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DECISION

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

FILE: B-195805,B-196036 DATE: February 7, 1980

MATTER OF: Watkins-Johnson Company CPG00087

DIGEST:

1. Military department is not required to advise domestic offerors of existence of Memorandum of Understanding between United States and United Kingdom which provides basis for Secretary of Defense's determination that Buy American Act is inapplicable to Defense items manufactured in the United Kingdom.

2. Military department's failure to notify potential competitors that they may be in direct competition with United Kingdom firms does not invalidate procurement.

Watkins-Johnson Company (WJC) protests the Air Force's award of a contract to Rank Precision Industries, Inc. (RPI), under request for proposals (RFP) No. F34601-79-R-1887 issued by Tinker Air Force Base, Oklahoma. DLG03827 AGC00153

WJC believes that the award to RPI is improper for two reasons: (1) the Air Force failed in its duty to advise WJC of the existence of the September 24, 1975, Memorandum of Understanding (MOU) between the United States (US) and United Kingdom of Great Britain and Northern Ireland (UK) Governments; and (2) the RFP did not contain a Notice of Potential Foreign Source Competition (Notice), Defense Acquisition Regulation § 7-2003.75 (1976 ed.). We are denying the protest since in our opinion neither reason provides a basis for invalidating the award. DLG03835

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[Request To Invalidate Award]

The RFP restricted the procurement to three sources which the Air Force had previously approved. WJC knew that its two potential competitors had previously furnished goods which had been manufactured outside the United States. WJC also knew that its status, as a firm located in a surplus labor market area, together with imposition of the Buy American Act (Act), 41 U.S.C. § 10a-d (1976), price differentials would increase by 12 percent the evaluated prices of its competitors. Since the RFP did not contain the Notice, WJC concluded that it could increase its price over and above that which it would have charged had there been notice of possible foreign price competition. On July 23, 1979, 10 days prior to award, WJC telegraphed the Air Force emphasizing that it had furnished a certificate of compliance with the Act and that it was located in a designated surplus labor market area.

WJC contends that the Air Force was under a duty to advise it of the existence of the MOU. The MOU provides the basis for the Secretary of Defense's November 25, 1976, determination that the Act is inapplicable to Defense items manufactured in the UK. Crockett Machine Company, B-189380, February 9, 1978, 78-1 CPD 109. WJC's contention is founded on the following passage from the MOU:

> "Each government will be responsible for bringing to the attention of the defense industries within its country, the basic understanding of the MOU, together with appropriate guidance on its implementation."

In our view the intent of the MOU, taken as a whole, is to increase the interchange of items of defense equipment between the two countries. We do not find an intent to maintain current domestic sources of supply, but rather an intent to increase the amount of defense equipment furnished by non-domestic sources. We believe that each government is to notify its own defense industry of the opportunity to trade, on an equal footing, in the previously protected defense item market of the other

country. While the MOU states that each government will be responsible for advising its own defense industry of the basic understanding of the MOU and its application, we do not interpret this to require specific advice to any particular offeror in any given procurement. Consequently, we find no Air Force obligation to advise WJC of the existence of the MOU.

Regarding WJC's second contention, that the RFP was deficient for failure to include the Notice, we believe that it is good procurement practice to advise, where practicable, domestic firms of a potential waiver of the Act's application, since such warning can only heighten the quality of competition offered by domestic firms. However, we have held that a military department's failure to notify all potential competitors that they may be in direct competition with UK firms which are eligible for the waiver, does not invalidate a procurement. Maryland Machine Tool Sales, B-192019, July 6, 1978, 78-2 CPD 14.

Accordingly, the protest is denied.

Milton J. Socolar

For the Comptroller General
of the United States