

DECISION

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

Agency
PK-IT
29349

FILE: B-214676**DATE:** September 18, 1984**MATTER OF:** International Logistics Group, Ltd.**DIGEST:**

Protest concerning agency's failure to permit protester to compete is denied since procurement was conducted under the Arms Export Control Act, 22 U.S.C. § 2751 et seq., and foreign government on whose behalf procurement was conducted requested that award be made to a specific source.

International Logistics Group, Ltd. (ILG) protests the proposed sole-source award of a contract to Cadillac Gage Company under request for proposals No. DAAE07-84-R-A260 issued by the Army Tank-Automotive Command, Warren, Michigan, on behalf of the Portuguese Government for the modernization of 82 wheeled armored vehicles. ILG advances numerous arguments in support of its contention that the intended sole-source award is improper and that, as a fully capable supplier, it should be allowed to compete. We deny the protest.

First, ILG contends that the procurement regulations only permit sole-source awards "when the contemplated procurement is to be reimbursed by a foreign country," see Defense Acquisition Regulation (DAR) §§ 3-210.2(xviii), 6-1307, reprinted in 32 C.F.R. pts. 1-39 (1983), and that this procurement involves "Grant Aid Funds" under the United States Military Assistance Program (MAP) which does not qualify as a procurement "reimbursed" by a foreign country. The Army states that the procurement is being conducted under the provisions of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. § 2151 et seq. (1982), and the Arms Export Control Act of 1976, as amended, 22 U.S.C. § 2751 et seq.

Generally, the Department of Defense acts as an agent for a foreign government when it conducts procurements under the authority of the Arms Export Control Act, using the foreign government's funds that have been deposited in

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the Foreign Military Sales (FMS) Trust Fund Account in the Treasury. See generally Allied Repair Service, Inc., 62 Comp. Gen. 100 (1982), 82-2 CPD ¶ 541. However, the Foreign Assistance Act specifically permits transfer of MAP funds to a country's FMS trust account which are then used to meet the obligations of the FMS customer. 22 U.S.C. § 2311(a)(3) (1982). Once funds are deposited in a foreign country's account pursuant to statutory authority, we see no reason why customary FMS rules and procedures should not apply, including the authority of a foreign customer to designate a sole-source supplier as permitted by DAR § 6-1307(a), reprinted in 32 C.F.R., supra. Accordingly, we find ILG's argument to be without merit.

ILG also argues that Portugal did not "specifically" request that the solicitation be restricted to Cadillac Gage. The record contains the initial letter from the Embassy of Portugal to the Department of the Army requesting vehicles "with characteristics similar to actual diesel vehicle . . . of Cadillac Gage." The Army has also supplemented the record with the following telegram dated April 26, 1984 from the United States Army Military Assistance Advisory Group, Lisbon:

"Ref. . . telecon: Maj Schroeder, MAAG Portugal and Col Pavara, Portuguese Army General Staff . . . Portugal has and still desires that the . . . upgrade be accomplished by the Cadillac Gage Corporation. This is a reaffirmation of expressed desires by Government of Portugal representatives during the annual security assistance conference."

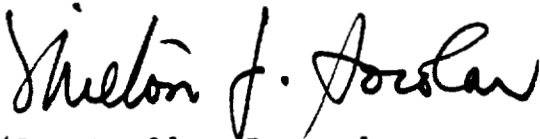
Further, the record also contains a letter from the protester to the Military & Air Attache, Embassy of Portugal, insisting, apparently without success, that the procurement be made competitive. On the basis of this information, we conclude that proper authorities of the Portuguese Government are fully aware of the sole-source designation and that the Army is acting according to stated Portuguese wishes under regulations permitting such discretionary sole-source designations.

Finally, ILG makes numerous allegations concerning the propriety of making an award to Cadillac Gage. For example, ILG alleges that: 1) Cadillac Gage improperly influenced the Portuguese Government to secure the sole-source contract; 2) the solicitation's specifications were

improperly and unethically written by and for Cadillac Gage with a view toward continued monopolization of the market for these vehicles; and 3) prior litigation has established that the equipment and parts necessary for performance are not proprietary but represent off-the-shelf items. ILG also states that the Army knew or should have known of these facts and requests that "the Portuguese Army be informed that a competitive bid is in their best interests."

These allegations provide no basis for us to interfere in this procurement. It is evident that the Portuguese Government has made a determination of its military needs, and this procurement merely implements that determination. We have found that the DAR has not been violated here, and that is the limit of our legal review of FMS procurements. See Allied Repair Service, Inc., supra.

The protest is denied.

for 
Comptroller General
of the United States