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

DECISION



FILE: B-200127

DATE: March 2, 1982

MATTER OF: Integrated Forest Management

DIGEST:

1. Protester, alleging that specifications requiring time of performance for each of seven bid items to run concurrently were unreasonable, bears the burden of proof and must show by convincing evidence that the specifications and the agency's determination of its needs are clearly unreasonable. Where the agency has a reasonable basis for the performance time requirement and the protester has not met the above burden, the protest is denied.
2. Solicitation which requested bids on mutually exclusive alternatives for freeing trees from surrounding vegetation did not violate the competitive bidding requirement that all bidders must bid on the same thing, because bidders bidding on one alternative were only competing with like bidders.
3. A solicitation will not be invalidated by GAO on grounds that it failed to include evaluation criteria listed in the agency's Policy Manual, as GAO will not consider protests concerning adherence to executive branch or departmental policies.
4. Bias in favor of one of two methods for freeing trees from surrounding vegetation will not be attributed to procurement officials based solely on inference or supposition.

Integrated Forest Management, Inc. (IFM), protests the award of a contract to Reforestation Services, Inc., under invitation for bids (IFB) No. R5-10-80-59, issued

by the Six Rivers National Forest, Eureka, California (Forest Service). The IFB was for aerial application of herbicides over certain forest locations to control certain plant growth and promote certain tree growth or for the manual accomplishment of this work in the same general vicinity as an alternative to the aerial spraying. Separate specifications were provided for each alternative.

IFM contends that the Forest Service's solicitation was defective on several grounds. The primary contentions are: that the specifications for the manual alternative were unduly restrictive; that the solicitation violated competitive bidding principles by requesting bids on two alternatives with unequal performance requirements; and that the Forest Service Policy Manual requires evaluation of the two alternatives to be based upon a broad range of criteria to determine the cost effectiveness of each alternative. For the reasons discussed below, we deny the protest.

The aerial spray alternative listed in the IFB required contractors to apply, over a 15-day period, quantities of herbicides over approximately 1,600 acres. Spray formulation and application requirements were in the specifications and application was to be by helicopter, with all areas to be sprayed delineated in the specifications. Compliance with the specifications was to be ensured by making droplet counts on oil sensitive cards placed in spray zones.

The manual alternative listed seven bid items consisting of tracts of land varying from 67 to 392 acres per item. Time of performance for each tract varied from 36 to 150 calendar days (time to run concurrently for all items). The work was to be performed by cutting all hardwoods, brush, and other vegetation within 5 feet of the crown of selected conifer trees (250-300 trees to be selected for each acre). Sample areas would be inspected to ensure compliance with the IFB's specifications, with a 90-percent compliance score required for payment.

IFM's initial protest primarily attacked the solicitation on the grounds that the specifications for the manual alternative were overly restrictive,

particularly in light of the requirements of the aerial spray alternative, IFM stated that restrictions in the solicitation had the effect of driving up costs so that the manual alternative was not competitive with the aerial spray alternative. The Forest Service amended the solicitation to eliminate several of the provisions objected to by IFM. After bids were opened, IFM still maintained that the specifications for the manual alternative were unduly restrictive. Nonetheless, a contract for item 1 of the aerial spray alternative was awarded to Reforestation Services, Inc., in order to avoid undue delay in performance, and performance has been completed.

While phrased in terms of restrictive specifications, much of IFM's dissatisfaction with the Forest Service's solicitation actually relates to its second contention; that it was improper for the Forest Service to include alternatives with different performance standards. Many of IFM's examples of restrictive specifications are better characterized as differences in the type of performance required for each alternative. Also, unresolved is IFM's contention that the concurrent time of performance for all manual release bid items was unreasonable.

With regard to the latter argument, according to the Forest Service, there are practical limitations on the time that may be allowed for performance of the work. For example, if the work is not performed before the advent of inclement weather, substantial delays may occur, resulting in loss of growing seasons. Additionally, the fact that many Forest Service employees are hired on a seasonal basis restricts the agency's ability to inspect the results of the contractor's work. IFM justifies its allegation that concurrent time of performance was unreasonable by stating that increasing total performance time to 1 year would encourage more small businesses to participate in the bidding process, and that any potential delay would be insignificant in terms of the 140-year growth period for the trees in question. IFM's statements, however, merely reflect its disagreement with the Forest Service as to the significance of potential delay. A protester's stated disagreement with an agency's opinion does not meet its burden of proof of showing that opinion to be unreasonable. See Integrated Forest Management, Inc., B-204106, B-204382, January 4, 1982, 82-1 CPD ____.

We find that the Forest Service has reasonably justified its specifications in this regard as being reasonably related to its needs.

IFM's principal argument is that performance standards for the two alternatives were unequal in violation of competitive bidding requirements. IFM states that the performance standards for the manual alternative were designed to achieve greater results than the aerial spray alternative. Of particular importance, IFM states, is the difference between inspection procedures for each alternative. IFM's evidence does demonstrate that the two methods of performance are significantly different, and that in a number of respects they are not comparable.

With regard to IFM's contention that the inclusion of the two alternatives violated a fundamental principle of competitive bidding requiring that all bidders must bid on the same thing, this Office has held that an invitation requesting bids on mutually exclusive alternatives and evaluation of one alternative against the other does not violate the competitive bidding statute. 45 Comp. Gen. 59, 67 (1965). In such a case, as here, where the Government has reserved the right to decide after the submission of bids which alternative it will select, bidders are competing only with other bidders on the same alternative. See 42 Comp. Gen. 640, 642 (1963). In any event, bidders were free to submit bids on either or both alternatives and, therefore, were afforded equality of competition.

IFM also contends that the manual alternative is significantly more effective than the aerial application of herbicides. For purposes of this solicitation, the Forest Service has determined the effectiveness of both methods to be substantially equivalent.

This Office has consistently held that contracting agencies are primarily responsible for determining the needs of the Government and the methods of accommodating those needs. Integrated Forest Management, Inc., supra. Since the agency is most familiar with the particular conditions involved, it is in the best position to determine the specifications that will meet its future requirements. Maremont Corp., 55 Comp. Gen. 1362 (1976), 76-2 CPD 181. We therefore will not question a restriction in a solicitation's specifications unless it is shown

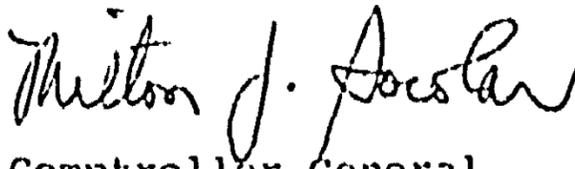
by convincing evidence to be unreasonable and, therefore, restrictive of competition, Edward E. Davis Contracting, Inc., B-198725, January 13, 1981, 81-1 CPD 19. IFM has not shown that determination to be unreasonable.

IFM's next contention is that the Forest Service was required by section 2150.3 of its own Policy Manual to evaluate the two alternatives in terms of a broad range of cost effectiveness criteria, including specificity, environmental effects, economic and employment effects, and fulfillment of resource management objectives. According to IFM, the solicitation was defective for failure to provide for this type of cost-benefit analysis.

We agree that section 2150.3 of the Forest Service Policy Manual does state that the agency's policy is to use pesticides (including herbicides) only after full consideration of alternatives based upon a broad range of cost-effectiveness factors. However, the failure of the Forest Service to include such factors in this solicitation's evaluation criteria is not grounds for invalidation of the solicitation by this Office. We have consistently declined to consider protests concerning adherence to executive branch or departmental policies per se, because we do not generally have any authority to require adherence to such policies in particular procurements. Communications Satellite Corporation, B-191233, March 2, 1978, 78-1 CPD 163.

Finally, IFM's initial protest also contains statements to the effect that alleged deficiencies in the solicitation are evidence of bias on the part of the Forest Service against manual methods of control. This Office, however, has repeatedly held that bias will not be attributed to procurement officials based solely on inference or supposition. Policy Research Incorporated, B-200386, March 5, 1981, 81-1 CPD 172.

We deny the protest.

for 
Comptroller General
of the United States