



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Pall Land and Marine Corporation; Calvert Environmental  
Equipment Co.

File: B-223478; B-223480

Date: July 16, 1986

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### DIGEST

1. The Buy American Act (Act) evaluation factors are not applicable to items being purchased that are included in the Defense Cooperation Agreement between Israel and the United States as items for which application of the Act has been waived.
2. The possibility of a buy-in is not a proper basis on which to challenge a contract award and there is no requirement that an agency offset foreign government subsidies in evaluating proposals other than through application of the Buy American Act, which is inapplicable here.
3. There is no legal requirement that an agency equalize whatever competitive advantage foreign firms might have because they are not subject to socio-economic requirements applicable to domestic contractors.

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### DECISION

Pall Land and Marine Corporation and Calvert Environmental Equipment Co. protest the Department of the Army's contract award to Shalon Chemical Industries Ltd. (Shalon) under request for proposals (RFP) No. DAAA09-86-R-0361. The procurement was for M48 filters for use on the M1 tank. We dismiss the protests.

Both protesters assert that the contract award is inconsistent with the Buy American Act, 41 U.S.C. §§ 10a-10d (1982), and that Shalon may be "buying-in" to the contract, with possible subsidization by the Israeli government. Calvert also contends that the award is improper because Shalon, as a foreign firm, will not be required to comply with the Walsh-Healey Act and other socio-economic requirements applicable to domestic firms, such as those pertaining to clean air and water, equal opportunity, and hazardous materials. Calvert argues that this gave Shalon an unfair competitive advantage.

Department of Defense (DOD) regulations implementing the Buy American Act for DOD procurements generally provide for an evaluation preference for domestic products over those of other, non-qualifying countries. See DOD Federal Acquisition Regulation Supplement (DOD FAR Supp.) § 25.105

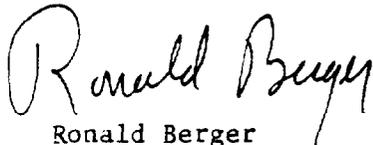
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(Defense Acquisition Circular No. 84-1, Mar. 1, 1984). However, Israel is exempt from the evaluation preference since it is a qualifying country by virtue of its status as a defense cooperation country. See DOD FAR Supp. §§ 25.001, 25.7501. A defense cooperation country is a country that has an agreement with the United States under which the Secretary of Defense has waived the Buy American Act for specific items. Id. The Army has advised us that under "Annex B" of the Memorandum of Agreement between Israel and the United States, the M48 filter is an item for which the Buy American Act has been waived.<sup>1/</sup> Accordingly, there is no merit to the protesters' assertions that the contract award is inconsistent with the Act. See Lear Siegler, Inc., 64 Comp. Gen. 452 (1985), 85-1 CPD ¶ 403.

With respect to the speculation that Shalon is buying-in to the contract with the help of subsidies from the Israeli government, we have consistently held that the possibility of a buy-in is not a proper basis upon which to challenge a contract award. The Harshaw/Filtrol Partnership, B-214137, Feb. 28, 1984, 84-1 CPD ¶ 254. Furthermore, there is no requirement that an agency offset foreign government subsidies in evaluating proposals other than through application of the Buy American Act evaluation differential, which is inapplicable here. See Endine, Inc., B-222617, June 5, 1986, 86-1 CPD ¶ \_\_\_\_.

We also find no merit to Calvert's contention that Shalon gained an unfair competitive advantage because it will not have to comply with the same socio-economic requirements as domestic firms. There is no legal requirement that procuring activities equalize whatever competitive advantages foreign firms might have because they are not subject to such requirements. The Hygenic Corp., B-215110, May 24, 1984, 84-1 CPD ¶ 571; E-Systems, Inc., 61 Comp. Gen. 431 (1982) 82-1 CPD ¶ 533.

The protests are dismissed.



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<sup>1/</sup>The protesters assert that the M48 filters are not exempt from application of the Buy American Act because they are not listed in FAR § 25.108 and DOD FAR Supp. § 25.108 as items excepted from the Act. The regulatory provisions cited by the protesters pertain only to items that are exempt from the Act because they are not mined, produced, or manufactured in the United States in sufficient quantities; thus they are irrelevant to the status of the M48 filters as items excepted from the Act due to Israel's status as a defense cooperation agreement country.