

Logistics Co. Found Ineligible For Air Force Deal In Greenland

By **Nicole Rosenthal**

Law360 (May 25, 2022, 8:32 PM EDT) -- The Government Accountability Office denied a logistics firm's protest over its ineligibility for an Air Force contract in Greenland, finding the firm doesn't meet the requirement to be Danish or Greenlandic despite having its headquarters in Copenhagen, Denmark.

The **May 18 decision** made public Monday relies on eligibility requirements revised in 2020, when the U.S. and Denmark decided that a firm must be registered in Greenland or Denmark with the Danish Central Business Register and be at least 50% Danish- or Greenlandic-owned to be eligible for a contract at U.S. Air Force's Thule Air Base in Greenland.

A non-Danish or non-Greenlandic individual also can't have "decisive influence" over the offeror, according to the 2020 joint agreement known as Diplomatic Note 127.

GAO General Counsel Edda Emmanuelli Perez found that, despite being headquartered in Denmark, Vectrus Services A/S was ineligible for the contract because its parent firm is America.

"Vectrus ignores ... that the eligibility criteria defining a Danish or Greenlandic source was revised pursuant to diplomatic note 127, to exclude wholly owned subsidiaries of foreign firms," Perez wrote. "When the Air Force issued the solicitation in 2020, it therefore used the revised eligibility criteria agreed to in diplomatic note 127."

Vectrus filed its protest with the GAO in February, first asserting that the eligibility criteria to provide base operations and maintenance services at Thule was too restrictive for competition. After learning that the GAO considered Vectrus ineligible for a contract, the company filed a supplemental protest arguing that the GAO unreasonably found it to not be an eligible Danish source.

In her decision concurring that the Air Force rightfully denied eligibility, Perez cited Section 2304 of the U.S. Code's Competition in Contracting Act, which states that agencies don't need to provide for completely open competition when it is precluded by the terms of an agreement between the U.S. and a foreign government.

Perez also pointed out that while Vectrus was awarded a Thule Air Base contract in 2014 when competition was still restricted to Danish or Greenlandic sources, eligibility criteria has since been narrowed under the 2020 diplomatic note between the U.S. and Denmark.

While Thule Air Base contracts have been limited to Danish or Greenlandic sources since a 2009 amendment to a 1991 memorandum, the definition of such sources was not defined until 2020.

"Vectrus has focused on the fact that the 1991 memorandum of understanding itself does not preclude Vectrus from competing and has ignored the new eligibility criteria," Perez said. "We also conclude that the agency reasonably accepted, and included in its solicitation for air base maintenance services at Thule Air Base, the definition of eligibility criteria for Danish/Greenlandic sources established by diplomatic note 127. As Vectrus cannot meet this eligibility criteria, we find that the agency reasonably concluded that Vectrus is not eligible to compete for this procurement."

In its supplemental filing, Vectrus also argued that the solicitation didn't include sufficient information for offerors to compete "on an intelligent and equal basis," failed to use past performance as an

evaluation metric for eligibility or provide for a reasonable price evaluation. But the GAO denied Vectrus' protest based on the eligibility criteria alone and didn't address the other issues Vectrus raised.

Vectrus Services is represented by J. Scott Hommer III, Rebecca E. Pearson, Christopher Griesedieck Jr., Taylor A. Hillman, Lindsay M. Reed and Alexander Koff of Venable LLP.

The Air Force is represented by Michael J. Farr, Erika Whelan Retta, Col. Frank Yoon and Katherine A. Illingworth.

GAO attorneys Mary G. Curcio and John Sorrenti participated in the preparation of its decision.

The case is Vectrus Services A-S, file numbers B-420527 and B-420527.3, before the U.S. Government Accountability Office.

--Editing by Lakshna Mehta.