



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Scopus Optical Industry--Reconsideration  
 File: B-225728.2, B-225729.2, B-225730.2, B-225731.2  
 Date: June 29, 1987

### DIGEST

Protest that agency improperly restricted procurement to domestic manufacturers is denied where item being procured is properly determined to be a defense mobilization item, and restriction therefore is required by governing regulations.

### DECISION

Scopus Optical Industry protests that Department of the Army solicitations Nos. DAA09-86-R-1893, -1894, -1895, and -1986, issued to procure periscopes, unduly restrict competition by limiting offerors to domestic manufacturers.

On March 25, 1987, we dismissed these protests as untimely under section 21.2(a)(2) of our Bid Protest Regulations, 4 C.F.R. part 21 (1986), because the protests were filed more than 10-working days after notices of the impending procurements were published in the Commerce Business Daily and no date for receipt of proposals was stated. Scopus Optical Industry, B-225728, et al., Mar. 25, 1987, 87-1 C.P.D. ¶ 342. Upon request for reconsideration, we have determined that section 21.2(a)(1) should have been applied and the protests considered timely since the protests involve alleged solicitation improprieties and the protests were filed prior to the receipt of proposals. See Engine & Generator Rebuilders, 65 Comp. Gen. 191 (1986), 86-1 C.P.D. ¶ 27.

We deny the protest.

The solicitations were issued on December 5, 1986, to obtain various types of plastic periscopes for use with armored combat vehicles. According to the Army, from 1979 through 1986 the periscopes were procured solely from two

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mobilization base planned producers.<sup>1/</sup> In 1986, however, in order to increase competition while maintaining an adequate domestic industrial base for the periscopes, the Army decided to open the competition, but to restrict it to domestic sources. The Justification and Approval (J&A) to limit the procurement to domestic sources was based on the fact that the periscopes are included on the Industrial Preparedness Planning List (IPPL).<sup>2/</sup>

In response to Scopus' protest, the Army has further explained the basis for the restriction. The Army reports that it considered, among other factors, that the periscopes are vital components for combat vehicles, which are critical items for the national defense; there have been sustained mobilization requirements for the periscopes since 1979; there are no known substitutes for the periscopes; and the manufacture of the periscopes requires critical skills and specialized production equipment so that domestic capability must be maintained to prevent the loss of skills and to have sources available to train others.

Scopus protests that the Army's decision to restrict the procurement to domestic sources is unreasonable and inconsistent with the applicable statutes and regulations which, according to Scopus, do not contemplate an automatic restriction to domestic sources for every mobilization item. Specifically, Scopus argues that before restricting a procurement for mobilization items, the agency responsible for the procurement must make two determinations: (1) that the item being procured is a mobilization item, and (2) that it is necessary to restrict the procurement of the item in order to maintain the industrial base. Scopus agrees that the periscopes have been properly classified as defense mobilization items and placed on the IPPL, but complains

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1/ A mobilization base planned producer is an industrial firm that has indicated its willingness to produce specified military items in a national emergency by completing a Department of Defense (DOD) Industrial Preparedness Program Production Planning Schedule (DD Form 1519). See DOD Federal Acquisition Regulation (FAR) Supp., 48 C.F.R. § 208.070(b) (1985); Lister Bolt & Chain, Ltd., B-224473, Sept. 15, 1986, 86-2 C.P.D. ¶ 305.

2/ The IPPL includes those items and weapons systems selected by military departments and the Defense Logistics Agency, in accordance with DOD Instruction 4005.3 (April 18, 1985), as required to sustain military operations under a declared national emergency. See DOD Instruction 4005.3 § E(1); DOD FAR Supp., 48 C.F.R. § 208.070(b).

it is necessary to restrict the procurement of the item in order to maintain the industrial base. Scopus agrees that the periscopes have been properly classified as defense mobilization items and placed on the IPPL, but complains that the restriction to domestic sources is wrong because the Army has not properly made the second determination, that is, the Army has not considered whether the restriction in these particular instances in fact are necessary to maintain the industrial mobilization base. In this regard, Scopus argues that even if it is necessary to restrict some of the solicitations to domestic sources, the Army has no reasonable basis on which to restrict all four solicitations to domestic sources.

There is no legal merit to the protest. Under the Competition in Contracting Act of 1984, 10 U.S.C. §§ 2304(b)(1)(B) and 2304(c)(3) (Supp. III 1985), and its implementing regulation, Federal Acquisition Regulation (FAR), 48 C.F.R. § 6.302-3 (1986), agencies have authority to conduct procurements in a manner that enables them to establish or maintain sources of supply for a particular item in the interest of the national defense. In procuring for industrial mobilization purposes, agencies therefore are not required to obtain full and open competition. See Lister Bolt & Chain, Ltd., B-224473, Sept. 15, 1986, 86-2 C.P.D. ¶ 305.

In accordance with this authority, the DOD has promulgated regulations and restrictions governing Industrial Preparedness Production Planning. See DOD FAR Supp., 48 C.F.R. § 208.070, DOD Instruction 4005.3 (1985). These instructions provide procedures for DOD to choose items that are critical to the national defense and to plan so that an adequate industrial base will be maintained to support DOD requirements for the items in the event of a national emergency. Once an item properly has been chosen for industrial preparedness production planning, DOD may engage in such planning for the item only with domestic sources. DOD FAR Supp., 48 C.F.R. § 208.070(e).

Scopus concedes that the periscopes being procured have been correctly classified as industrial mobilization items and included on the IPPL. Consequently, the Army properly restricted the procurements to domestic sources.

Moreover, we disagree with Scopus' contention that the Army has not actually decided that all four of these particular purchases should be made domestically. Each solicitation restriction is supported by a separate J&A, executed and concurred in by the appropriate individuals. In this respect, the decision as to what restrictions are required to provide for an adequate mobilization base involves

complex judgments that must be left to the discretion of the military agencies. Wayne H. Coloney Co. Inc., 64 Comp. Gen. 260 (1985), 85-1 C.P.D. ¶ 186.

The protest is denied.

*for Seymour Spos*  
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General Counsel