

Timmerman



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Airport Markings of America, Inc.; Hydro International Services Corporation; Texas Hydro Services; and Hy-Tech Industrial Services, Inc.

File: B-238490; B-238490.2; B-238490.3; B-238491;
B-238491.2; B-238491.3; B-238497; B-238497.2;
B-238498; B-238498.2; and B-238498.3

Date: June 8, 1990

J.H. Moore for Airport Markings of America, Inc., Roger L. Kurfman for Hydro International Services Corporation, Marilyn Kemp for Texas Hydro Services, and Evelyn Cook for Hy-Tech Industrial Services, Inc., the protesters.

Col. Herman Peguese, Department of the Air Force, for the agency.

Barbara Timmerman, Esq., and John Brosnan, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency decision to procure airfield paint and rubber removal and restriping services under one contract is not objectionable where agency reasonably anticipates that combining these services under one contract will reduce scheduling difficulties that significantly delayed performance and increased costs in prior procurements where the services were procured under separate contracts.

2. Requirement for regional contracts for paint and rubber removal and restriping of airfields which include up to 34 airfields in a single contract award unduly restricts competition where record does not establish that the requirement meets a legitimate need of the agency.

DECISION

Airport Markings of America, Inc., Hydro International Services Corporation, Texas Hydro Services, and Hy-Tech Industrial Services, Inc., protest solicitation Nos. F42650-90-R-0034 (0034), F33601-90-B-0011 (0011), F34650-90-R-0006 (0006), F09650-90-R-0075 (0075), issued by the Department of the Air Force for removing rubber and paint and restriping

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at various airfields.^{1/} The protesters contend that the solicitations are overly restrictive of competition because each provides for a single award for the combined requirements of removal and restriping and because each award for these combined requirements covers a large number of airfields.^{2/}

The protests are sustained in part and denied in part.

Request for proposals (RFP) 0034 requested offers for rubber and paint removal and restriping at 17 airfields. RFP 0006 requested offers for the services at 34 airfields. RFP 0075, originally issued as an invitation for bids (IFB), included 17 airfields and solicitation 0011, issued as an IFB, included 16 airfields. Each solicitation contemplated the award of a single firm, fixed-price contract.

The protesters, all of which are small businesses, state that in the past the Air Force procured only the restriping services through the use of these regional contracts. They contend that, first, by consolidating the two requirements and, second, by procuring the consolidated requirements in large regional packages, the Air Force has precluded effective competition. Small businesses, they assert, are unable to make the large capital investment required to purchase the necessary additional equipment or obtain bonds, and cannot subcontract or enter into joint-ventures on a cost-effective basis. They argue that the format chosen by the agency unfairly favors the one company that in the past has performed four out of five of the regional striping contracts.^{3/} The protesters assert that structuring the

^{1/} Airport Markings protests solicitations 0034 and 0011; Hydro International protests all four solicitations; Texas Hydro protests solicitations 0011, 0075, and 0034; and Hy-Tech protests solicitations 0006 and 0075.

^{2/} The protesters also contended in their initial protests that the requirement in the solicitations for 100 percent removal of paint and rubber is impossible to achieve without damaging the surface of the runways. The agency agreed with the protesters on this issue and subsequently issued amendments specifying 85 percent removal.

^{3/} The protesters also assert that there were serious irregularities in the performance of prior striping contracts. This is not a matter we consider under our bid protest function. In any event, the agency reports that these claims are currently under investigation by the Air Force Office of Special Investigation.

solicitations this way will cost the agency more money because of reduced competition and will result in runways being closed for longer periods of time.

The Air Force argues that combining the removal and restriping is necessary because the prior method of managing the two requirements separately resulted in airfield runways often being closed for extended periods or closed on short notice. According to the agency, coordinating individual removal contract schedules with regional striping schedules to ensure that airfield runways were left unmarked for the shortest duration was both time consuming and costly. It argues that since paint and rubber removal is a prerequisite to restriping it is appropriate to combine the tasks, allowing one contractor to manage the entire process. With respect to adequacy of competition, the agency states that based on its own informal market survey, there are at least five firms able and willing to compete for the combined contract. It also notes that on the one solicitation where offers have been received, RFP 0034, it has received several proposals.

We do not think the agency's consolidation of removal and restriping under one solicitation is objectionable. We find, however, that the agency has not justified its decision to combine these services under regional contracts that provide for one award for up to 34 airfields.

The Competition in Contracting Act of 1984 (CICA), generally requires that solicitations permit full and open competition and contain restrictive provisions and conditions only to the extent necessary to satisfy the needs of the agency. 10 U.S.C. § 2301(a) (1988). The protesters concerns about the agency's "total package" approach here are two-fold; they object to the combination of the tasks into one package and they object to the aggregation of numerous airfields into large regional packages. Because procurements on a total package basis can restrict competition we will object to such procurements where a total package approach does not appear to be necessary to satisfy the agency's minimum needs. See Pacific Northwest Bell Tel. Co.; Mountain States Tel. Co., B-227850, Oct. 21, 1987, 87-2 CPD ¶ 379, aff'd on reconsideration, Pacific Northwest Bell Tel. Co.; Mountain States Bell Tel. Co.--Reconsideration, B-227850.2, Mar. 22, 1988, 88-1 CPD ¶ 294.

With respect to the agency's determination that it needs to procure removal and restriping services together in one package, we think the agency's justifications are reasonable and consequently have no basis upon which to object to this

approach. See Eastman Kodak Co., 68 Comp. Gen. 57 (1988), 88-2 CPD ¶ 455. We find persuasive the Air Force's argument that having a single contractor responsible for the performance of both functions will result in less airfield downtime. Although the protesters suggest that the previous difficulties were due to a variety of factors, we think the agency could reasonably conclude that the use of multiple contractors on such a closely interrelated project as removing the old surface and repainting contributed significantly to the delay and resulted in additional cost.

There is, however, no justification in the record for the Air Force's decision to aggregate 84 airfields under four contracts. According to the Air Force, the restriping contracts have historically been conducted on a regional basis. The four contract packages correspond to four regional Air Force Logistic Command Centers (AFLC). Initially, the Air Force performed the striping using its own employees and equipment and, since the equipment was expensive, each AFLC provided the services centrally for all of the airfields in its region. When the agency later determined to contract out for these services, it apparently simply retained the regional format to which it has now added removal services. The record is otherwise devoid of any reason the services are being obtained in such large regional packages.

The Air Force's argument that the fact that several offerors have responded to RFP 0034 indicates adequate competition and its suggestion that the protesters can compete by combining in a joint-venture or subcontracting simply avoids the question of whether this method of packaging is necessary to meet its minimum needs. Pacific Northwest Bell Tel. Co.; Mountain States Bell Tel. Co.--Reconsideration, B-227850.2, supra. The question is not whether potential competitors can surmount barriers to competition, but whether the barriers themselves--in this case the requirement for a single regional contract--are required to meet the government's minimum needs. CICA requires that the agency obtain "full and open" competition, defined as meaning all responsible sources are permitted to submit sealed bids or competitive proposals; therefore, even though several offerors have responded to one solicitation, this does not negate the fact that other responsible sources could have been excluded, without justification, in violation of CICA. See EMSA Ltd. Partnership, B-237846, Mar. 23, 1990, 90-1 CPD ¶ 326. There is no evidence in the record that a single award for each region meets some rational need or serves any purpose other than possibly to facilitate the administration of the contracts. Mere administrative convenience is not a sufficient justification


for restrictions which eliminate competition. Burton Myers Co., 57 Comp. Gen. 454 (1978), 78-1 CPD ¶ 354. Nor is there any evidence in the record that it is unduly burdensome to provide for more than four contracts to cover 84 airfields located in 35 states.

Since we find the requirement for a single award for each region lacks adequate justification, we sustain the protests on this ground. We recommend that the Air Force review its decision to award one contract per region and make a determination relating to the number of airfields necessary to be included under a single solicitation to meet its minimum needs. We also recommend that the agency review its justification for soliciting essentially the same requirement under several solicitations using negotiated procedures and in one instance sealed-bid procedures. See 10 U.S.C. § 2304(a)(2); Federal Acquisition Regulation § 6.401.

Airport Markings and Hydro International further contend that the delivery schedules in solicitations 0011, 0006, and 0075, which call for contract performance at each airfield within an 8-day time period, are unrealistic. The Air Force has failed to address this issue in its report to our Office. Since our recommendation that the Air Force review its method of contracting may entail changes to the existing contract delivery schedules, we suggest that the agency review the feasibility of contractor performance within the time periods provided.

Should review of the agency's needs result in a change in any of the terms contained in the current solicitations, we recommend that the affected solicitations be canceled and the requirements resolicited. We also find that the protesters are entitled to be reimbursed their protest costs. Bid Protest Regulations. 4 C.F.R. § 21.6(d)(1) (1990).

The protests are sustained in part and denied in part.


Acting Comptroller General
of the United States