



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of:

Jewett-Cameron Lumber Corporation

File:

B-223779.2

Date:

April 24, 1987

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### DIGEST

General Accounting Office will not consider a protest against an agency's determination that the protester is nonresponsible where the protester is ineligible for the award of a contract because it offered products to be made in a nondesignated country under the Trade Agreements Act of 1979 and, therefore, is not an interested party to protest under GAO's Bid Protest Regulations.

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### DECISION

Jewett-Cameron Lumber Corporation (JCL) protests the rejection of its low offer under group III of request for proposals (RFP) No. FNP-A7-1901-N, issued by the Federal Supply Service Furniture Commodity Center, General Services Administration (GSA), for the procurement of rattan bedroom furniture. JCL contends that GSA improperly determined JCL to be nonresponsible because JCL was given an inadequate amount of time to present its financial and production information.

We dismiss the protest based on the contracting agency's supplemental report, filed April 16, 1987, in accordance with 4 C.F.R. § 21.3(f) (1986), which provides that when the propriety of a dismissal becomes clear only after information is provided by the contracting agency, we will dismiss the protest at that time.

The RFP was issued on November 22, 1985, and the closing date for receipt of initial proposals was January 28, 1986. Best and final offers (BAFO's) were due June 11, 1986. The RFP stated that under the Trade Agreements Act of 1979, 19 U.S.C. §§ 2501-2582 (Act), no eligible product which originates in a nondesignated foreign country may be purchased by a federal agency. However, the RFP permitted offers to furnish products originating in nondesignated

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countries under the Act, but stated that such offers will only be considered for award if a waiver of the purchasing prohibitions of the Act was sought by GSA and obtained from the United States Trade Representative. The RFP further stated that the determination to seek a waiver shall be in the sole discretion of the procurement authority, and would not be sought unless: (1) the government's requirements could only be obtained from products originating in nondesignated countries or (2) no acceptable offer from a responsible offeror is received offering products originating in the United States or originating in a designated country.

The RFP provided for the procurement of four separate groups of furniture and stated that award will be made in the aggregate by group. Groups I, II and IV were awarded to Shelby Williams Industries, Inc., on September 26, 1986.

Due to a delay of the award of group III, an amendment was issued on October 27, 1986, which revised the delivery schedule and reopened negotiations. The second round of BAFO's were due November 14, 1986. Because the BAFO's revealed that JCL was the apparent low offeror, GSA notified JCL (by telephone on November 21, 1986), that preaward surveys (financial and production) would be conducted on JCL so that GSA could determine whether JCL was a responsible offeror. Based upon "no award" recommendations of the senior financial analyst and the quality assurance specialist, GSA determined that JCL was nonresponsible, i.e., incapable of performing this procurement.

JCL argues that it was not given sufficient time to present its production and financial information and because of this, GSA drew improper conclusions about JCL's ability to perform the contract.

In its initial report on the matter, GSA confirmed that JCL was in line for award. GSA argued that JCL was given adequate time to prepare its production and financial information and in fact contended that JCL should have protested the matter at the time if it felt that it was being treated unfairly or improperly.

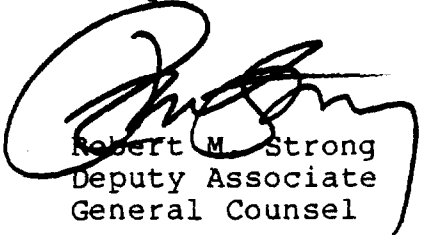
In a supplemental report, filed with our Office on April 16, 1987, GSA indicates that the matter of JCL's responsibility has become academic because JCL is no longer

eligible for award in any event. GSA reports that the furniture offered by JCL was to be manufactured in the Philippines, a nondesignated country under the Act. See Federal Acquisition Regulation (FAR), 48 C.F.R. § 25.401. Although offers to furnish products originating in a nondesignated country were permitted in response to the RFP, GSA states that an acceptable offer was received which indicates the offeror's intention to supply products produced in a designated country under the Act. Therefore, GSA states that it does not intend to seek a waiver of the purchasing prohibition under the Act and that all offers (such as JCL's) to supply products from nondesignated countries, are ineligible for the award. See FAR, 48 C.F.R. § 25.402; The W.H. Smith Hardware Co., B-219405.2, Oct. 25, 1985, 85-2 C.P.D. ¶ 460.

There is no question that JCL offered furniture manufactured in the Philippines, a nondesignated country under the Act. FAR, 48 C.F.R. § 25.401. When GSA determined that it had an acceptable offer of products from a designated country, waiver of the purchasing prohibition provisions of the Act became unnecessary and, in fact improper, rendering JCL's offer ineligible for award. See Amalgamet, Inc., B-213552, Dec. 23, 1983, 84-1 C.P.D. ¶ 20.

Under our Bid Protest Regulations, a party must be "interested" before we will consider its protest. 4 C.F.R. §§ 21.0(a), 21.1(a) (1986). A party is not interested if it would not be eligible for award should its protest be upheld. Potomac Contractors, B-223173, June 3, 1986, 86-1 C.P.D. ¶ 520. Since JCL is not eligible for award (as discussed above), even if its protest against the nonresponsibility determination is sustained, it is not an interested party. Potomac Contractors, B-223173, supra.

The protest is dismissed.



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