



## Decision

**Matter of:** HID Global, Inc.

**File:** B-403103

**Date:** September 15, 2010

---

Jessica C. Abrahams, Esq., and Erin Sheppard, Esq., McKenna Long & Aldridge LLP, for the protester.

Julie Kelley Cannatti, Esq., Government Printing Office, for the agency.

Kenneth Kilgour, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

---

### DIGEST

Protest that solicitation improperly includes provisions of the Buy American Act without also including the domestic preference exemption available under the Trade Agreements Act of 1979 is denied where the procuring agency is not one whose procurements are covered by the Trade Agreements Act exemption.

---

### DECISION

HID Global, Inc., of Irvine, California, protests the terms of request for proposals (RFP) No. GP010-0001, issued by the Government Printing Office (GPO) for specialized passport cover material for use by the Department of State. HID asserts that the RFP improperly includes the domestic preferences of the Buy American Act, 41 U.S.C. §§ 10a–10d (2006), without also incorporating the provisions of the Trade Agreements Act of 1979, 19 U.S.C. § 2501 *et seq.* (2006), that provide an exemption to the Buy American Act preferences.<sup>1</sup>

We deny the protest.

---

<sup>1</sup> The protester alleged several other solicitation improprieties which were rendered academic by the agency's issuance of a clarifying amendment. See Letter from Agency to GAO, July 9, 2010.

The Buy American Act requires, with certain exceptions, that only domestic end products be acquired for public use. Federal Acquisition Regulation (FAR) §§ 25.102, 25.103 (exceptions). In comparison, the Trade Agreements Act provides that eligible products from World Trade Organization Government Procurement Agreement (WTO GPA) countries are entitled to “nondiscriminatory treatment,” FAR § 25.403(a), and for those eligible products, the President is authorized to and, in fact, has waived the requirements of the Buy American Act. See 19 U.S.C. § 2511; Exec. Order No. 12,260, 46 Fed. Reg. 1,653 (Dec. 31, 1980); FAR § 25.402(a)(1).

The Trade Agreements Act exemption is applicable to procurements by federal agencies designated as covered by the WTO GPA. See FAR §§ 25.400(a)(1), 25.402(a)(1); Final Act Embodying the Results of the Uruguay Round of Multinational Negotiations, Apr. 15, 1994, 33 I.L.M. 1125, Annex 4(b), Agreement on Government Procurement, Article I (stating that the GPA applies to any procurement by entities specified in Appendix I to the GPA). As a signatory to the agreement, the United States maintains a list of procuring entities covered by the WTO GPA; that list does not include the GPO. See id. at Appendix I, United States, Annex 1 (Oct. 1, 2004).<sup>2</sup> Since the procurement at issue in the protest here is being conducted by the GPO, and the GPO is not a covered agency under the WTO GPA, the Trade Agreements Act exemption from the Buy American Act domestic preference provisions does not apply.

In arguing that the Trade Agreements Act and the associated exemption from the Buy American Act do apply to this procurement, HID maintains that the State Department is a de facto procuring agency for this procurement, along with the GPO. Since the State Department (unlike the GPO) is included on the list of federal agencies covered by the WTO GPA, id. at 1, HID argues that the provisions of the Trade Agreements Act apply and supersede the Buy American Act domestic preferences. We disagree.

In support of its position, the protester points to the State Department’s “intimate involvement” in outlining its requirement here, drafting the solicitation specifications, conducting the procurement, evaluating offerors, and personalizing the passports. Comments, July 19, 2010, at 5. The protester also notes that the RFP introduction states that the GPO, “in cooperation with its partner the Department of State,” has a requirement for passport cover material. RFP ¶ C1. The GPO is procuring fabric and creating passport covers for the State Department, and presumably that transformation of fabric into an item of value for the State Department will involve a cooperative partnership. It does not follow, however, that

---

<sup>2</sup> The text of the WTO GPA, the Appendices, and the Annexes is available online at the WTO’s website, [www.wto.org](http://www.wto.org).

the State Department is a de facto procuring agency. In the absence of any compelling indicia that the State Department was a co-procuring agency, we will not ascribe to the State Department a status that the agencies themselves did not.

In sum, the GPO is not listed as an agency covered by the WTO GPA, the exemption to the Buy American Act domestic preference provisions applicable to covered agencies under the Trade Agreements Act does not apply to procurements by the GPO. Further, we see no merit to the protester's argument that the State Department, whose procurements are subject to the Trade Agreements Act exemption, is an actual procuring entity here. We therefore see nothing improper in the RFP's inclusion of the BAA preferences, without also including the exemption provision of the TAA.

The protest is denied.

Lynn H. Gibson  
Acting General Counsel