



Decision

Matter of: Pilkington Aerospace, Inc.
File: B-260397
Date: June 19, 1995

David P. Metzger, Esq., and Mark D. Colley, Esq., Davis, Graham & Stubbs, for the protester.
Michael A. Nemeroff, Esq., Gary P. Quigley, Esq., and Richard L. Larach, Esq., Sidley & Austin, for Sierracin/Sylmar Corporation, an interested party.
Gregory H. Petkoff, Esq., and Bryant L. Durham, Esq., Department of the Air Force, for the agency.
Mary G. Curcio, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Sole-source award of advanced design windshields for the F-15 aircraft was proper where procurement involves a foreign military sale and foreign government on whose behalf procurement was conducted requested item manufactured by the specified source.

DECISION

Pilkington Aerospace, Inc. protests the award of a sole-source contract to Sierracin/Sylmar Corporation under request for proposals (RFP) No. F09603-95-R-22401, issued by the Department of the Air Force for quick replacement windshields, National Stock Numbers (NSN) 1560-01-381-4973FX and 1560-01-384-3372FX, to be supplied to the Government of Israel pursuant to a foreign military sale (FMS). Pilkington asserts that, because the NSNs identify specific Sierracin part numbers, the specifications are restrictive of competition, resulting in an improper sole-source award. Pilkington also protests that the Sierracin products specified will not meet the Air Force's needs.

We deny the protest.

The Arms Export Control Act, as amended, authorizes the Department of Defense to enter into contracts for purposes of resale to foreign countries or international organizations. 22 U.S.C. § 2751 et seq. (1988). The Competition in Contracting Act of 1984 (CICA), which

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generally requires that agencies obtain full and open competition, exempts procurements in which the "written directions of a foreign government reimbursing the agency for the cost of the procurement of the property or services for such government, have the effect of requiring the use of procedures other than competitive procedures." 10 U.S.C. § 2304(c)(4) (1994).

The Federal Acquisition Regulation (FAR) reiterates this exemption, and provides for its use "[w]hen a contemplated acquisition is to be reimbursed by a foreign country that requires that the product be obtained from a particular firm as specified in the official written direction such as a Letter of Offer and Acceptance." FAR § 6.302-4(b)(1). Further, the Defense Federal Acquisition Regulation Supplement (DFARS) states that:

"FMS customers may request that a defense article or defense service be obtained from a particular contractor. In such cases, FAR § 6.302-4 provides authority to contract without full and open competition. . . ."

DFARS § 225.7304.

The Air Force has provided us with three documents demonstrating that Israel directed the Air Force to supply it with the Sierracin part numbers in question. The first document is a letter from the Israeli Ministry of Defense referencing its order for the specific Sierracin stock numbers and requesting the Air Force to act as quickly as possible to supply the ADWs because they are urgently needed for mission incapable F-15s. The second document is a letter from an official in the Israeli Air Force stating that the Israeli Air Force opened a requisition for the Sierracin stock numbers and requesting that the windshields be delivered as soon as possible. The final document is a printout of an order for the Sierracin windshields, identified by part number, that was placed through the Air Force's DO35 computer system.

These documents--an order for the windshields which references the specific national stock number designating the Sierracin product, and two communications executed by representatives of Israel and referencing the order for the Sierracin product--represent written direction by Israel for the Air Force to procure the Sierracin windshields. As such, they provide the Air Force with the authority to purchase the Sierracin windshields for Israel without using

full and open competition. See Group Technologies Corp.; Electrospace Sys., Inc., B-250699 et al., Feb. 17, 1993, 93-1 CPD ¶ 150. Accordingly,¹ the sole-source award to Sierracin is unobjectionable.

The protest is denied.

/s/ Ronald Berger
for Robert P. Murphy
General Counsel

¹In reaching our conclusion, we recognize that the Air Force supported the award by arguing, not that it was a directed FMS procurement, but that Israel urgently needed the windscreens and Sierracin was the only source that could supply them in the required time. See 10 U.S.C. § 2304(a)(1). Only after submitting its report did the Air Force provide the three documents on which we base our decision. This does not affect our decision. Our review is not limited to the question of whether a selection decision was properly supported at the time it was made. Rather, we look at the entire record, including statements and arguments made in response to a protest, so that we may determine whether the selection decision is legally supportable. Burnside-Ott Aviation Training Center, Inc.; Reflectone Training Sys., Inc., B-233113; B-233113.2, Feb. 15, 1989, 89-1 CPD ¶ 158.