

116975

20172

*Ballard*

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20548**

**FILE:** B-204471

**DATE:** December 3, 1981

**MATTER OF:** Omega Machine Co.

**DIGEST:**

Foreign bidder from a North Atlantic Treaty Organization nation which has entered into a Memorandum of Understanding with the United States may not be disqualified from award because it may have a competitive advantage. Further, the agency was under no obligation to place a notice in a solicitation for aircraft parts to inform domestic bidders that foreign firms might participate in the procurement.

Omega Machine Company protests the award by the Department of the Air Force of a contract for aircraft radar system parts (cable assemblies) to a foreign firm, the Royal Ordnance Factory of the United Kingdom, under RFP FD2060-81-80133. Omega contends that the agency should have notified domestic firms that foreign firms were being permitted to bid under this solicitation. We deny the protest.

Omega does not contest the premise that Royal, as a firm located in a North Atlantic Treaty Organization country, which has entered into a Memorandum of Understanding with the United States enabling Royal and other British firms to be evaluated on an equal basis with domestic firms, is entitled to compete for Government contracts. See Defense Acquisition Regulation (DAR) § 6-1401. The protester does maintain that it cannot compete with foreign firms such as Royal as they are generally subsidized by their Governments in the form of tax advantages and plant facilities not available to domestic firms and complains that the RFP did not contain a notice of possible competition from such foreign firms. As a result,

Omega concludes it needlessly incurred substantial proposal preparation expenses in a procurement it could not expect to win.

We have held that a foreign bidder's possession of economic advantages such as lower taxes and lower minimum wage standards provides no basis for rejecting the foreign bid, Fire & Technical Equipment Corporation, B-203858, September 29, 1981, 81-2 CPD 236; B-175833, September 25, 1972. Also there is no Federal law which prevents foreign firms from bidding on Government procurements and in this case the only law which seeks to equalize the competitive advantage which a foreign firm may possess, the Buy American Act, 41 U.S.C. §§ 10 a-d (1976) was not applicable because of the Memorandum of Understanding between the United States and the United Kingdom, DAR § 6-1403.1(c). Just as there is no legal bar to the participation of a foreign firm such as Royal in any procurement of this type there was no legal requirement that the agency include a special notice in this particular solicitation that foreign firms might participate. Further, since Royal was not specifically solicited, there was no reason for the agency to know at the time the solicitation was issued that Royal or any other similar foreign firm would actually submit a proposal.

The protest is denied.

for *Milton J. Rowland*  
Comptroller General  
of the United States