



The Comptroller General  
of the United States

Washington, D.C. 20548

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## Decision

Matter of: Westec Air, Inc.

File: B-230724

Date: July 18, 1988

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### DIGEST

1. A bid to provide a helicopter for fighting fires and other services is responsive where the bid does not qualify or limit the offeror's obligation to supply a helicopter that can operate in accord with the material performance requirements set forth in the invitation for bids.
2. The contracting officer properly delayed award of contracts for helicopter services in order to allow the Federal Aviation Administration (FAA) to certify the helicopters offered to operate in the manner and in conditions specified in the invitation. As the helicopters were capable of meeting the performance specifications at all times pertinent to the protest, the issue of the FAA's certifying the helicopters to operate was a matter of responsibility that properly could be resolved after bid opening.

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### DECISION

Westec Air, Inc., protests the award of contracts to CRI Helicopters and Rogers Helicopters by the United States Forest Service pursuant to invitation for bids (IFB) No. R5-88-19. The invitation requested bids to provide helicopters, fully operated by qualified personnel and equipped as specified, to be used in the administration and protection of public lands. The helicopters primarily would be used for fighting fires, though law enforcement missions and other administrative flights also would be required. The IFB contained 11 line items representing the various bases at which helicopter services were to be provided, and a separate award was to be made for each line item. Westec contends that the bids of CRI and Rogers were nonresponsive to the IFB requirements for line items 7 and 10, respectively.

We deny the protest.

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The IFB required that contractors and helicopters be certified by the Federal Aviation Administration (FAA). The specifications set out the climatic conditions in which the services were to be performed and the manner in which the helicopters were to be operated. Westec argues that the CRI and Rogers bids were nonresponsive because each firm offered to provide a Sikorsky model S-62A helicopter that was not certified by the FAA to be flown in the manner and conditions specified in the IFB.

More specifically, Westec points out that the specifications state that the helicopters must be capable of hovering in ground effect<sup>1/</sup> and taking off and landing at 6,000 feet pressure altitude and 30 degrees centigrade. According to Westec, at 6,000 feet pressure altitude with an outside air temperature of 30 degrees centigrade, the density altitude<sup>2/</sup> is approximately 9,200 feet. However, Westec points out that the Sikorsky Flight Manual as certified by the FAA on the bid opening date limited the model S-62A's take-off density altitude to no more than 7,000 feet. Therefore, as the specifications required performance at a density altitude of about 9,200 feet, well above the FAA-certified ceiling of 7,000 feet, Westec concludes that the CRI and Rogers bids should have been rejected as nonresponsive.

The contracting officer states that "Both offerors made unequivocal offers to provide services that fully meet specifications. Neither qualified their bid by stating limitations on their offers for these items." The contracting officer determined that both bids thus were responsive. He also decided that the only issue for resolution was whether both bidders could get the necessary

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<sup>1/</sup> Hovering in ground effect means that the helicopter remains in one place near the ground. Because the helicopter is close to the ground, it creates a cushion of air between itself and the ground which helps the helicopter to hover.

<sup>2/</sup> Density altitude (as explained by the parties at a conference on this protest) shows the combined effect of altitude and temperature in terms of the density of the air in which the helicopter will be flown. Thus, as we understand it, the air density would be equivalent to the density of the air at 9,200 feet even though the helicopter was at 6,000 feet.

FAA approvals--a responsibility issue. The contracting officer allowed CRI and Rogers time after bid opening (March 4, 1988) to petition the FAA to certify the S-62A model helicopter to hover in ground effect and to take off and land in the environmental conditions specified in the IFB.

On April 19, the FAA approved a supplement to the Sikorsky Flight Manual that raised the maximum density altitude for the S-62A helicopter to 10,000 feet. Thus, the FAA certified that the S-62A could legally take off and land, as well as hover in ground effect, at 6,000 feet pressure altitude and at 30 degrees centigrade. Subsequently, the contracting officer determined that both CRI and Rogers were responsible and awarded them contracts for line items 7 and 10, respectively.<sup>3/</sup>

We agree with the Forest Service that the CRI and Rogers bids were responsive. To be responsive, a bid must represent an unequivocal offer to provide the exact thing called for in the IFB such that acceptance of the bid will bind the contractor in accordance with the solicitation's material terms and conditions. Spectrum Communications, B-220805, Jan. 15, 1986, 86-1 CPD ¶ 49. The bids submitted by CRI and Rogers took no exception to the hovering in ground effect, take-off, and landing requirements, which stated the environmental conditions that could be expected. Moreover, the FAA ultimately determined that the S-62A model helicopter could indeed operate safely in the manner and in the conditions specified. Thus, the actual product offered --the S-62A model helicopter--did meet the performance specifications at the time of bid opening as well as at the time of the FAA's evaluation of it. As the bids were not qualified and the helicopter offered could perform as required, the bids were responsive. See Hicklin GM Power Co., B-222538, Aug. 5, 1986, 86-2 CPD ¶ 153.

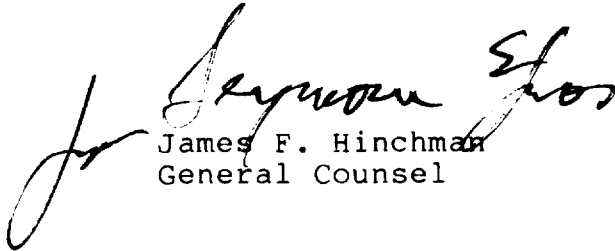
The protester also objects to the contracting officer's allowing CRI and Rogers an opportunity to petition the FAA to certify the helicopters to operate at 9,200 feet density altitude. The protester contends that since the helicopter was not certified to operate legally at 9,200 feet density altitude at the time of bid opening the bids should have been rejected. We do not agree.

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<sup>3/</sup> The contracts were awarded in spite of Westec's protest based upon an April 22 determination that urgent and compelling circumstances would not permit waiting for our decision.

The contracting officer properly concluded that the FAA certification related to bidder responsibility as it concerned only the legal authority to fly the aircraft under the specified performance criteria. A bidder may be found responsible if in the view of the contracting officer the bidder will be capable of performing and will have the necessary federal authority to perform by the start of the required performance. What-Mac Contractors, Inc., 58 Comp. Gen. 767 (1979), 79-2 CPD ¶ 179. Moreover, our Office has held that an agency properly may allow a prospective awardee a reasonable period following bid opening within which to cure a problem related to its responsibility. See Ameriko Maintenance Co., B-208485, Aug. 27, 1982, 82-2 CPD ¶ 184; see also 39 Comp. Gen. 655 (1960), wherein we stated that a bidder properly could provide proof of FAA operating authority up to the start of performance under the contract. We therefore see no legal basis to object to the contracting officer's decision to delay award to allow the FAA an opportunity to examine the helicopter and to certify it for flight in accord with the specifications before making his determination on the bidders' responsibility. See Ameriko Maintenance Co., B-208485, supra; Right Away Foods Corp., B-216199, Jan. 3, 1985, 85-1 CPD ¶ 15.

The protest is denied.



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