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Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Millbrook Industrial Contracts, Ltd.

File: B-277883

Date: October 29, 1997

S. G. Hogan for the protester.

Maj. Michael J. O'Farrell, Jr., Department of the Army, for the agency.

Mary Curcio, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that solicitation improperly restricts competition by requiring contractor to paint vehicles at contractor's facility, rather than on government installation, is denied where agency reasonably determined that restriction is necessary to minimize government's potential liability for environmental violations which could result from hazardous paint dust and fumes.

DECISION

Millbrook Industrial Contracts, Ltd. protests the terms of invitation for bids No. DAJA22-97-B-0038, issued by the Department of the Army, Wiesbaden, Germany, for the sanding, sandblasting, rustproofing, and "Chemical Agent Resistant Coat" painting of tracked and wheeled military vehicles located at 26 U.S. military installations in Germany. The solicitation called for tracked vehicles to be sanded and painted at 11 installations, and for wheeled vehicles to be sanded and painted at the contractor's own facility. Millbrook argues that the requirement that the wheeled vehicles be sanded and painted at the contractor's own facility is unnecessary and unduly restricts competition; Millbrook wants to work on the wheeled vehicles at government installations in the firm's mobile booths.

We deny the protest.

The determination of an agency's minimum needs, and the best method of accommodating them, is primarily within the agency's discretion. VION Corp., B-256363, June 15, 1994, 94-1 CPD ¶ 373 at 8. We will not question an agency's assessment of its minimum needs absent a clear showing that the assessment is unreasonable. Tri-County Fence Co., Inc., B-209262.2, Apr. 12, 1983, 83-1 CPD ¶ 381 at 3.

The Army explains that the decision to have the wheeled vehicles painted at an off-premises facility was based on environmental concerns.¹ The paint dust and fumes resulting from contract performance are hazardous wastes which, according to the Army, are difficult to contain within a mobile booth. The Army is concerned with the potential economic and political ramifications in the event of an environmental violation on a U.S. installation in Germany, especially if the air or water supply outside the installation were threatened. The Army thus decided that, while the tracked vehicles had to be painted on the installations because they cannot be readily moved over the roads, and because they contain features and components which for security reasons must remain under Army control, it could limit the potential for environmental problems by having the wheeled vehicles painted at the contractor's own facility.

The Army's justification is adequate to support the off-premises requirement. While Millbrook argues that it has taken steps to reduce the escape of paint dust and fumes into the air during its performance of past contracts, Millbrook has not shown that the Army's environmental concerns are not legitimate. In this regard, given that it is unrefuted that there is no assurance that paint dust and fumes can be 100-percent contained, it is self-evident that the presence of a painting operation involving hazardous materials has the potential for causing environmental problems. It is reasonable for the Army to structure its requirement to eliminate this possibility.

The protest is denied.

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¹The Army also believed that performing the work on the installations would require too much space. We need not address this point, since we find that the Army's environmental concerns were sufficient to justify the off-premises requirement.