



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: PacOrd
File: B-238366
Date: May 11, 1990

John Flippen, for the protester.
Stuart S. Heller, Esq., for Raytheon Company, an interested party.
Shauna D. Russell, Esq., Department of the Navy, for the agency.
John Formica, Esq., and John Brosnan, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Where an international organization, comprised of 11 nations including the United States, specifies that supplies and services be purchased from a particular firm, the Navy may properly specify that firm when purchasing the supplies and services on behalf of the international organization.
2. A justification and approval for a noncompetitive award that states that a market survey was not conducted because a "directed source" was designated pursuant to an international agreement adequately states why the market survey was not conducted.

DECISION

PacOrd protests a proposed basic ordering agreement to be executed with the Raytheon Company by the Naval Sea Systems Command (NAVSEA) for the acquisition of supplies and services for the North Atlantic Treaty Organization (NATO) Seasparrow surface missile system project and the issuance of sole-source delivery orders under that agreement.

We deny the protest.

C-48511/141368

The NATO Seasparrow surface missile system was cooperatively developed and produced under an international memorandum of understanding (MOU) first entered into in 1968 by the United States and several participating NATO nations. The participating nations, including the United States, agreed to a second MOU in 1977 for the cooperative support of the system. The Seasparrow system and related equipment have been installed on ships of 11 different nations. This second MOU established a Seasparrow steering committee, comprised of one member from each participating nation, responsible for the implementation of the Seasparrow support project. The MOU also provided that the United States would, on behalf of the participating nations, be responsible for the procurement of the supplies and services necessary for the project. Belgium, Canada, Denmark, the Federal Republic of Germany, Greece, Italy, The Netherlands, Norway, Portugal, Turkey, and the United States are the current participants in the project.

The steering committee met on October 23-24, 1989, and determined, among other things, that the requirement for the materials and services necessary for the overhaul, repair, and modification of Seasparrow project equipment be contracted to Raytheon, the incumbent contractor and the initial supplier of the Seasparrow system. In accordance with the United States' responsibility to procure the necessary supplies and services for the project, NAVSEA began to take the steps necessary to make the award to Raytheon, as directed by the steering committee. The record shows that a justification and approval (J&A) for use of other than full and open competitive procedures was approved on February 1, 1990. The authority cited by the J&A is 10 U.S.C. § 2304(c)(4) (1988), which allows the head of an agency to authorize the use of other than competitive procedures in awarding a contract if "the terms of an international agreement . . . have the effect of requiring the use of procedures other than competitive procedures." NAVSEA also announced in the Commerce Business Daily (CBD) its intention to award delivery orders to Raytheon for the supplies and services necessary to support the Seasparrow project. PacOrd, alerted to the proposed award to Raytheon by the CBD notice, first protested to the agency, and subsequently to our Office.

PacOrd states that the sole-source delivery orders to Raytheon would be improper. PacOrd contends that it is a source of the supplies and services needed and should be permitted to compete for the requirement. The protester argues that the steering committee should have been made aware of PacOrd's experience in the area of Seasparrow missile system support.

While the Competition in Contracting Act of 1984 (CICA) generally requires that agencies conducting procurements for property or services obtain full and open competition through the use of competitive procedures, 10 U.S.C. § 2304(a)(1)(A), it specifically exempts procurements where an international agreement has "the effect of requiring the use of other than competitive procedures." 10 U.S.C. § 2304(c)(4). Here, the proposed awards to Raytheon involve the acquisition of supplies and services in support of a weapons system pursuant to the MOU; the MOU, entered into by several NATO countries, constitutes an international agreement. There is no dispute that the steering committee was set up under the MOU and that it approved the use of Raytheon as a part of its authorized duties. It is thus our view that the acquisition of these supplies and services from Raytheon was authorized pursuant to 10 U.S.C. § 2304(c)(4).

PacOrd nevertheless argues that the steering committee should have been made aware of PacOrd's experience in this area before it made its decision concerning the purchase of the supplies and services. We are aware of nothing in either the MOU or in 10 U.S.C. § 2304(c)(4) that required the steering committee to consider alternate sources for its needs. As we said in connection with another noncompetitive procurement involving a foreign military sale under this same statutory authority: "[w]hether a United States agency initially recommends specific items or advises the foreign government as to what items might satisfy its needs is immaterial in the absence of evidence that the agency sought to have the foreign government request certain sources in bad faith or for the purpose of circumventing the requirement for competition." Kahn Indus., Inc., 66 Comp. Gen. 360 (1987), 87-1 CPD ¶ 343. No such evidence has been presented here.

Finally, the protester alleges various deficiencies in NAVSEA's J&A. For example, PacOrd complains that the J&A does not adequately explain why a market survey was not conducted. FAR § 6.303-2(a)(8) requires a J&A to describe the market survey conducted or a statement as to why a survey was not conducted. The J&A here states that a market survey was not conducted because "this procurement is considered as a directed source" in light of the MOU and the steering committee approval of Raytheon as the source for the acquisition. We do not see any inadequacy in this statement. It is clear from the J&A that a market survey was not conducted because pursuant to the MOU a specific

source was designated for the procurement by an international body, with the Navy being responsible for acquiring the needed goods and services from that source. Obviously, under such circumstances, a market survey would serve no purpose. We therefore find no merit to the complaint. While PacOrd also complains about other aspects of the J&A, we also find the J&A to be sufficient in those respects as well.

The protest is denied.

Ronald Berger
for James F. Hinchman
General Counsel