



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Jet Research Center, Inc.; Israel Military Industries, Ltd.--Reconsideration

**File:** B-248352.4; B-248352.5

**Date:** November 6, 1992

James S. Phillips, Esq., Israel & Raley, for Jet Research Center, Inc., and Jacob B. Pompan, Esq., and Lawrence J. Sklute, Esq., Pompan, Ruffner & Bass, for Israel Military Industries, Ltd., the requesting parties.  
Craig E. Hodge, Esq., and Bridget A. Stengel, Esq., U.S. Department of the Army, for the agency.  
Catherine M. Evans, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Decision denying protest of agency's transportation cost evaluation is affirmed where additional information furnished by agency confirms that awardee's total evaluated cost was substantially lower than protester's.

### DECISION

Jet Research Center (JRC) requests reconsideration of our decision, Jet Research Center, Inc., B-248352, Aug. 20, 1992, 92-2 CPD ¶ 115, in which we denied JRC's protest of the Department of the Army's transportation cost evaluation under invitation for bids (IFB) No. DAAA09-92-B-0879.

We affirm the decision.

The IFB contemplated award of a contract for fixed quantities of 11 different sizes of flexible linear shaped charges (FLSC), for delivery f.o.b. origin. IMI submitted the low bid of \$896,542.97; Jet bid \$1,046,134.15. The Army then added transportation costs for the seven shipments required under the contract to arrive at the total cost to the government--\$1,092,556.60 for IMI; \$1,096,011.43 for Jet. As IMI's bid represented the low total cost, the Army awarded it the contract. JRC protested the award, alleging that the Army had improperly evaluated the bidders' transportation costs.

We denied the protest, finding that although the Army had made certain errors in the evaluation, correction of those errors did not make JRC the low bidder. Specifically, we found that JRC's cost, properly evaluated, was \$1,105,092.37. We concluded that IMI's cost, properly evaluated, was between \$1,069,923.74 and \$1,103,649.02, depending on the resolution of an issue concerning its ocean transportation costs. We found it unnecessary to resolve that issue because IMI's bid was in any event at least \$1,443 lower than JRC's.

JRC has correctly identified an error in our calculations that resulted in a \$3,000 overstatement of its costs. JRC's total cost is \$1,102,092.37, not \$1,105,092.37. JRC contends that we should correct our decision accordingly, and find that it was entitled to the award based on its low total cost. However, it is not clear which firm is the low bidder without resolving the issue of IMI's ocean transportation costs; we therefore must resolve that issue.

#### IMI'S OCEAN TRANSPORTATION COSTS

The unresolved issue in our decision concerned the number of seavans (shipboard containers) required to transport IMI's production units. We questioned the agency's determination that nine seavans would be required to ship all of the FLSCs under the contract. We concluded that as many as 3 additional seavans might be needed to ship the items, adding \$33,725.28 (\$11,050 in rental and port handling charges for each additional seavan plus \$191.76 in discharge costs for each) to the Army's evaluation of IMI's transportation costs. In response to JRC's reconsideration request, the Army has provided detailed explanations and illustrations of how FLSCs are packed in seavans. The information convincingly establishes the accuracy of its assertion that only nine seavans are required to ship the FLSCs. The Army has explained in detail how 18 full pallet loads of boxed FLSCs can fit into a single seavan, as opposed to the 16 pallet loads we presumed in our decision. In this regard, the Army has submitted detailed diagrams showing how the loaded pallets are arranged in the seavan, along with supporting calculations showing that the dimensions of the loaded and arranged pallets do not exceed the dimensions of the seavan interior. With the exception of the issues addressed below, JRC has not disputed the Army's explanation. We therefore revise our decision to accept the Army's conclusion that nine seavans are required.<sup>1</sup>

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<sup>1</sup>JRC questions the Army's reliance on a Department of Defense (DOD) transportation specialist located in Israel in arriving at its seavan calculations and loading plan. However, the record clearly shows that the DOD specialist is

In concluding that the Army has established the accuracy of its nine-seavan figure, we reject several arguments JRC advances to the contrary. For example, JRC asserts that the Army's proposed loading plan leaves only 1.25 inches to spare between the cargo and the seavan wall, too tight a fit to rely upon. JRC's argument is without merit. The protest record shows that tight loading of seavans is required. In this regard, Appendix 119 of the solicitation refers to an Army specification for loading and bracing of boxed ammunition in commercial containers, which states that cargo should be positioned so as to achieve a "tight load" against the side of the container, with no more than 1.5 inches of unblocked space. The Army's loading plan, which leaves 1.25 unblocked inches inside the container, is consistent with this specification.

JRC also asserts that the Army's plan to place partially loaded pallets on top of fully loaded ones does not provide for the required blocking or bracing of the extra pallets. However, the Army has established that the partial pallet loads will not exceed the seavan's capacity; there is nothing on the face of the record indicating that required blocking and bracing is not possible for partial pallets; and JRC has not submitted any information supporting a conclusion that the extra pallet loads cannot be blocked or braced in accordance with contract requirements.

Finally, JRC argues that the seavans, which ultimately may be trucked to their destinations in the U.S., cannot be loaded to their full capacities because of federal highway weight limits. As the federal limits are 20,000 pounds per single axle, 34,000 pounds per tandem axle, and 80,000 pounds gross vehicle weight per 5 axles, see 23 U.S.C. § 127 (1988), it appears that a single seavan with a gross weight of 36,977 pounds (4,850 pounds for the seavan and 32,127 pounds for the contents) can be shipped by truck without violating any weight restrictions.

In summary, the new seavan information shows that only 9 seavans are required instead of 12. Thus, IMI's maximum evaluated cost as we had computed it in our prior decision, \$1,103,649.02, is reduced by \$33,725.28,<sup>2</sup> to \$1,069,923.74.

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solely responsible for arranging transportation for all movements of U.S. military cargo out of Israel, and therefore has the best information as to how FLSCs are loaded into seavans for shipment on commercial ocean vessels.

<sup>2</sup>As discussed above, this figure is comprised of the cost of rental and port handling for three seavans, \$33,150, and discharge costs for those seavans, \$575.28.

This cost remains \$32,168.63 below JRC's total cost of \$1,102,092.37. JRC alleges other errors in our decision, including our conclusion that the Army properly did not add \$7,060.46 in intra-Israel transportation costs to IMI's bid, and our failure to consider \$3,847.14 in domestic ground transportation costs for one of IMI's shipments. We need not address these issues, as their resolution in JRC's favor would not make a difference in the bidders' competitive positions. IMI's bid would still be low by \$21,261.03 even if JRC were correct as to the remaining costs in dispute. We therefore affirm our conclusion that the award to IMI was proper.

#### ALLEGED AGENCY MISCONDUCT

JRC also argues that our decision improperly failed to draw a presumption unfavorable to the Army based on the alleged criminal conduct of agency personnel. In the decision, we noted that the Army currently is investigating an incident in which Army personnel who were involved in the transportation evaluation under this IFB and the prior one allegedly destroyed records of the prior evaluation in order to keep JRC from obtaining them through the protest process, presumably because the prior evaluation contained errors. We expressed our concern regarding the alleged misconduct, but found that our decision would not be affected even if the allegations prove to be true because the alleged criminal conduct had no bearing on the evaluation here. JRC's disagreement with our conclusion does not provide a basis for us to reconsider it. See R.E. Scherrer, Inc.--Recon., B-231101.3, Sept. 21, 1988, 88-2 CPD ¶ 274.

Finally, JRC questions the Army's credibility during the entire protest proceeding, asserting that by denying the protest we rewarded the agency's repeated changing of its position regarding its seavan calculation and the false statements in connection with the alleged destruction of documents (discussed above). JRC is correct regarding the false statements, and the Army did change its positions and explanations in support of its seavan calculation at least twice during the proceeding so that we were obliged to keep the record open to obtain clarifications and comments from the parties. Although these actions during the protest process impeded the orderly resolution of the protest, and resulted in an unnecessary expenditure of time and effort by the protester, it is now clear from the record--in particular the new seavan information--that the award decision was correct. Our role in deciding bid protests under the Competition in Contracting Act of 1984 is to review alleged violations of procurement laws and regulations. 31 U.S.C. § 3552 (1988). Even where agency action or inaction interferes with the resolution of a protest, we can sustain a protest of an award and recommend

corrective action only if the award was improper, 31 U.S.C. § 3554(b)(1); Culver Emergency Servs., Inc.--Recon., 68 Comp. Gen. 314 (1989), 89-1 CPD ¶ 253. Because IMI properly was awarded the contract based on its low total evaluated cost, there was, and is, no basis for sustaining JRC's protest.

The decision is affirmed.



~~Acting~~ Comptroller General  
of the United States