of actual flight time. Evergreen has a similar contract with Region 5 of the Forest Service, which originally called for Evergreen to base a helicopter in the Klamath National Forest, Oregon, with a flat payment rate of \$777 per hour of flight time and guaranteed availability from July 1 to October 14, 1973. On July 20, 1973, the Region 5 contracting officer was requested to take immediate action to rent a helicopter to be based in Angeles National Forest, California, because of "an unusually extreme fire season." The helicopter was requested to be on station by July 25, with a guaranteed availability period running through November 15, 1973. The contracting officer determined that there was no time to conduct an advertised procurement, and instead asked Evergreen if it could handle the additional requirement. Evergreen agreed to do so, and a change order adding the requirement for a second helicopter (at a guaranteed hourly rate of \$777 for 115 hours) to the Evergreen contract was then issued.

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The contracting officer acted pursuant to a provision in the Evergreen contract which states:

"When helicopters, in addition to those under contract, are required by the Forest Service, the contractor agrees to furnish additional helicopters and pilots if available. All terms and conditions of this contract will apply to use of such additional helicopters, except as set forth below.

"(1) For such additional helicopters, a guarantee of one hour flight time for each calendar day or portion thereof that the helicopter is held will be paid."

You point out that your contract contains a similar provision, and you assert that in view of your lower hourly flight time rate of \$485, as opposed to Evergreen's rate of \$777, the contracting officer should have requested you to provide the additional helicopter.

It is generally true, as you state, that contracting officers are charged with procuring supplies and services that will meet the Government's minimum needs at the lowest cost to the Government. This principle applies not only to the initial awarding of formally advertised contracts, 41 U.S.C. 253; 37 Comp. Gen. 550 (1958), but also to other procurement actions, such as decisions regarding the propriety of exercising contract options, 33 Comp. Gen. 265 (1953); B-173141, October 14, 1971, and to the selection of a supplier from the Federal Supply Schedules when more than one listed firm can satisfy an agency's needs. FPMR 101-26.408-3; 47 Comp. Gen. 135 (1967). The contracting officer asserts, however, that his action was proper in view of the exigency of the situation and the fact that Region 5's need for the helicopter was outside the scope of your contract with Region 3. He also asserts that the cost savings available under your contract was not evident because of the provision for the \$350 daily availability charge in addition to hourly flight time charges.

We do not agree with the contracting officer's position with respect to either the scope of your contract or the cost of furnishing the desired helicopter services thereunder to Region 5. The contract required payment of the \$350 daily charge through July 31, 1973, but after that time only a guaranteed daily minimum payment equal to one hour of flight pay would have been required. Thus, while it would

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have cost the Government at least \$835 for each day from July 25 to July 31 that your helicopter would have been used, the minimum daily charge from August 1 to November 15 would have dropped to \$485. Also, there is nothing in the contract which restricts the use of your services to any particular National Forest or Forest Service Region, and we understand that contract helicopters such as yours have from time to time been used outside the Region which contracted for them.

However, we also understand that it has not been the practice of Region 5 to utilize helicopter services from firms under contract to other Forest Service Regions, and therefore it may not have been unreasonable for the Region 5 contracting officer to believe that the scope of your contract with Region 3 did not contemplate the providing of services in Region 5. In view of the urgency involved, and the absence of any indication in the record that the contracting officer acted otherwise than in good faith, we cannot interpose any legal objection to his procuring additional services under the existing contract with Evergreen. However, we do believe it would have been prudent for the contracting officer to have considered more seriously the alternative procurement methods that were available to him, and we are therefore calling this matter to the attention of the Secretary of Agriculture. A copy of our letter of today to the Secretary is enclosed.

Sincerely yours,

Paul G. Dembling
Acting Comptroller General
of the United States

Enclosure