



The Comptroller General
of the United States

Washington, D.C. 20548

Curcio

Decision

Matter of: Space Commerce Corporation

File: B-235429

Date: August 29, 1989

DIGEST

Protest that agency improperly restricted procurement for launch vehicle services to domestic sources is denied where the agency reasonably interpreted statute to give it the authority to include such a restriction.

DECISION

Space Commerce Corporation (SCC) protests the terms of request for proposals (RFP) No. RFP5-65922/352, issued by the National Aeronautics and Space Administration (NASA) for space launch services. SCC contends that the RFP is ambiguous and unduly restrictive of competition.

We deny the protest.

The RFP, issued on March 7, 1989, requires the successful contractor to deliver medium-class payloads into designated orbits. Specifically, the RFP calls for the contractor to provide all necessary personnel, equipment and services to "design, develop, produce, integrate, test, and launch expendable launch vehicles" to carry designated payloads into orbit. Pursuant to the National Aeronautics and Space Administration Authorization Act of 1988, Pub. L. No. 100-147, § 311(a), 101 Stat. 860, 867 (1987), NASA restricted competition under the solicitation to the "United States launch vehicle industry." Under the restriction, only domestic firms that could either produce launch vehicles for the purpose of providing launch services or subcontract directly with a United States launch vehicle industry source to produce the vehicle were eligible for award; in effect, the use of foreign-made launch vehicles was prohibited.

The relevant provision of Pub. L. No. 100-47, entitled "Contracts Regarding Expendable Launch Vehicles," provides as follows:

O-46343 / 139430

"Sec. 311. (a) The Administrator [of NASA] may enter into contracts for expendable launch vehicle services that are for periods in excess of the period for which funds are otherwise available for obligation, provide for the payment for contingent liability which may accrue in excess of available appropriations in the event the Government for its convenience terminates such contracts, and provide for advance payments reasonably related to launch vehicle and related equipment, fabrication, and acquisition costs, if any such contract limits the amount of the payments that the Federal Government is allowed to make under such contract to amounts provided in advance in appropriation Acts. Such contracts may be limited to sources within the United States when the Administrator determines that such limitation is in the public interest." (Emphasis added.)

Pursuant to section 311(a), the Administrator of NASA executed a general determination and findings to limit competition for launch services to domestic sources in order to enhance the development of the domestic commercial launch industry. With regard to the present procurement, NASA then issued a justification to procure the launch services using other than full and open competition.

SCC is a Texas corporation that desires to submit a proposal to perform the space launch services using a vehicle manufactured in the Soviet Union. SCC asserts that insofar as the RFP prohibits a domestic firm from using a foreign-made launch vehicle it is unduly restrictive of competition. SCC also complains that the solicitation is ambiguous because it does not define the term "United States launch vehicle industry." Finally, SCC protests that because this is a service contract certain clauses contained in the RFP which are applicable to supply contracts are unnecessary and cause the solicitation to be ambiguous and, in some cases, restrictive of competition.

It is NASA's position that the Authorization Act gives it the authority to restrict both the provider of the launch services and the provider of the launch vehicle to domestic sources. In this regard, NASA asserts that, as indicated by the Senate Report on the legislation, the intent of the statutory provision is to give NASA the authority to promote and encourage the growth of the infant commercial expendable launch vehicle industry in this country. See S. Rep. No. 87, 100th Cong., 1st Sess. 102 (1987). NASA argues that

the growth of the domestic industry would not be encouraged if the funds for the launch vehicle, which represent a substantial portion of the cost of the launch services contract, go to foreign sources.

NASA further asserts that the statute recognizes that launch vehicles are integral to launch services contracts since it authorizes advance payments under such contracts for costs "reasonably related to launch vehicles and related equipment, fabrication and acquisition costs." It is NASA's position that the contracts which the statute refers to in its concluding sentence as those which may be limited to sources within the United States include those contracts for which advance payments may be made, that is, those related to launch vehicles. Finally, NASA asserts that its interpretation is consistent with the revised National Space Policy as enunciated by the January 5, 1988, Presidential Directive on National Space Policy, which is to enhance development of the domestic commercial launch industry.

SCC argues that the statute gives NASA authority to restrict competition for launch services to domestic sources, but makes no mention of launch vehicle manufacturers. SCC reasons that since the manufacture of launch vehicles is a separate and distinct component of the launch industry, NASA has no authority to prohibit a domestic firm from providing the services with a foreign-manufactured vehicle and that this limitation is thus an improper restriction on competition. SCC also argues that its interpretation of the statute is consistent with the purpose of the statute, that is, to promote the domestic launch industry. Specifically, SCC argues that its interpretation will encourage the development of companies that provide launch services; in comparison, argues SCC, NASA's interpretation will not foster growth of the industry because it eliminates companies that will provide space launch services but do not manufacture space launch vehicles.

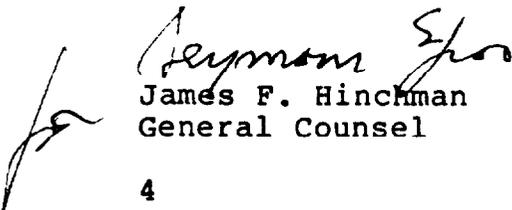
The legislative history of the statute makes clear, and both parties agree, that the purpose of the provision is to permit NASA to encourage the growth of the United States commercial launch industry. Neither the statute nor the legislative history, however, specifically addresses whether Congress considered that industry to include manufacturers of launch vehicles, as well as providers of launch services. Based on our review of the record, we conclude that NASA reasonably interpreted the statute to encompass the authority to require that the launch vehicle be manufactured by a domestic source.

As a preliminary matter, it is clear that Congress had launch vehicles in mind when it enacted the provision. In this regard, the provision is entitled, "Contracts Regarding Expendable Launch Vehicles." In addition, the provision specifically states that launch vehicle services contracts may ". . . provide for advance payments reasonably related to launch vehicle and related equipment, fabrication and acquisition costs." Thus, as NASA argues, the contracts which the last sentence of the provision allows to be limited to domestic sources clearly include providing launch vehicles.

Most importantly, even if, as SCC argues, launch services and launch vehicle manufacturers can be considered separate parts of the launch industry, NASA's broad interpretation of the Act as giving it authority to restrict to domestic sources the providers of both is entirely consistent with Congress' intention in enacting the legislation--to foster growth of the domestic launch industry. Rather than focusing narrowly on one component of the domestic launch industry, NASA's interpretation fosters development of the entire industry, both the providers of launch services and the providers of launch vehicles. Moreover, since the launch vehicle represents a substantial portion of the cost of a launch services contract, extending the domestic restriction to manufacture of the launch vehicle clearly enhances development of the entire domestic commercial launch industry. Accordingly, we find that NASA's interpretation is reasonable and consistent with the purpose of the statute, and we deny this basis of protest. See Gumsur Ltd., B-231630, Oct. 6, 1988, 88-2 CPD ¶ 329; Urdan Industries, Ltd., B-210843, July 6, 1983, 83-2 CPD ¶ 62.

Concerning the other issues raised by SCC--whether the supply clauses were properly included in the RFP and whether the solicitation is ambiguous--at the administrative conference held in our Office SCC agreed that if NASA properly could require the use of a domestic launch vehicle, SCC would not compete for this procurement. Consequently, SCC is not an interested party to have us address these remaining issues. See G.S. Link and Assocs., B-229604; B-229606, Jan. 25, 1988, 88-1 CPD ¶ 70.

The protest is denied. Accordingly, SCC is not entitled to recover its protest costs. Gumsur Ltd., B-231630, supra.


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