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Comptroller General
of the United States
Washington, D.C. 20548

Decision

REDACTED VERSION*

Matter of: Group Technologies Corp.; Electrospace Systems, Inc.
File: B-250699; B-250699.3; B-250699.6; B-250699.7

Date: February 17, 1993

Alan M. Grayson, Esq., for the protester.
David R. Hazelton, Esq., for Grumman Aerospace Corporation, an interested party.
Jeffery I. Kessler, Esq., and John J. Reynolds, Esq., Department of the Army, for the agency.
John Van Schaik, Esq., and John Brosnan, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Sole-source award is proper where procurement involves a foreign military sale and foreign government on whose behalf procurement was conducted requested that award be made to a specific source.

2. Protest alleging unequal treatment, bias and other improper conduct is denied where nothing in the record shows that awardee received improper information or other improper advantages as a result of its receipt of a sole-source award for the same item as a foreign military sale.

3. The government is under no obligation to eliminate an advantage which a firm may enjoy because of its particular circumstances, including the award of other contracts by the government, unless the advantage has resulted from unfair action on the part of the government.

DECISION

Group Technologies Corp. (GTC) protests the award of a contract to Grumman Aerospace Corporation by Diesel Division of General Motors of Canada Limited (DDGM) for 1,117 vehicular intercommunications systems (VIS) or intercoms, for installation in light armored vehicles to be supplied to

*The decision issued on February 17, 1993, contained proprietary information and was subject to a General Accounting Office protecter order. This version of the decision has been redacted. Deletions in text are indicated by "[deleted]."

the Saudi Arabian National Guard (SANG). DDGM is the prime contractor under United States Army Tank-Automotive Command (TACOM) contract No. DAAE07-91-C-A035 to provide 1,117 light-armored vehicles to SANG as a foreign military sale (FMS).[1] GTC also protests the award of a contract to Grumman under request for proposals (RFP) No. DAAB07-91-R-B031, issued by the United States Army Communications-Electronics Command (CECOM), for a quantity of VIS.

We deny the protests.[2]

BACKGROUND

On May 31, 1991, TACOM awarded contract No. DAAE07-91-C-A035 to the Canadian Commercial Corporation (CCC) which in turn awarded a subcontract to DDGM for 1,117 light-armored vehicles.[3] That contract was awarded pursuant to a Letter of Offer and Acceptance from the Army to SANG in accordance with the Arms Export Control Act and applicable regulations. See Defense Federal Acquisition Regulation Supplement (DFARS) § 225.7301. Originally, the Letter of Offer and Acceptance and the DDGM contract provided that all communications equipment for the Saudi vehicles, including VIS units, was to be acquired from Racal Communications, Inc., a British firm, and supplied to DDGM as government furnished equipment.

On June 11, 1992, the Office of Program Management SANG (OPM-SANG), which is the Army's contact point with SANG in Saudi Arabia, informed TACOM that Racal equipment would not be used in the Saudi light-armored vehicles. OPM-SANG also provided TACOM with a preliminary list of the replacement communications equipment, which included Grumman's VIS. On June 15, the cognizant TACOM contracting officer directed

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[1]The Arms Export Control Act, as amended, 22 U.S.C. § 2751 et seq. (1988), authorizes the Department of Defense to enter into contracts for purposes of resale to foreign countries.

[2]While the award to Grumman for the Saudi VIS was of a subcontract, we will review the matter under the circumstances here since the award was directed by the Army pursuant to foreign government instructions under the FMS procedures and the prime contractor had no part in the selection. See Bid Protest Regulations, 4 C.F.R. § 21.3(m)(10) (1992).

[3]DDGM is a Canadian corporation and pursuant to applicable regulations, the CCC was the actual offeror. When CCC is awarded a contract, it subcontracts 100 percent of the contract to a Canadian corporation, such as DDGM.

CCC and DDGM to cease all contractual effort related to the Racal equipment and provided the contractor with the new equipment lists.

The CECOM solicitation, RFP No. DAAB07-91-R-B031, which was for the needs of the United States Army, contemplated the award of a firm, fixed-price contract for 110 VIS units and 800 headsets. The basic contract includes an option for 700 VIS units and also includes options for 28,910 VIS units and 68,000 headsets over 4 option periods.

CECOM received proposals from six firms: GTC, Grumman, Racal, Electrospace Systems, Inc., Telephonics Corporation, and Canadian Marconi Corporation. Based on an initial technical evaluation, all six were included in the competitive range and discussions were conducted. After discussions were completed, a second competitive range determination was made which eliminated the Racal and Electrospace proposals. Discussions were conducted with the remaining offerors and best and final offers (BAFO) were requested on August 28, and received on September 8. CECOM awarded the contract to Grumman on September 25.

On July 13 through 15, before BAFOs were submitted to CECOM, at a hotel in Eatontown, New Jersey, which is near CECOM's contracting offices, Grumman officials attended a meeting relating to the Saudi FMS requirement for VIS. This meeting included officials from TACOM, CECOM, CCC, DDGM, ITT Aerospace and the Harris Corporation (manufacturers of other communications equipment to be used in the Saudi light-armored vehicles). A memorandum sent to CCC/DDGM described the purpose of that meeting as to "determine exact signal equipment specifications and quantities for all SANG [light-armored vehicle] variants, and develop a strategy for acquiring and integrating these items into the SANG [light-armored vehicles]."

Other meetings were held on August 24 through 28 and September 8 through 11 concerning the SANG light-armored vehicle communications requirements and representatives of the organizations listed above attended these meetings also. A TACOM engineer who attended some of these meetings has explained that at the time of the meetings agency personnel were operating under the assumption that the Grumman VIS and other communications equipment discussed at the meetings would be used in the SANG light-armored vehicles although they "were aware that the Grumman VIS intercom selection was tentative." Also, according to the engineer, SANG's final selection of an intercom system would not be made until after CECOM's selection of a VIS vendor and after the completion of high temperature tests on Grumman's VIS.

On September 3 and October 27, DDGM contracted with Grumman for technical support, cables for risk reduction testing, long lead connectors, nonrecurring engineering and recurring material and labor for four VIS units. A letter dated October 28 from the TACOM contracting officer to CCC/DDGM states that it authorized DDGM to buy enough Grumman VIS units in order to (1) conduct SANG light-armored vehicle communications system risk-reduction testing, (2) conduct testing to demonstrate the robustness of the Grumman VIS in extreme high temperature environments; and (3) provide complete VIS sets for the first two SANG light-armored vehicles scheduled for production in February 1993.

According to the Army, there was at that time no written directive from SANG regarding the intercom units for the SANG light-armored vehicles. The Army states that initial TACOM action concerning the acquisition of VIS units from Grumman for SANG "was taken due to the urgency of the communications equipment situation for the SANG [light-armored vehicles] and in the belief that such documentation existed or would be promptly forthcoming. We are awaiting said direction." On January 6, 1993, the Army submitted to our Office the following letter, dated January 4, 1993, from the Acting Deputy of SANG:

> "This letter confirms the Saudi Arabian National Guard's (SANG) decision to equip all its [light-armored vehicles] with the Grumman intercom system. The Grumman intercom system has passed special testing required by the SANG and satisfies our technical requirements.
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> . . . . .
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> "Request you take necessary actions to procure the Grumman intercom system in an expedited manner to avoid any delay in delivery of [light-armored vehicles] to SANG."

PROTEST ALLEGATIONS

GTC first protested on October 2, 1992, arguing that Grumman had an improper competitive advantage in the CECOM competition as a result of information given to it and not its competitors at a "secret" meeting with officials from CECOM, TACOM and SANG in late August 1992, before BAFOs were submitted on the CECOM procurement. GTC assumed that SANG's need for VIS units was to be met by the exercise of options under CECOM's VIS contract and argued that as a result of the meeting, when BAFOs were submitted, only Grumman knew of the Saudi FMS requirement for VIS. According to GTC, only Grumman knew that the large option quantities in the CECOM contract likely would be exercised in order to satisfy the

Saudi FMS requirement. GTC argued that this improper information allowed Grumman to lower its BAFO price.

In addition, GTC argued that at the meetings Grumman gained important insights into CECOM's view of the requirement and was able to "sell" CECOM on its technical capabilities. Further, GTC argued that it was excluded from the August meetings because it has an Israeli licensor and therefore Army officials participated in an illegal boycott of Israel. Finally, GTC maintained that Grumman violated various procurement integrity statutes and regulations as a result of its receipt of inside information about the procurement.

After GTC's first protest, the Army explained that the August meeting with Grumman, and other meetings with that firm in July and September, did not concern the CECOM solicitation. Rather, according to the Army, the purpose of those meetings was to discuss communications equipment requirements, including VIS equipment, for SANG's light-armored vehicles, which were being acquired under the contract with CCC/DDGM. According to the Army, at that time, no production contract had been awarded to Grumman for SANG's VIS requirements, although SANG had tentatively selected Grumman as its source for VIS units. The Army asserted that Grumman gained no improper competitive advantage in the CECOM competition since the meetings concerned only the SANG VIS requirements and not the CECOM solicitation.

In response, on October 19, GTC filed a second protest. In this latest version, GTC continues to assert that the Army had intended to supply VIS units to SANG by means of the options under the CECOM contract. Also, according to GTC, whether or not the SANG VIS acquisition was always separate from the CECOM RFP, or only later became separate, the meetings gave Grumman inside information, providing it with an improper advantage under the CECOM solicitation. GTC continues to maintain that CECOM improperly considered a Saudi preference for Grumman, that Grumman violated procurement integrity laws, and that the Army's actions amounted to an illegal boycott of Israel. GTC argues that Grumman should be disqualified from award under the CECOM solicitation or, in the alternative, all offerors must be given an opportunity to submit a new BAFO based on equal access to all relevant information.

With respect to the procurement of VIS for SANG under the FMS program, GTC makes essentially the same arguments as it made under the CECOM solicitation with respect to a Saudi preference, violation of procurement integrity laws and an illegal boycott of Israel. Moreover, GTC argues that the subcontract award to Grumman was illegal because of a failure to follow mandatory procedures of the FMS program.

Finally, after GTC raised the issue, Telephonics, CMC and Electrospace filed protests essentially repeating GTC's initial allegation that Grumman had an improper competitive advantage in the CECOM competition as a result of information given to it alone in meetings with officials from CECOM, TACOM and SANG. In addition, Telephonics and CMC raised other allegations regarding the evaluation of proposals and the selection of Grumman. We will address these additional allegations in a separate decision to be issued at a later date. In this decision, in addition to addressing GTC's allegations of an improper competitive advantage on the part of Grumman as a result of the allegedly improper FMS award, we have considered all of the related allegations of the other protesters.[1]

THE FMS PROCUREMENT

The Arms Export Control Act authorizes the Department of Defense (DOD) to enter into contracts for purposes of resale to foreign countries or international organizations. The Competition in Contracting Act of 1984 (CICA), which generally requires that agencies obtain full and open competition, exempts procurements in which the "written directions of a foreign government reimbursing the agency for the cost of the procurement of the property or services for such government, have the effect of requiring the use of

[1]We dismissed Electrospace's protest on the ground that the firm was not an interested party to protest the award to Grumman since its proposal was excluded from the competitive range in August 1992 and there were other proposals besides the awardee's in the competitive range. Electrospace Sys., Inc., B-250699.5, Nov. 2, 1992. Electrospace has requested that we reconsider that decision since, according to Electrospace, before its proposal was excluded from the competitive range, the Army had "already taken steps which biased the procurement in favor of Grumman and . . . . such preexisting bias tainted the Army's subsequent decision to eliminate [Electrospace's] proposal from the competitive range." This argument provides no basis to reverse our decision dismissing the protest. Electrospace's proposal was excluded from the competitive range in August because the firm had no reasonable chance for award. Since Electrospace did not timely challenge that determination, it is not an interested party to protest the selection decision which occurred months later. Advanced Health Sys.--Recon., B-246793.2, Feb. 21, 1992, 92-1 CPD ¶ 214. In any event, this decision resolves the substance of the issues raised by Electrospace in its initial protest, which were virtually identical to those raised by GTC.

procedures other than competitive procedures." 10 U.S.C. § 2304(c)(4) (1988).[5]

The Federal Acquisition Regulation (FAR) reiterates this exemption, and provides for its use in circumstances such as "[w]hen a contemplated acquisition is to be reimbursed by a foreign country that requires that the product be obtained from a particular firm as specified in the official written direction such as a Letter of Offer and Acceptance." FAR § 6.302-4(b)(1). Further, the DFARS provides that:

> "FMS customers may request that a defense article or defense service be obtained from a particular contractor. In such cases, FAR § 6.302-4 provides authority to contract without full-and-open competition. The FMS customer may also request that a subcontract be placed with a particular firm. The contracting officer shall honor such requests from the FMS customer only if the Letter of Agreement or other written direction sufficiently fulfills the requirements of FAR [Subpart] 6.3." DFARS § 225.7304.

The Army explains that this exemption from the requirement to obtain full and open competition permitted the award of a sole-source subcontract to Grumman for SANG's VIS requirements. According to the Army, consistent with these regulations, the Saudi Arabian government selected Grumman as its source for the VIS and, under the circumstances, there was no requirement for full and open competition or that other sources be notified of the requirement.

GTC argues that, contrary to the assertions of the Army, numerous documents in the record demonstrate that the Army, and not SANG, selected Grumman. For example, according to the minutes of a December 12, 1992, meeting of the SANG Technical Committee for Communications, the Committee "met to discuss the [Army's] recommendation . . . concerning the selection of Grumman intercommunications equipment for the

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[5]The statutes and regulations governing direct federal procurements generally do not apply to procurements by prime contractors. However, where, as here, the prime contractor (DDGM) has no role in the selection of the subcontractor, but the selection is directed by the government, we believe it is appropriate to consider the procurement as one by the government and thus subject to federal statutes and regulations--including, in this case, the provisions of CICA and applicable regulations relating to the FMS program--and to review the protest in that light. See St. Mary's Hospital and Medical Center of San Francisco, California, 70 Comp. Gen. 579 (1991), 91-1 CPD ¶ 597.

[light-armored vehicle]." GTC notes that the selection of Grumman is referred to as an Army "recommendation," not a SANG directive and that following that meeting, a December 14 SANG letter states that "[w]e would like to advise you that we have no objection to the selection of the above mentioned company [Grumman] based upon your request."

With respect to the January 4 letter in which SANG confirmed its "decision to equip all its [light-armored vehicles] with the Grumman intercom system," GTC argues that the letter was simply a result of repeated efforts by the Army to "recharacterize the Army's source selection as a SANG decision." GTC maintains that DFARS § 225.7304(a), relied on by the Army to depart from the requirement for full and open competition, does not permit the FMS award to Grumman. According to GTC, this provision, which states an "FMS customer may request that a defense article . . . be obtained from a particular contractor," does not support the Army's actions here since the language used by SANG in its correspondence with the Army demonstrates that the Army, and not SANG, selected Grumman.

We believe that the documents relied on by the Army comply with the requirement for "written direction" by a foreign government. In this respect, as previously discussed, the FAR, at § 6.302-4, specifically states that a Letter of Offer and Acceptance constitutes the required "written directions." The record includes an April 24, 1991, Letter of Offer and Acceptance which authorized the FMS of the light-armored vehicles and which provided that communications equipment for them, including the VIS, was to be manufactured by Racal. In our view, the January 4 letter signed by the Acting Deputy of SANG, which confirmed SANG's decision to change its VIS supplier and equip its light-armored vehicles with the Grumman VIS, was in effect a modification of the April 24 Letter of Offer and Acceptance and therefore constituted the proper authorization for the purchase of the Grumman equipment. See Kahn Indus., Inc., 66 Comp. Gen. 360 (1987), 87-1 CPD ¶ 343.

GTC points out that FAR § 6.302-4(a)(2) requires that the written direction from an FMS customer must do more than name a preferred source, it must "preclude . . . full and open competition." Although GTC argues that the January 4 letter from the Acting Deputy of SANG does not meet this test, in our view, that letter, which stated SANG's decision to equip all its light-armored vehicles with the Grumman intercom system, contained a direction to use a particular

supplier which clearly precluded full and open competition.[6]

The fact that SANG did not provide the written direction concerning Grumman until January 4, 1993, is not legally significant. In this respect, although GTC insists that the selection occurred as early as June 1992, the record shows that SANG's selection of Grumman was tentative until CECOM selected its VIS contractor and until high temperature testing of the Grumman VIS was successfully completed. After that testing was successfully completed, SANG provided the appropriate written direction to the Army.

GTC also argues that the Army improperly favored Grumman since agency officials presented SANG with a list of sources that included only Grumman, Racal and another source that clearly did not meet SANG's needs and which did not include GTC and the other firms in the CECOM competition. However, neither CICA nor the applicable procurement regulations require that a foreign government initiate a sole-source designation or formulate it without assistance from the United States. The statute and regulations simply state that there must be "written directions" of the foreign government for a particular source. Thus, in some cases United States officials suggest the specifications or products listed in Letters of Offer and Acceptance. See Julie Research Labs., Inc.--Recon., B-216312.2 et al., June 12, 1985, 85-1 CPD ¶ 672. Whether a United States agency initially recommends specific items or advises the foreign government as to what items might satisfy its needs

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[6]While DFARS § 225.7304(a) permits a request by the FMS customer that an article or service be obtained from a particular contractor, without full and open competition, GTC notes that the regulation also states that "[t]he contracting officer shall honor such requests from the FMS customer only if the Letter of Agreement or other written direction sufficiently fulfills the requirements of FAR [Subpart] 6.3." GTC states that FAR Subparts 6.303 and 6.304 require a written justification for the award of a contract without providing for full and open competition and higher-level approval unless the use of other than competitive procedures is approved by the contracting activity's competition advocate. GTC apparently believes that the selection of Grumman is flawed as a result of the lack of such a justification. However, FAR § 6.302-4, which permits the use of other than full and open competition "when precluded by the . . . written directions of a foreign government," contains an exception, at FAR § 6.302-4(c), to the requirement for a written justification and approval for contracts awarded using this authority for DOD, National Aeronautics and Space Administration and the Coast Guard.

is immaterial in the absence of evidence that the agency sought to have the foreign government request certain sources in bad faith. Id.

We do not think that the record shows that the Army sought to have SANG request Grumman VIS equipment in bad faith. After SANG decided to reverse its original decision to obtain all communications equipment from Racal, a replacement source for the VIS was required. It is not clear whether the Army or SANG initially suggested Grumman. In any event, it is clear that SANG retained ultimate authority to select a source for VIS equipment and refused to make that selection until it was satisfied with the results of the high temperature tests on the Grumman units.

GTC argues that the Army violated provisions of the Army's Security Assistance Management Manual which provides that a foreign purchaser's request for a sole-source designation should be contained in a "Letter of Authorization" and that the request must provide the basis and justification for the sole-source. GTC also notes that a foreign purchaser's request for the award of a sole-source contract or subcontract "shall not be honored in any case of patently arbitrary, capricious or discriminatory exclusion of other sources." We do not think that there was any material violation of the manual here. Moreover, this DOD "Manual" provides internal guidance for DOD personnel and any failure to follow it does not provide a valid basis for protest. Kahn Indus., Inc., supra.

Finally, although GTC argued that the actions of Army officials amounted to "illegal U.S. Government participation in the international boycott against Israeli contractors," the protester now concedes that "nothing in the documents disclosed by the Army indicates that the Saudis vetoed an award to GTC on account of GTC's Israeli subcontractor." We agree with GTC that there is no evidence of a boycott.

THE CECOM PROCUREMENT

GTC argues that Grumman was given an improper competitive advantage in the CECOM competition since CECOM contracting officials who were working on the CECOM VIS procurement attended the FMS meetings. GTC also argues that Grumman's knowledge of the FMS requirement for approximately 1,117 VIS for SANG gave Grumman an improper competitive advantage since it allowed Grumman to offer a lower price.

We have carefully reviewed the record, including affidavits of the CECOM contracting officer and other agency officials responsible for the CECOM VIS procurement, affidavits from CECOM and TACOM officials who attended the various meetings with Grumman and who were responsible for the SANG FMS

procurement, affidavits from Grumman officials, and internal agency documents concerning both the CECOM procurement and the FMS procurement, including minutes of the July, August and September FMS meetings. Based on that review, we conclude that the record does not support the protesters' allegations of unequal treatment, bias and other improper conduct.

We first address GTC's allegation that the competitors in the CECOM procurement were treated unequally by the Army since only Grumman was invited to "secret" meetings with SANG and officials from CECOM and TACOM and that only Grumman was given "valuable information" relating to CECOM's technical requirements. GTC notes that the regulations and decisions of this Office require that "[c]ontracting officers shall furnish identical information concerning a proposed acquisition to all prospective contractors." FAR § 15.402(b); Deknatel Div., Pfizer Hospital Prods. Group, Inc., 70 Comp. Gen. 652 (1991), 91-2 CPD ¶ 97.

First, GTC speculates that contracting officials preselected Grumman and deliberately gave inside information to the firm at the FMS meetings, apparently as a result of the Saudi bias against GTC. When a protester contends that contracting officials were motivated by bias or bad faith, the record must contain convincing proof that the agency directed its actions with the specific and malicious intent to hurt the protester. Oktel, B-244956; B-244956.2, Dec. 4, 1991, 91-2 CPD ¶ 512. We find nothing in the record that shows bias in the selection of Grumman.

Moreover, even if agency officials were biased in favor of Grumman, it would simply make no sense for them to have provided improper information in the manner claimed by GTC. Although GTC repeatedly insists that the meetings were "secret," the record shows that the meetings were attended by numerous officials from other firms, including ITT and Harris, from two different Army commands, CECOM and TACOM, and from the Saudi Arabian government. As the Army argues, if contracting officials wanted to provide improper information to Grumman, they could have easily done so during discussions under the RFP; there was no reason to do so during these meetings.[7]

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[7]In addition, although GTC repeatedly has insisted that the Army was going to use the CECOM solicitation to satisfy SANG's needs for VIS under the FMS program, the record does not support this assertion. On the contrary, although the record shows that in December 1991 an official from OPM-SANG discussed this possibility with CECOM, the idea was rejected because the CECOM delivery schedule would not meet the needs of SANG.

Next, GTC argues that even if there was no intent to favor Grumman, because of its attendance at the meetings Grumman "gained important insight into CECOM's view of this requirement" and was given an "opportunity to 'sell' CECOM on Grumman's technical capabilities." According to GTC, the information and access that it gained as a result of the meetings allowed Grumman to improve its technical ratings more than any other offeror from initial proposals to BAFOs. In this regard, GTC points out that the minutes of the FMS meetings and other correspondence concerning them indicate that a topic of those meetings was "the VIS requirement" for the SANG light-armored vehicle procurement and that the VIS to be supplied to SANG was "the same model and configuration as proposed in the U.S. Army VIS competition." GTC also notes that those meetings were attended by officials from the CECOM acquisition office that issued the VIS solicitation.

The record does not support these contentions. The affidavits submitted by agency officials state that none of the CECOM officials who attended the meetings concerning the FMS procurement was involved in the CECOM acquisition, and there is nothing in the record that refutes these statements. In addition, in their affidavits, CECOM officials who attended the FMS meetings state that the main concern at those meetings was the timely delivery of the communications equipment for the DDGM contract and that the only discussion of the CECOM VIS procurement was the requirement that the Grumman VIS to be supplied to SANG be the same as that proposed to CECOM. Also, in their affidavits, Grumman officials who attended the FMS meetings state that no one from Grumman received technical information that was relevant to Grumman's proposal efforts in the CECOM VIS procurement. Again, nothing in the record refutes these statements.

GTC also argues that Grumman obtained an improper advantage in pricing its proposal since it knew that it would receive the FMS award. GTC argues that simply as a result of being informed of the SANG VIS requirement, Grumman was able to spread fixed costs over a much larger quantity than the other offerors since the CECOM solicitation included only 110 units in the base quantity while the FMS procurement was for 1,117 units. In this respect, GTC notes that Grumman reduced its BAFO price [deleted]. GTC states that there were no solicitation amendments before BAFOs which would have resulted in such a price reduction and argues that the only development between initial proposals and BAFOs that could account for Grumman's price reduction was the designation of the firm as the SANG VIS supplier. GTC maintains that the reduction left Grumman's price 10 percent below its price and argues that "[i]f GTC had been informed of the Saudi VIS requirement, and told that the base

quantity for the VIS was 110 + 1,117 rather than 110, its proposed price would have been less than Grumman's."

We find there is no merit to these allegations. First, it is not clear that the reductions in Grumman's price were entirely a result of the FMS award. As Grumman explains, when it calculated its BAFO price, it did not have a VIS contract for the Saudi FMS requirement. At that time, Grumman's only binding connection with the SANG requirement was its subcontract with DDGM in the amount of approximately $209,000 for testing and long lead items. According to Grumman, it did not include any SANG VIS in its calculations of its BAFO prices. [Deleted][8]

Moreover, to the extent that the FMS award allowed Grumman to offer lower prices in the CECOM competition, this is not legally objectionable. In this respect, the government is under no obligation to eliminate an advantage which a firm may enjoy because of its particular circumstances, including the award of other contracts by the government, unless the advantage has resulted from unfair action on the part of the government. Ferranti Int'l Defense Sys., Inc., B-237555, Feb. 27, 1990, 90-1 CPD ¶ 239. Since we have concluded that the Grumman FMS award was proper, we do not believe that award can constitute an unfair advantage. Although GTC argues that if it had known of the SANG VIS requirement its proposed price would have been lower than Grumman's, since Grumman is to receive the award to meet that requirement we do not see how GTC's knowledge of that requirement would have allowed GTC to reduce its price to any significant extent.

Finally, GTC argues that Grumman violated procurement integrity statutes and regulations as a result of its receipt of improper information regarding the CECOM procurement.[9] Since there is nothing in the record which

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[8]Grumman also notes that the record shows that other offerors reduced their BAFO prices by larger amounts and argues that significant price reductions in negotiated procurements are not unusual.

[9]The Office of Federal Procurement Policy Act, 41 U.S.C. § 423 (1988 and Supp. II 1990), and implementing regulations at FAR § 3.104.

shows that Grumman received any improper information, we have no basis upon which to conclude that Grumman violated any procurement integrity provision.

The protests are denied.

James F. Hinchman
General Counsel