



UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

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PROCUREMENT, LOGISTICS,
AND READINESS DIVISION

RELEASED

September 29, 1981

B-203587

The Honorable Gene Snyder
Ranking Minority Member
Committee on Merchant Marine
and Fisheries
House of Representatives



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The Honorable Don Young
Ranking Minority Member
Subcommittee on Coast Guard
and Navigation
Committee on Merchant Marine
and Fisheries
House of Representatives

Subject: Response to Questions About the Coast Guard's
Procurement of Fixed-Wing and Helicopter Aircraft
(PLRD-81-70)

This report is in response to your letter of April 9, 1981,
concerning U.S. Coast Guard contracts with Falcon Jet Corporation
and Aerospatiale Helicopter Corporation of France.

The questions that you raised about the delivery schedules,
liquidated damage provisions, requirements for jet engines, and
the Buy American Act, as they pertain to the Coast Guard con-
tracts are listed, along with our answers, in enclosure I.

Coast Guard program officials have reviewed the enclosure
and we have considered their comments, where appropriate.

Unless you publicly announce its contents earlier, we plan
no further distribution of this report until 30 days from the
date of the report. At that time, we will make copies available
to others upon request.

Donald J. Horan
Director

Enclosure

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ANSWERS TO QUESTIONS RAISED
BY REPRESENTATIVES DON YOUNG AND
GENE SNYDER ON THE U.S. COAST GUARD'S
PROCUREMENT OF MEDIUM-RANGE
SURVEILLANCE (MRS) AIRCRAFT
CONTRACT NUMBER DOT-CG-50152A

INTRODUCTION

In January 1977 the U.S. Coast Guard, which is within the Department of Transportation, entered into a contract with Falcon Jet Corporation, headquartered in New Jersey, for 41 fixed-wing, medium-range surveillance aircraft. At that time, Falcon Jet was jointly owned by Pan American Airlines and Avions Marcel Dassault-Brequet Aviation, a French Aircraft manufacturer. In 1980 Pan American sold its interest in Falcon Jet to its French partner, Avions Marcel Dassault-Brequet Aviation.

The Buy American Act generally gives preferential treatment to American products in public contracts (41 U.S.C. § 10a (1976)). Executive Order No. 10582, December 17, 1954, as amended, which establishes uniform procedures for Buy American Act determinations, provides that materials (including articles and supplies) shall be considered to be of foreign origin if the cost of the foreign products used in such materials constitutes 50 percent or more of the cost of all the products used therein. The order further provides that the price of domestic articles is unreasonable if it exceeds the cost of like foreign articles plus a differential.

The act, as implemented by Executive order and Federal Procurement Regulations (FPR) § 1-6.104 (1964 ed. circ. 1) imposes two determinative requirements that manufactured articles, materials or supplies must be manufactured both (1) in the United States and (2) substantially all from "components" mined, produced or manufactured in the United States. If these requirements are not met, the end product is considered foreign and a specified percentage factor or differential (generally 6 percent) must be added to bids or offers of foreign end products for the purpose of proposal evaluation in order to give the required preference to domestic bids or offers.

Question: Why has the Coast Guard permitted a 2-year delay in construction performance?

Answer: According to Coast Guard officials there have been eight separate contract rescheduling of delivery dates as follows:

	original July 1979
(1)	Jan. 1980
(2)	Mar. 1980
(3)	July 1980
(4)	Oct. 1980
(5)	Feb. 1980
(6)	Apr. 1981
(7)	May 1981
(8)	Sept. 1981

In each instance, the contractor notified the Coast Guard in advance and documented that the delays were essentially caused by the American engine manufacturing subcontractor, Garrett AiResearch (Engine: ATF3-6). The subcontractor for the engines was selected by the prime contractor, with Coast Guard approval. One delay of 2 months was apparently attributable to the airframe subcontractor, Avions Marcel Dassault-Brequet Aviation, who is also Falcon Jet's parent company.

While September 1981 is the current official delivery date, Coast Guard officials are not optimistic that the date will be met, and suggest that a more realistic delivery date would be November/December 1981. It should be pointed out that some 26 completed airframes have been delivered to and received by the prime contractor's facility at Little Rock, Arkansas, and the remainder are either in transit or in various stages of production at the French plant.

According to Coast Guard officials, the ATF3-6 engine was recently (July 17, 1981) certified by the Federal Aviation Administration (FAA). Falcon Jet can now go through the process of having the total aircraft certified by FAA.

Question: Is the maximum liquidated damages provision low in comparison to other Government contracts, especially given the fact that the contractor in this particular case is so far behind?

Answer: In our opinion, no. It is the general policy in the Government not to use liquidated damages provisions in procurement contracts. However, they may be used where timely delivery or performance is of unusual importance to the Government in that it may be reasonably expected to suffer damages if the deliveries are delinquent and the extent or amount of damages would be difficult or impossible of ascertainment or proof. Coast Guard officials advised that the estimated increased maintenance cost of continuing to use older aircraft (Convair C-131s) was the basis of using a liquidated damages clause of \$600 per day per aircraft for lateness up to a maximum of \$4 million. Because of delivery delays, Falcon Jet is liable for the full amount of liquidated damages.

Question: Why did the Coast Guard buy a turbojet, rather than turboprop engines for this aircraft?

Answer: Coast Guard records disclosed that turboprop aircraft are not as well suited as turbo-fan jet aircraft in the performance of certain missions in at least two significant respects: (1) their relatively low dash speed inhibits the rapid response necessary to carry out search and rescue, as well as law enforcement mission, and (2) their lower altitude capability

similarly increases response time because they must fly around, rather than over, certain weather phenomena. Moreover, because turboprop engines are generally placed further forward than jet engines, distortions in visibility caused by engine exhaust reduce the portion of the aircraft that can be used by the crew for search and vessel identification purposes. Similarly, forward placement of the engines and the rotating propeller blades also reduce the pilot's range and quality of vision, and the greater vibration caused by turboprop engines tends to reduce the ease and accuracy of visual sightings. Finally, the turboprop aircraft that were considered to be likely bid candidates were too small to accommodate the full range of medium-range surveillance missions.

The Coast Guard also determined that higher life cycle and maintenance costs are associated with turboprop aircraft compared with turbo-fan aircraft. Significant items include more training, hangar time, and line and shop equipment to maintain the engines and propeller assemblies.

Lastly, according to the Coast Guard, flight and ground safety was an important consideration in excluding turboprop aircraft from the final competition. Propeller assembly malfunctions cause a substantial proportion of in-flight turboprop engine failures and such assemblies do not exist in turbo-fan engines. Also, the higher noise and vibration levels caused by turboprop engines increase airframe and engine fatigue. On the ground, low-wing or high-wing turboprop engines place propellers within striking distance of ground personnel--a very real hazard, according to the Coast Guard, in view of the fact that the missions for which the medium-range surveillance aircraft are designed often require immediate response, even in bad weather and darkness.

Question: Were the bid specifications drawn to exclude certain aircraft types?

Answer: No. On the contrary, Coast Guard records indicate that this procurement was based on performance specifications, rather than design specifications. By utilizing performance specifications and inviting into the competition any offeror with an aircraft which met the minimum performance requirements, it appears to us that the Coast Guard encouraged the maximum amount of participation among aircraft manufacturers, rather than limiting it.

Question: Was this procurement in compliance with the Buy American Act?

Answer: Review of the Coast Guard documents discloses that the Buy American Act (41 U.S.C. 10 a-d), in conjunction with the applicable implementing Executive Orders (Nos. 10582 and 11051,

Sept. 27, 1962) and the applicable Federal Procurement Regulations (41 C.F.R. 1-6.1 (1980)), was adhered to by the Coast Guard for this procurement. The winning contractor, Falcon Jet, certified in its bid that each end product would be a domestic source end product. The Coast Guard examined Falcon Jet's bid, facilities, and production plans and concluded that there was nothing to indicate any intention other than full compliance with all terms of the bid, including production of domestic source end products. Assuring compliance with the contract terms is a matter of contract administration, which the Coast Guard is performing currently.

We should also point out that according to Coast Guard records, the closest competing bid to Falcon Jet's was Fokker, a foreign manufacturer, at about 17 percent higher per aircraft and the only American bidder was about 26 percent higher per aircraft. Rockwell and Grumman, two other American aircraft manufacturers whose proposed aircraft were judged technically acceptable by the Coast Guard, declined to submit a fixed-price bid for this competition. Thus, even if Falcon Jet's aircraft were determined to be of foreign manufacture (over 50 percent manufactured from materials or supplies mined, produced, or manufactured outside of the United States), the addition of a 6-percent differential would not have affected the outcome of the competition. Executive Order 10582 provides that the price of domestic articles is unreasonable if it exceeds the cost of like foreign articles plus a specified differential.

Question: Are maintenance, training, and spare parts included for purposes of determining whether an item is considered a domestic source end product?

Answer: GAO and the United States District Court for the District of Columbia have ostensibly taken different positions.

In 1979 the U.S. Coast Guard contracted with a foreign manufacturer (Aerospatiale Helicopter Corporation, which established a plant in Grand Prairie, Texas) for 90 helicopters, training and maintenance. A losing competitor (Bell Helicopter Textron) protested the award to GAO. Bell's protest contained five allegations, one of which was that the Coast Guard erroneously determined that the Aerospatiale helicopter was a domestic source end product, and therefore failed to evaluate the firm's proposal in accordance with the Buy American Act. Before GAO gave an opinion on the matter, Bell also filed suit in the United States District Court for the District of Columbia (Civil Action No. 79-1749) seeking an order setting aside the contract, requiring re-evaluation of the proposals, and requesting that our decision on the protest be transmitted to the court.

In the GAO decision (B-195268, dated December 21, 1979), subsequently transmitted to the court, we stated that the cost of training and maintenance services must be excluded from consideration in determining whether a contractor is offering a foreign or domestic end product because services are not subject to the act. However, the court held that the Coast Guard's conclusion that the procurement was for a system, which included these items, was reasonable.

A copy of the Court's decision was furnished to your staff on July 31, 1981.

Question: What, if any, bearing does the fact that Falcon Jet is an American company marketing French aircraft have on the Buy American Act?

Answer: None. The nationality of the company is not material to Buy American Act determinations. The act is concerned with the place of manufacturing, mining, or production of the product in question.

ENCLOSURE I

ENCLOSURE I

ANSWERS TO QUESTIONS RAISED
BY REPRESENTATIVES DON YOUNG AND
GENE SNYDER ON THE U.S. COAST GUARD'S
PROCUREMENT OF SHORT-RANGE RECOVERY
(SRR) HELICOPTERS
CONTRACT NUMBER DOT-CG-80513-A

Question: How did the Coast Guard comply with the Buy American Act on this contract?

Answer: A detailed discussion answering this question is contained in GAO's Decision, B-195268, dated December 21, 1979, on the matter of Bell Helicopter protesting this contract award. A copy was furnished to your staff on May 28, 1981.

Question: What is the breakdown or composition of domestic source end product?

Answer: A full discussion and answer to this question (beginning on page 10) is contained in the GAO decision identified in response to the previous question.