

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

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FILE: B-209458.5

DATE: September 15, 1983

MATTER OF: Northwest Pipe & Casing Co.

DIGEST:

Awards to contractor offering product of foreign subcontractor are not affected by Department of Commerce temporary order allegedly denying export privileges to subcontractor because order applied only to United States origin commodities or technology.

Northwest Pipe & Casing Co. (Northwest) protests the contract awards to the R.H. Pines Corporation (Pines) by the Defense Construction Supply Center of the Defense Logistics Agency (DLA) under invitations for bids (IFB) Nos. DLA700-82-B-1531 and -2019, for steel tube for delivery outside the United States.

We deny the protest.

After evaluating bid prices adjusted for discounts, transportation costs, and labor surplus area preferences, Pines was determined to be the low responsive bidder on both solicitations. Pines' bids were predicated on supplying steel tube manufactured by Mannesmann-Rohren-Werke (Mannesmann-R-W) in Dusseldorf, West Germany, f.o.b. port of loading at Duisburg, West Germany. Northwest was the second low bidder on both IFB's based on steel tube manufactured domestically. Following the solicitation's provision for evaluation of domestic and foreign end products under the Department of Defense Balance of Payments Program (BoPP), Defense Acquisition Regulation (DAR) Part 6-800(b) (Defense Acquisition Circular Nos. 76-25, -27, October 31, 1980, May 15, 1981), DLA did not add the 50-percent BoPP evaluation factor to Pines' bids because products of West Germany qualify for equal treatment as domestic bids.

Northwest contended initially that DLA should have rejected the foreign-product bids of Pines as not in the public interest because of the general BoPP preference for domestic bids, that its home port of Portland, Oregon, should have been designated as a permitted American port of loading in addition to those specified in the IFB's which would substantially eliminate freight charges, and that

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Pines' subcontractor, Mannesmann-R-W, was sanctioned by a Department of Commerce Temporary Denial Order effective 1 week after the awards pursuant to the Export Administration Act of 1979, 50 U.S.C. App. § 2401 (Supp. IV, 1976).

However, the protester did not rebut, and we agree with DLA's position, that the evaluation was in strict accord with the solicitation's BoPP provisions implementing applicable statutes and regulations and that Northwest's home port was properly not included in the IFB's. Essentially, the protest is against the awards in the face of the impending issuance of the Temporary Denial Order.

DLA contends, first, that the Department of Commerce is the agency responsible for implementing and enforcing the act, and that our Office will not review protests raising issues within the cognizance and statutory mandates of other agencies. DLA argues that, in any event, the contracts were awarded before the Order was in effect and the Order was vacated a month later, and that the order applied to Mannesmann Anlagenbau Aktiengesellschaft and it has not been established that there is any connection with Pines' subcontractor, Mannesmann-R-W. Further, DLA states that the Order applies only to United States origin commodities and technical data to prevent sanctioned firms from obtaining export privileges, and the foreign-produced steel tube to be supplied by Pines is not covered. Pines subscribes to DLA's position.

Although Northwest takes issue with these positions, we need only discuss the DLA and Pines contention that the Order does not apply to the foreign product involved here but only to the export of United States origin products. In this regard, Northwest contends that the order extends "to a wider range of dealings between U.S. entities and the affected firm than just U.S.-origin commodities or technical data" and "* * * affects an entire course of dealing." However, the clear language of the Order supports the DLA and Pines positions since the Pines' bids offer a foreign product. The Order provides for revoking all export privileges of Mannesmann Anlagenbau Aktiengesellschaft "concerning U.S.-origin commodities or technical data" and, further, denies all "privileges of participating * * * in any manner

or capacity, in any transaction involving U.S.-origin commodities or technical data * * *." Absent a contrary interpretation of its Order by Commerce, we believe DLA's interpretation of the Order is consistent with the language thereof. Tymnet, Inc.; GTE Telenet Communications Corporation, B-209617, B-209617.2, April 12, 1983, 83-1 CPD 384. Because of this conclusion, it is not necessary to consider DLA's other arguments.

for *Milton J. Aroslan*
Comptroller General
of the United States