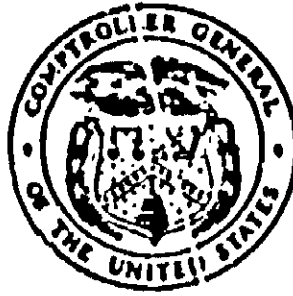


DECISION



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

FILE: B-208499

DATE: December 14, 1982

MATTER OF: Central Air Services, Inc.

DIGEST:

1. Telegraphic solicitation was proper in reprourement of air tanker services given exigencies of time and circumstances.
2. Although a defaulted contractor may not be automatically excluded from competition, a defaulted supplier of air tanker services was not improperly excluded from competition in an urgent procurement which considered only two other suppliers qualified to commence work 5 days later.

Central Air Services, Inc. (Central), protests against an award of a reprourement contract for air tanker services issued by the Department of Agriculture, Forest Service, pursuant to telegraphic invitation for bids (IFB) No. 49-82-10.

We deny the protest.

Central had held a contract to supply air tanker services for forest firefighting at Rohnerville, California, during the June 24-October 11, 1982, season. Central's air tanker No. 148 had been due for inspection on May 26. As it was not ready on that date, a new inspection date of June 2 was set. When No. 148 did not pass inspection on June 2, Central was terminated for default by the Forest Service. A reprourement contract was negotiated with Douglas County Aviation, Inc., on June 14. However, Douglas' air tanker No. 113 did not pass inspection and a default termination action was then taken against Douglas.

On July 2, the Forest Service issued a telegraphic IFB for reprourement of the air tanker services. Only two potential bidders, Aero Union Corporation and Hawkins and

Powers Aviation, Inc., were solicited by the Forest Service. Bids were received from Aero Union and Douglas on July 6; award was made to Aero Union on July 7.

The Forest Service states that "time is of the essence" in securing air tanker services. At the time of the July 2 telegraphic solicitation, the fire season at Rohnerville was advanced into its second week. The Forest Service states that it did not solicit Central because "it was known that [Central] would have to offer the aircraft that had already failed to pass inspection." The Forest Service states that "to take default termination action in relation to a specific air tanker and then award a reprocurement contract for the same air tanker would be ludicrous." In addition, the Forest Service states that no other offerors were solicited, because although "larger aircraft were available * * * they exceeded the aircraft maximum gross weights allowable on the Rohnerville ramps and runway."

Central contends that it was unfairly precluded from competition by not being invited to bid. Although Central acknowledges that a contracting officer has broad discretion in a reprocurement for defaulted services, the protester argues that the contracting officer cannot "pre-select" or "pre-judge" any contractor prior to bidding. Further, Central offers evidence that it had two inspected air tankers available for service at the time of bid opening and, therefore, argues that it would not have been "non-responsible" for the Rohnerville work. Finally, the protester submits that Hawkins and Powers Aviation was known to be without qualified aircraft at the time it was solicited. Central requests that the award be canceled and a new solicitation be issued thereafter.

We cannot find that the Forest Service's exclusion of Central was improper. In PRB Uniforms, Inc., 56 Comp. Gen. 976 (1977), 77-2 CPD 213, we held that a defaulted contractor may not be automatically excluded from competition since this would constitute an improper premature determination of nonresponsibility. This, however, does not mean that a defaulted contractor necessarily has an automatic right to resolicitation. Ikard Manufacturing Company, 58 Comp. Gen. 54 (1978), 78-2 CPD 315; Skip Kirchdorfer, Inc., B-192843, February 15, 1979, 79-1 CPD 111. Whether a defaulted contractor should be resolicited depends on the circumstances of each case.

The circumstances of this case clearly indicate that the solicitation was an IFB in name only. There was no publication, and bids were due within 4 days. This was an urgent procurement, with the Forest Service determining that only two suppliers of air tanker services were qualified to commence operations 5 days from the date of the solicitation. It is clear that time was of the essence in securing these services. Furthermore, while Central contends it had two approved air tankers available at the time bids were solicited, the Forest Service reports otherwise. According to the Forest Service, one air tanker was in use under another contract and the other had not been certified by the Federal Aviation Administration (FAA). Although Central states the latter air tanker had been approved by the Interagency Airtanker Board, the Forest Service reports that FAA certification is also necessary. Consequently, we can only conclude that this procurement was proper in light of the "special circumstances" exceptions to the right to resolicitation as expressed in Icard Manufacturing Company, supra, and Skip Kirchdorfer Inc., supra.

The protest is denied.

Milton J. Fowler
for Comptroller General
of the United States