



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

317245

Decision

Matter of: Midwest Dynamometer & Engineering Company
File: E-252168
Date: May 24, 1993

George M. Pape for the protester.
Michael E. Bower, Environmental Protection Agency, for the agency.
John L. Formica, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency reasonably justified its procurement of a dynamometer under the small purchase procedures on a sole-source basis where the agency reasonably determined that only one source manufactured a dynamometer that meets the agency's needs.
2. Buy American Act, 41 U.S.C. § 10 (1988), is not applicable to the purchase of a dynamometer from a foreign firm under small purchase procedures where the agency has a sufficient sole-source award justification and reasonably determines that a dynamometer which meets its needs is not manufactured in the United States.

DECISION

Midwest Dynamometer & Engineering Company protests the sole-source award of small purchase order No. 2A-0495-NASA to Vibro-meter Corp., by the Environmental Protection Agency (EPA) for a dynamometer to be used by EPA's National Vehicle and Fuel Emissions Laboratory, Ann Arbor, Michigan.

We deny the protest.

¹A dynamometer measures power or force, and will be used by EPA here to test various small engines.

The sole-source award to Vibro-meter in the amount of \$24,998 was made on September 23, 1992, under small purchase procedures.² The justification for the sole-source award states that the dynamometer is required for use by EPA in its development, after testing, of new regulations to control emissions from small utility engines. The justification states that the testing of a variety of small engines with disparate horsepower ranges is a very specialized task, and provides that three firms, including Midwest and Vibro-meter, were contacted concerning the agency's dynamometer requirement. The justification provides that when contacted, Midwest stated that it did not manufacture a dynamometer that could meet the agency's needs. The justification concludes that Vibro-meter manufactures the only dynamometer available to meet the needs of the agency.

Midwest contends that there was not adequate justification for the sole-source award to Vibro-meter, now asserting that it manufactures a dynamometer that would meet EPA's needs, and that the award violated the Buy American Act, 41 U.S.C. § 10 (1988), since Vibro-meter is a Swiss manufacturer.

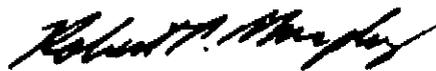
The Competition in Contracting Act of 1984 (CICA) requires simplified procedures for small purchases of property and services in order to promote efficiency and economy in contracting, and to avoid unnecessary burdens for agencies and contractors. 41 U.S.C. § 253(a)(1)(A), (g) (1988 & Supp. III 1991); Omnif Elevator Co., 71 Comp. Gen. 308 (1992), 92-1 CPD ¶ 201. Thus, small purchases are excepted from the requirement set forth in the CICA that agencies obtain full and open competition through the use of competitive procedures. Id. Nevertheless, all procurements, including small purchases, must be conducted consistent with the concern for fair and equitable competition that is inherent in any procurement. Vocational Resources, Inc., B-242396, Apr. 29, 1991, 91-1 CPD ¶ 414. The small purchase procedures set forth in the FAR generally require that contracting officers solicit quotations from a reasonable number of sources (generally, three or more) to promote competition to the maximum extent practicable. FAR § 13.106(b); Ultraviolet Purification Sys., Inc., B-226941, Sept. 10, 1987, 87-2 CPD ¶ 229. However, if the contracting agency reasonably determines and justifies that only one source is available, the agency may solicit a quotation from only that source. FAR § 13.106(b)(1), (c)(2); Ultraviolet Purification Sys., Inc., supra.

²Small purchase procedures can be used for the acquisition of supplies, services, and construction from commercial sources, the aggregate amount of which does not exceed \$25,000. Federal Acquisition Regulation (FAR) § 13.000; Helitune, Inc., B-243617.2, Mar. 16, 1992, 92-1 CPD ¶ 285.

We find EPA's justification for award to Vibro-meter on a sole-source basis reasonable and in compliance with the requirements of the FAR. In this regard, the agency contacted three manufacturers of dynamometers, including the protester, and found that only Vibro-meter manufactured a dynamometer that would meet its needs. The record shows that the protester was contacted by the agency on at least three occasions during the conduct of this procurement concerning the agency's requirement. EPA disclosed to Midwest its needs for a dynamometer capable of running a wide array of small engines, e.g., handheld engines at speeds up to 15,000 RPM (rotations per minute) and non-handheld engines generating up to 20 horsepower. The agency represents that the protester acknowledged the inability of its current models to accommodate the full range of engines to be tested by EPA. The model which Midwest now asserts can do so was not suggested by Midwest in these conversations, and the protester's literature that the agency consulted shows the model to be limited to engines under 5 horsepower. Despite the protester's contention to the contrary, and its unsupported assertion that it now manufactures dynamometers that meets EPA's requirements, we find nothing in the record suggesting that the agency's determination, that only Vibro-meter manufactured a dynamometer that would meet its needs, was unreasonable.

With regard to the protester's contention that the award to Vibro-meter constituted a violation of the Buy American Act, 41 U.S.C. § 10, where, as here, an agency has sufficient justification to make a sole-source award to a foreign firm, it can properly determine that because the item is not manufactured in the United States in sufficient and reasonably available commercial quantities, the Buy American Act is not applicable. Maremont Corp., 55 Comp. Gen. 1362 (1976), 76-2 CPD ¶ 181; see FAR § 25.102.

The protest is denied.


for James F. Hinchman
General Counsel