



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Proper International, Inc.

File: B-229888; B-229889

Date: March 22, 1988

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### DIGEST

1. In procurements conducted under provisions of the Competition in Contracting Act of 1984 pertaining to mobilization base producers, the usual concern for obtaining full and free competition is subject to the needs of industrial mobilization. Agencies properly may exclude a particular source or restrict a procurement to predetermined sources in order to create or maintain their readiness to produce critical supplies in case of a national emergency or to achieve industrial mobilization.

2. Procuring agency's decision to exclude the protester from competing for two industrial mobilization base contracts in order to develop additional sources of supply is proper where the protester has held every contract for the solicited item since 1979 and currently has production requirements into 1989.

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### DECISION

Proper International, Inc., protests any awards under request for proposals (RFP) Nos. DLA100-88-R-0048 and DLA100-88-R-0049, issued by the Defense Logistics Agency's Defense Personnel Support Center (DPSC), Philadelphia, Pennsylvania, respectively for 540,000 and 180,000 Navy hats. DPSC issued these RFP's on a sole-source basis to only two of six planned producers under the Department of Defense Industrial Preparedness Program (IPP). Proper, which is also a planned producer, contends that DPSC's decision to exclude it from competing violates the Competition in Contracting Act of 1984 (CICA).

We deny the protests.

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Propper argues that it should be allowed to compete for these hats. It further argues that the RFP's were defective because they did not reference the industrial mobilization authorization under CICA, 10 U.S.C. § 2304(c)(3) (Supp. III 1985), and did not contain caution sheets restricting the procurement to IPP producers, when initially issued by DPSC. Also, Propper questions whether those solicited are actually IPP planned producers.

To be designated a "planned producer," as part of the DOD Industrial Preparedness Program, a firm must have indicated its willingness to produce specified military items in a national emergency by completing a DD Form 1519, "DOD INDUSTRIAL PREPAREDNESS PROGRAM PRODUCTION PLANNING SCHEDULE." Government production planning officials then survey the firm's facilities and negotiate a production planning schedule which is incorporated in the DD Form 1519. A firm is considered a mobilization base producer after completion and approval of its DD Form 1519. Oto Melara S.p.A., B-225376, Jan. 6, 1987, 87-1 CPD ¶ 15. Because of the status of these procurements, certain aspects of the agency's report, including the identity of the firms solicited, were deleted from the protester's copy of the agency report. However, our in camera review of the report reveals that both firms have current DD Form 1519 IPP agreements. Accordingly, Propper's concern that DPSC did not solicit planned producers is without merit.

Further, by amendments to these RFP's dated December 31, 1987, DPSC added language advising that "As provided by FAR 6.302-3, implementing 10 U.S.C. 2304(c)(3), it is necessary to restrict the solicitation to a particular planned producer in the interest of providing for an adequate industrial base." Thus, the RFP's did contain notice of their restricted status.

Military agencies have authority to conduct procurements in a manner that enables them to establish or maintain sources of supply for a particular item in the interest of national defense. See 10 U.S.C. §§ 2304(b)(1)(B) and 2304(c)(3). These agencies need not obtain full and open competition where the procurement is conducted for industrial mobilization purposes and may use other than competitive procedures where it is necessary to award the contract to a particular source or sources. Oto Melara, S.p.A., B-225376, supra. Because DOD is responsible for developing an effective industrial preparedness program, DOD must ascertain which producers should be included in the mobilization base. Accordingly, the decision as to which and how many producers of a particular item must be kept in active production is a judgment which must be left to the discretion of the

military agencies. Wayne H. Coloney Co., Inc., 64 Comp. Gen. 260 (1985), 85-1 CPD ¶ 186; Urdan Industries, Ltd., B-222421, June 17, 1986, 86-1 CPD ¶ 557. This Office will question such a decision only if the evidence convincingly demonstrates that the agency has abused its discretion. Martin Electronics, Inc., 65 Comp. Gen. 59 (1985), 85-2 CPD ¶ 504. We limit our standard of review in such cases because the normal concern of maximizing competition is secondary to the needs of industrial mobilization. Id.; National Presto Industries, Inc., B-195679, Dec. 19, 1979, 79-2 CPD ¶ 418.

DPSC reports that the hat is considered an essential part of the Navy enlisted man's uniform and thus has been designated an industrial mobilization item. As such, DPSC states that appropriate steps to procure the item were undertaken under the IPP. The justification for less than full and open competition states that the goal of the acquisition was to increase or maintain properly balanced sources of supply to provide for an adequate industrial mobilization base by dividing current production quantities between two contractors. Further, the justification states that the decision not to solicit Proper was made because every contract for the item has been awarded to Proper since 1979, and that it was not in the government's best interest to continue to foster a single source environment. Also, DPSC reports that a market survey indicated that Proper was at or near full capacity from the present through mid 1989, and that additional awarded quantities could jeopardize already awarded contracts. DPSC further determined that the other potential producers, besides Proper and the two which were solicited, lack the necessary equipment and are not interested in the procurement because of start-up manufacturing problems. Therefore, DPSC advises that separate solicitations were issued to the two interested firms in accordance with their agreed upon minimum sustaining rates. This action is supported by an appropriate justification and approval document.

Federal Acquisition Regulation (FAR) §§ 6.302-3(b)(1)(iii) and (vii) (FAC 84-28), which implement 10 U.S.C. § 2304(c)(3), provide that an agency may maintain properly balanced sources of supply by dividing current production requirements among two or more contractors to provide for an adequate mobilization base. DPSC states that having planned producer sources whose facilities are not currently producing the item does not maintain a "warm" base to meet the needs of industrial mobilization in the event of a national

emergency. Since Propper has been the sole producer of the item since 1979, we do not find that DPSC's decision to exclude Propper from award consideration in order to establish multiple sources to maintain a warm industrial mobilization base was an abuse of discretion. See, e.g., Lister Bolt & Chain, Ltd., B-224473, Sept. 15, 1986, 86-2 CPD ¶ 305.

The protests are denied.

*Ronald Berger*

*for*

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General Counsel