

McArthur



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Transmission Structures Limited
File: B-230855.2
Date: July 14, 1988

DIGEST

Solicitation for construction of radio towers that precluded use of welded steel pipe is not unduly restrictive of competition where agency shows that requirement is necessary to insure structural integrity of tower and is directly related to the safety of personnel who will climb the towers, and where the protester fails to show that requirements are clearly unreasonable or that they do not represent the agency's minimum needs.

DECISION

Transmission Structures Limited (TSL) protests the terms of invitation for bids (IFB) No. DTFA09-88-B-20518 issued by the Central Region of the Federal Aviation Administration (FAA), for construction and modification of radio towers in Central Nebraska and Northeast Kansas. The protester alleges that the specifications, which exclude steel pipe as a tower component, are unduly restrictive of competition because they exceed the agency's minimum needs, which according to the protester can be satisfied by issuing a delivery order under the protester's national requirements contract for towers.

We deny the protest.

On June 30, 1986, FAA national headquarters awarded contract No. DTFA-02-86-D-86568, under which the agency was obligated to order, and the protester to furnish all requirements under maximum order limitations for labor, tools, parts, materials and facilities to fabricate and deliver Radio Communication Link (RCL) antenna support towers during the contract period.^{1/} The contract included requirements for technical engineering support services and the preparation of design drawings for each of the 34 specified tower

^{1/} Currently through June 30, 1989, with 1 option year remaining.

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designs, which differ in height and method of support (guyed or self-supporting).

On February 12, 1988, the FAA Central Region issued the protested IFB for construction of 15 microwave repeater sites including towers and modification of two existing sites, with a bid opening date of March 14. Specification No. FAA-CE-628A, applicable to 14 of the new sites, contained revisions made in October 1987 that eliminated steel pipe as an acceptable material for tower legs, required bolted construction and directed that contractors hold welding to a minimum.

The protester, whose national requirements contract allowed use of welded steel pipe contacted the agency to urge the region to revise the specification order towers under TSL's contract and supply them to the successful bidder as government-furnished equipment (GFE). On March 11, in a conversation with the protester, agency personnel apparently realized for the first time that specification No. FAA-CE-651 for the fifteenth tower, to be erected in the Columbus, Nebraska airport terminal complex, required clarification as to the tower design parameters.

Accordingly, the agency notified potential bidders that opening had been postponed and on March 16, issued a formal amendment extending the date of bid opening to April 4 and clarifying the requirement for the Columbus tower. On March 22, TSL protested the conduct of the procurement, objecting that the agency should have ordered towers under its contract, but that in any event, the elimination of steel pipe as a potential construction material was unduly restrictive of competition and exceeded the agency's minimum needs.

Initially, we note that the protester's national requirements contract includes Federal Acquisition Regulation (FAR) § 52.216-19, Delivery-Order Limitations; subparagraph (c) of this clause states that the government is not required to order a part of any one requirement from a contractor if that requirement exceeds the contract's maximum order limitation--\$300,000 in the case of the protester's contract. Based on the record before us, we find that under the protester's contract, the cost of the total order for the new towers exceeds this limitation. The protester has not shown otherwise. Therefore, TSL has not shown that its requirements contract precludes the FAA from acquiring these towers on a competitive basis.

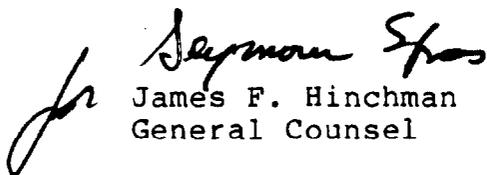
Regarding the restriction concerning tower construction material, where a protester challenges a specification as being unduly restrictive of competition, the burden

initially is on the procuring agency to establish prima facie support for its contention that the restriction is needed to meet its minimum needs. Reach All, Inc., B-229772, Mar. 15, 1988, 88-1 CPD ¶ 267. This requirement reflects the agency's obligation to permit full and open competition to the extent consistent with the agency's actual needs; once the agency establishes support for the challenged solicitation terms, the burden shifts to the protester to show that they are clearly unreasonable. Microwave Radio Corp., B-227962, Sept. 21, 1987, 87-2 CPD ¶ 288.

The agency advises that inspections have recently revealed serious problems with existing welded pipe towers of the type furnished by TLS, that welds were found to be defective and that the welded steel pipe had a tendency to rust from inside weakening its structural integrity. According to the FAA, the regional office is not staffed to supervise welding operations within a contractor's plant, and the national office, which monitors the protester's facility, cannot commit itself to provide quality inspectors in support of the regional office. We further have been advised that the regional office believes that rust and welding defects could present a safety problem to personnel who, in the course of their duties, must climb the towers. In our view, the agency has provided prima facie support for its requirement.

In response, the protester alleges that there will be no need to modify the tower once built and asserts that its towers are cheaper and quicker to build. The protester does not deny that welding quality and rust present problems in using steel pipe; TSL presents nothing to refute the agency's concerns. We do not believe therefore that the protester has met its burden of showing that the IFB does not state the agency's actual minimum needs.^{2/}

The protest is denied.


James F. Hinchman
General Counsel

^{2/} The record shows that the FAA received 10 bids under this solicitation.