



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Orlite Engineering Company, Ltd.
File: B-228373
Date: January 26, 1988

DIGEST

1. Protest that agency improperly restricted solicitation to offerors that are mobilization base planned producers is denied where restriction is required so agency can maintain a warm production base and the protester does not demonstrate the agency abused its discretion in imposing the restriction.
2. Protest by potential subcontractor that procurement is unduly restrictive is dismissed, since the firm is not a prospective offeror under the solicitation and therefore is not an interested party eligible to protest under General Accounting Office's Bid Protest Regulations.

DECISION

Orlite Engineering Company, Ltd., protests that Defense Logistics Agency (DLA) request for proposals (RFP) No. DLA100-86-R-0725, issued to procure combat helmets, improperly limits offerors to mobilization base planned producers.^{1/}

We deny the protest in part and dismiss it in part.

The RFP was issued on August 11, 1987, for 157,830 helmets, to fulfill the government's requirements for fiscal years

^{1/} A mobilization base planned producer is an industrial firm that has indicated its willingness to produce specified items in a national emergency by completing a Department of Defense (DOD) Industrial Preparedness Program Production Planning Schedule (DD Form 1519). See Lister Bolt & Chain, Ltd., B-224473, Sept. 15, 1986, 86-2 CPD ¶ 305.

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1986 through 1989,^{2/} and indicated that DLA intended to procure 79,918 helmets in each of fiscal years 1987 and 1988. The RFP also indicated that DLA desired to award three contracts, one at 70 percent and two each at 15 percent of the total requirement. The procurement was restricted to mobilization base planned producers; also, foreign firms were not permitted to participate in the procurement as subcontractors.

Orlite, an Israeli firm that manufactures the helmets in issue and separately manufactures the outer shell, first protests that restricting offerors to planned producers is not necessary to maintain the mobilization base.^{3/} Orlite argues that there are 13 planned producers of the helmet with sufficient production capacity to satisfy DLA's need to maintain the mobilization base without restricting the instant procurement. In this regard, Orlite points to DLA's acquisition plan for the helmets which, according to Orlite, demonstrates that there is sufficient domestic capacity to meet surge and mobilization requirements and does not identify any shortfall requiring the restriction. Orlite further points to the Justification and Approval (J/A) prepared by DLA for the procurement, which provides that DLA is restricting the procurement to mobilization base producers to insure a warm production base and that such a base will be assured if three awards are made. The J/A further states that 15 percent of the total requirement is the minimum sustaining rate of most planned producers, which

^{2/} The quantity reflects actual requirements for fiscal years 1986 and 1987, and projected requirements for fiscal years 1988 and 1989. The record indicates that the delay in fulfilling the fiscal year 1986 requirements is attributable to problems with the technical data package, which have been resolved.

^{3/} Orlite also argued that the restriction violated a Memorandum of Agreement between the United States and Israel which is designed to remove barriers to full participation by contractors of one country in the procurement process of the other country. In its report DLA specifically denied this allegation, and in reply Orlite did not rebut DLA's denial. We therefore consider this protest issue abandoned and will not consider it on the merits. See Spectrum Analysis & Frequency Engineering, Inc., B-222554, Aug. 1, 1986, 86-2 CPD ¶ 136.

Orlite interprets to mean that DLA can assure a warm production base by awarding 45 percent of the total requirement (three contracts at 15 percent) to planned producers. Orlite thus concludes that at least 55 percent of the requirement should have been procured on the basis of full and open competition.

The J/A represents that since there is no civilian market for the helmets, awards must be made to planned producers to maintain an industrial mobilization base. The J/A further states that the present procurement is being restricted to ensure the maintenance of a warm production base and that the quantity of helmets being procured is that needed to maintain a warm base in the event of mobilization. Finally, the J/A provides that three awards will ensure a warm base and permit the greatest number of planned producers to receive awards.

DLA, in responding to Orlite's protest, asserts that having 13 planned producers subscribed to provide helmets in the event of mobilization does not equate with having a warm production base. DLA explains that a warm base means that the firm not only has subscribed to produce the parts but is producing them. DLA argues that in the event of mobilization, its needs could be met only from a warm base because such a facility could be converted to active status on short notice.

Under the Competition in Contracting Act of 1984, 10 U.S.C. §§ 2304(b)(1)(B) and (c)(3) (Supp. III 1985), military 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 national defense. Agencies thus need not obtain full and open competition where the procurement is conducted for industrial mobilization purposes and may use other than competitive procedures where it is necessary to award the contract to a particular source or sources. The decisions as to the restrictions needed to meet the needs of industrial mobilization are left to the discretion of the military agencies, and our Office questions those decisions only if the evidence convincingly shows that the agency abused its discretion. NI Industries, Inc., Vernon Division, B-223990.2, June 16, 1987, 87-1 CPD ¶ 597.

The record fails to show that DLA abused its discretion in limiting offerors on the current procurement to planned producers of the helmet. Our Office has recognized that an agency's desire to maintain a warm mobilization base is a proper basis on which to restrict competition in the interest of defense mobilization. See NI Industries, Inc., Vernon Division, B-223990.2, supra. We thus agree with DLA

that the fact that there are 13 planned producers of the helmet does not establish that the agency did not need to restrict this procurement. More importantly, Orlite has provided no evidence to show that DLA did not need the restriction to ensure a warm mobilization base. We disagree with Orlite that the J/A establishes that DLA's need in that regard would be met if only 45 percent of the requirement were restricted to planned producers, that is, that the J/A shows that DLA could maintain a warm production base by awarding three contracts to planned producers at their minimum sustaining rates. Although the J/A does note that 15 percent of the total requirement is the minimum sustaining rate of most planned producers, this simply means that of the total requirement to be awarded to maintain a warm mobilization base, not less than 15 percent must be awarded to any one producer. Thus, the J/A provides:

"Dividing requirements among three Planned Producers will ensure a warm production base is maintained in the event of mobilization. Further, awarding three contracts will permit the greatest number of Planned Producers to receive awards and remain viable and still accommodate limited peace time quantity requirements and MSR [minimum sustaining rate] considerations. The above cited MSR quantities are the lowest levels at which companies can produce without either an increase to cost or otherwise experience an operating loss . . . three awards at the MSR plus a small variance . . . is a better business decision than sustaining four Planned Producers on a minimal basis."

The J/A specifically provides that "[t]he acquisition quantity herein is the quantity needed to maintain a warm production base," and thus clearly indicates that DLA determined that it needed to restrict the entire quantity in issue to planned producers.

Orlite also protests that DLA improperly extended the restriction to manufacturers of components of the helmet. Orlite, however, is not an interested party to protest this issue. Our Bid Protest Regulations, 4 C.F.R. § 21.0(a) (1987), define an interested party for purposes of eligibility to protest as an "actual or prospective bidder or offeror whose direct economic interest would be affected by the award of the contract or the failure to award the contract." Since Orlite's status on this protest issue is that of a potential supplier of outer shells to the successful offeror on the procurement, and not that of an actual or prospective offeror, Orlite is not interested to

protest the matter. See Microrim, Inc.--Request for Reconsideration, B-225525.2, Jan. 14, 1987, 87-1 CPD ¶ 58.

The protest is denied in part and dismissed in part.

for *Seymour E. Hoover*
James F. Hinchman
General Counsel