

McArthur



Comptroller General  
of the United States  
Washington, D.C. 20548

# Decision

**Matter of:** Hiltronics Corporation  
**File:** B-241450; B-241451; B-241452; B-241453;  
B-241454; B-241455; B-241456; B-241457;  
B-241459; B-241461; B-241462; B-241464  
**Date:** January 18, 1991

Stephen S. Heller for the protester.  
Philip F. Eckert, Jr., Esq., Defense Logistics Agency, for the agency.  
C. Douglas McArthur, Esq., Andrew T. Pogany, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

## DIGEST

Where schedule of products authorized to be supplied by Federal Prison Industries (FPI) contained cable assemblies that were not approved items on agency's qualified products list (QPL), agency decision to purchase supplies from FPI was, nevertheless, proper where QPL listed only one source and agency found that it could assure satisfactory quality of items from FPI through first article testing.

## DECISION

Hiltronics Corporation protests the award of 12 contracts by the Defense General Supply Center (DGSC), Defense Logistics Agency, for cable assemblies appearing on the agency's qualified products list (QPL), to Federal Prison Industries, Inc. (FPI), doing business under the trade name UNICOR. The protester argues that the agency improperly awarded the contracts to FPI, since the awardee has not complied with the qualification requirements of MIL-C-22442, which is applicable to the cable assemblies being procured.

We dismiss one protest and deny and dismiss the remaining protests.

On September 4, 1990, the agency issued delivery order No. DLA400-90-F-2297, for aircraft radio electrical cord assemblies, to FPI for a first article and production in accordance with military specification MIL-C-22442. That specification, which governs production of the assemblies, generally requires the agency to purchase the assemblies from

050436 / 143034

sources offering products on the appropriate QPL.<sup>1/</sup> Hiltronics, which is the only qualified source for the assemblies under the applicable QPL, filed these protests on October 2, upon learning of the award.

The protester contends that FPI unreasonably invoked its statutory preference to prevent the agency from seeking competitive bids.<sup>2/</sup> Specifically, the protester argues that the regulations under which FPI operates do not authorize it to offer products not complying with applicable specifications; in this instance, the protester argues that paragraph 6.3 of the specification prohibits the agency from awarding a contract except for products that have "prior to the time set for opening of bids, been tested and approved for inclusion in the applicable [QPL]." The protester argues that the agency improperly allowed the awardee to meet quality requirements by submission of a first article and inspection of production samples rather than ordering the items under the QPL.

The FPI board of directors is responsible for determining in what manner and to what extent federal penal and correctional institutes will carry on industrial operations for sale to government agencies.<sup>3/</sup> See 18 U.S.C. § 4122. The relevant statute prohibits FPI from operating in such a way that any single private industry bears an undue burden of the competition or from capturing more than a reasonable share of the federal market for any specific product. Any decision to produce a new product or to expand the production of existing products requires that the corporation prepare a detailed written analysis of the probable impact on private industry, considering, among other things, the number of current vendors

---

1/ Hiltronics also protests the issuance of delivery order No. DLA400-90-F-1558 for the same part, as well as Nos. DLA400-90-F-1631 and DLA400-89-F-2571 for a branched cable assembly, and Nos. DLA400-89-F-0881, DLA400-89-F-0229, DLA400-88-F-2389, DLA400-88-F-0524, DLA400-87-F-2916, DLA400-87-F-1731 and DLA400-86-F-3275, for a third type of cable assembly. MIL-C-22442 applies to all three assemblies.

2/ Generally, 18 U.S.C. § 4124 (1988) and Federal Acquisition Regulation (FAR) § 8.602(a) require government agencies to purchase supplies of the classes listed in UNICOR's schedule so long as the prices charged do not exceed current market prices. The card assemblies being procured here are listed in the schedule.

3/ The board of directors include representatives of industry, labor, agriculture, retailers and consumers as well as representatives of the Secretary of Defense and the Attorney General.

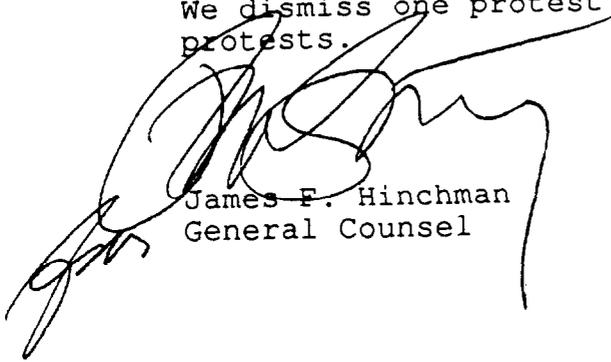
and the ability of the market to sustain both FPI and private vendors. Such decisions must be publicly announced, are subject to public comment and must be approved by the corporation's board of directors. Once the corporate board of directors has approved a product for addition to the schedule, both the statute, 18 U.S.C. § 4124, and FAR § 8.605(a), require agencies to either purchase their needs for products appearing on the schedule from FPI, where the products offered meet the agency's required level of quality and prices do not exceed current market prices, or to obtain clearance for obtaining the product from another source.

Here, FPI's authorized Schedule of Products made in Federal Penal and Correctional Institutions includes the cable assemblies for which DGSC awarded the protested contracts; as stated above, the protester is the only firm listed as an approved source under the QPL. While the protester argues that the applicable specification requires QPL testing and approval of products prior to award, the QPL itself specifically provides that where, as here, there are less than two sources for a part on the QPL, the agency may waive the QPL requirement. In such a case, agencies may allow potential contractors the opportunity to demonstrate the ability to meet quality requirements through first article inspections equivalent to the qualification inspections of MIL-C-22442; these inspections consist primarily of tests of 15 sample units produced with equipment and procedures normally used in production. Although the protester argues that the QPL conflicts with MIL-C-22442, and that the specification takes precedence, we think that reasonably read together, the specification and the QPL are not in conflict but generally require compliance with the QPL unless there are less than two sources previously qualified. In the latter case, where an equivalent first article requirement is instead imposed by the agency, we will not disturb an agency's determination as to the appropriate testing procedure unless it is shown to be unreasonable. Aero Technology Co., B-227374, Sept. 25, 1987, 87-2 CPD ¶ 301. We have no basis in the record before us for finding that the agency unreasonably determined that with first article and sample testing, FPI could provide adequate assurance of product quality. We therefore conclude that the agency decision to make an award to FPI was reasonable and in accordance with applicable statute and regulation.

Hiltronics also has protested the award of delivery order No. DLA400-89-F-0771, for a fourth cable assembly. The relevant QPL in this instance contained two potential sources, including Hiltronics, and the agency canceled the award on March 31, 1989. The protest is therefore moot, and we will not consider it further. 4 C.F.R. § 21.3(m) (1990).

Hiltronics also contends that UNICOR failed to deliver conforming card assemblies and, therefore, its contracts should be terminated. UNICOR's performance under the contracts involves a matter of contract administration, which our Office does not consider. 4 C.F.R. § 21.3(m)(1).

We dismiss one protest and deny and dismiss the remaining protests.



James F. Hinchman  
General Counsel