



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Goddard Industries, Inc.

File: B-275643

Date: March 11, 1997

Gary Goddard for the protester.

Richard A. Couch, Esq., and Vera Meza, Esq., Department of the Army, for the agency.

Wm. David Hasfurther, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Sole source procurement was proper where it involved a foreign military sale and the foreign government on whose behalf the procurement was conducted requested purchase from the specified source.

DECISION

Goddard Industries, Inc. protests a sole source procurement of M151 vehicle spare parts by the U.S. Army Tank-Automotive and Armaments Command on behalf of the Republic of the Philippines (ROP). Goddard contends that the procurement should have been conducted competitively.

We deny the protest.

The procurement involves a foreign military sale (FMS) conducted under the Arms Export Control Act. 22 U.S.C. § 2751-2799aa-2 (1994). The Act authorizes the Department of Defense, acting as an agent for a foreign country and using funds of that country that have been deposited in the FMS Trust Fund Account, to enter into contracts for purposes of resale to foreign countries. The Competition in Contracting Act of 1984, which generally requires agencies to obtain full and open competition through the use of competitive procedures, exempts procurements from competition where "written directions of a foreign government reimbursing the agency for the cost of the procurement of the property or services for such government, have the effect of requiring the use of procedures other than competitive procedures." 10 U.S.C. § 2304(c)(4) (1994); Pilkington Aerospace, Inc., B-260397, June 19, 1995, 95-2 CPD ¶ 122; Optic-Elec. Corp., B-235885, Oct. 6, 1989, 89-2 CPD ¶ 326. The Federal Acquisition Regulation (FAR) reiterates this exemption and provides for its use in circumstances such as "[w]hen a contemplated acquisition is to be reimbursed by a foreign country that requires that

the product be obtained from a particular firm as specified in an official written direction such as a Letter of Offer and Acceptance [LOA]." FAR § 6.302-4(b)(1).

The record shows that the Armed Forces of the Philippines (AFP) requested in writing that the United States Government cancel a prior initiated purchase of M151 spare parts, that an LOA be obtained, and that Red River Parts and Equipment Co. be designated as the sole source supplier for the spare parts. The AFP further stated that Red River is an accredited supplier of the parts and can provide the parts packaged as required for integration into the inventory of the AFP, can quickly supply the parts within the time frames required, and has an exclusive distributor in the Philippines which can give immediate warranty support and any technical assistance or training needed. An LOA was issued under which the United States government agreed to sell the ROP these spare parts. The purchase is being funded with \$1,105,643 of military assistance funds, which are available from the canceled purchase, and with an FMS credit of \$281,479.

Goddard does not dispute that the ROP requested that the United States Government obtain the parts on a sole source basis as part of an FMS; Goddard argues that the sole source purchase is improper, however, because the United States government and not the ROP is financing the purchase using MAP funds. Goddard thus asserts that this procurement does not qualify as one for which the cost is "reimbursed" by a foreign country under CICA and the implementing regulations.

We have addressed this precise issue previously. The Foreign Assistance Act, 22 U.S.C. §§ 2311(a)(3) (1994), specifically permits transfer of military assistance funds to a country's FMS trust account for use in meeting the obligations of that FMS customer arising from purchases made under the Arms Export Control Act. Once funds are deposited in a foreign country's account to be used to meet the obligations of the FMS customer, FMS rules and procedures apply, including the

honoring of a customer's designation of a sole source supplier as provided for in FAR § 6.302-4. Optic-Elec. Corp., supra; International Logistics Group, Ltd., B-214676, Sept. 18, 1984, 84-2 CPD ¶ 314. Accordingly, there is no basis to object to the agency's actions here.

The protest is denied.¹

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¹Goddard also argues that the LOA does not include certain delivery, warranty, and other terms which ROP initially specified in its request. Since these terms would at best require only modifications of the LOA and do not affect the legality of the sole source award to Red River, we need not address these matters since Goddard cannot compete in any event. See EEV, Inc., B-261297; B-261297.2, Sept. 11, 1995, 95-2 CPD ¶ 107.