Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Stocker & Yale, Inc.

File: B-238251.2

Date: December 6, 1990

Jay P. Urwitz, Esq., Hale & Dorr, for the protester.
D. Joe Smith, Esq., Jenner & Block, for Marathon Watch Company, an interested party.
Michelle Harrell, Esq., and Stuart Young, Esq., Office of the General Counsel, General Services Administration, for the agency..
John W. Van Schaik, Esq., and John Brosnan, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that at time of award, awardee did not have Nuclear Regulatory Commission (NRC) licenses required by solicitation is denied where, in earlier decision, it was recommended that agency determine whether awardee "possesses" licenses that meet requirement, protester did not question that recommendation, and agency relied on the recommendation to allow performance to continue upon determining that awardee was in possession of required licenses.

DECISION

Stocker & Yale, Inc. protests the award of a contract to Marathon Watch Co., Ltd., under request for proposals (RFP) No. FCGA-N3-N-126-9-13-89, issued by the General Services Administration (GSA) for wrist watches. This is Stocker's second protest of the award to Marathon; in an earlier protest, Stocker argued that Marathon should not have received the award because it did not have Nuclear Regulatory Commission (NRC) licenses required by the solicitation. We sustained Stocker's protest and recommended that GSA determine whether Marathon, on its own, or through its suppliers, possesses licenses that meet the RFP requirements. Stocker & Yale, Inc., B-238251, May 16, 1990, 90-1 CPD ¶ 475. Following GSA's determination that Marathon meets the license requirements, Stocker filed this protest, again arguing that Marathon does not have the required licenses and did not have them at the time of award.

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It is evident from the record that Marathon as well as the protester now comply with the solicitation licensing requirements. The solicitation, however, required contractor possession of the licenses at the time of award, and on this record we cannot conclude that Marathon was in compliance with the requirement at that time. Nonetheless, under the circumstances, we deny this protest.

First, GSA has complied with our recommendation, which was to determine whether Marathon "possesses" the required licenses or their equivalent. It appears that GSA was misled by the wording of our recommendation, which used the present tense rather than the correct past tense--whether it "possessed" the licenses at the time of award. The protester did not question or object to our recommendation; had it done so, we could have clarified the language of the recommendation so that our intent would have been clear.

Second, GSA has informed us that it has already placed orders under the contract for more than 17,000 watches. Since the estimated quantity of watches to be furnished under the contract is 24,240, we anticipate that a substantial majority of the orders to be made under this contract have been placed. In short, we have substantial performance of a contract that the agency permitted to continue because it was able to make a determination allowed by our recommendation, which itself went unchallenged by the protester. Given this set of circumstances, and the fact that the awardee is performing in accordance with the solicitation licensing requirements, we deny this second protest.

for James F. Hinchman
General Counsel