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DECISION



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

FILE: B-191178

DATE: July 25, 1978

MATTER OF: Arizona Industrial Machinery Company

DIGEST:

Where bidder indicates in solicitation's Buy American Certificate only that certain components, comprising less than 50 percent of cost of end item, will not be of domestic origin, bidder is obligated to supply domestic source end item and is entitled to have bid evaluated without regard to Buy American price differential.

Arizona Industrial Machinery Company (Arizona) protests award of a contract to Lakeshore, Inc. by the Bureau of Indian Affairs, Department of the Interior for two motor graders under solicitation No. FAO-K01-78-3221. Arizona alleges that if the Buy American Act differential is properly applied to Lakeshore's bid, Arizona, and not Lakeshore, will have the lowest evaluated bid. For the reasons that follow, Arizona's protest is denied.

The solicitation requested bids to supply two Type II, Size 5 motor graders. Lakeshore submitted the apparent low bid of \$113,780.00. Arizona's bid was second low at \$115,396.00.

Lakeshore's representation in the solicitation's Buy American Certificate, Standard Form 33, Item 7, was as follows:

"The offeror hereby certifies that each end product, except end products listed below, is a domestic source end product (as defined in the clause entitled 'Buy American Act'); and that components of unknown origin have been considered to have been mined, produced, or manufactured outside the United States."

EXCLUDED END PRODUCTS	COUNTRY OF ORIGIN
Frame-Front Axle-Circle Drawbar-Final Drive-Cab & R.O.P.S.-Tandem Box	Canada

Arizona protested to the contracting officer and requested that Lakeshore be required to show proof of compliance with the Buy American certificate. The contracting officer responded by asking Lakeshore for more information regarding the percentage of United States versus Canadian components and the place of assembly and completion of the motor graders.

Lakeshore replied that the type motor graders it intended to supply are made from 65 per cent U. S. components and are assembled in Goderich, Ontario, Canada. Upon receiving this reply the contracting officer answered Arizona's protest by finding that Lakeshore would be supplying a domestic source end item. At that point Arizona protested to this Office and requested a ruling that "the Champion motor grader is not in compliance with the Buy American Certificate * * *."

In its report Interior revised its original position and concluded that, because of Lakeshore's representation that the motor graders it intended to supply were to be assembled in Canada, Lakeshore's bid would have to be evaluated as a foreign source product in accordance with 41 CFR § 1-6.104-4 (1977) (Federal Procurement Regulations). This would mean that a differential of at least 6 per cent would be added to Lakeshore's bid for evaluation purposes and would make Arizona the low bidder.

After being apprised of Interior's change of position, Lakeshore reported that the motor graders to be supplied under the solicitations are to be manufactured in Champion's new plant located in West Columbia, South Carolina and

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not in Canada. Arizona argues, in effect, that the latter representation by Lakeshore is immaterial and that Lakeshore's initial representation that the units were to be made in Canada should govern.

We note that although the end products to be purchased under the solicitations are two motor graders, Lakeshore listed motor grader components such as frame, front axle, etc. as excluded end products. It is not disputed that these listed components comprise less than 50 percent of the total cost of each motor grader. Therefore, Lakeshore did not exclude either end product from its Buy American Certificate. See FPR § 1-6.101(d). Where a bidder neither excludes an end product from its Buy American Certificate nor otherwise offers to supply a foreign source end item, its bid constitutes an irrevocable offer for the duration of the acceptance period to supply a domestic end product. Thorsen Tool Company, B-188271, March 1, 1977, 77-1 CPD 154. Consequently, if a contract is awarded to Lakeshore, it will be obligated to supply domestic source end products. The question of whether Lakeshore, if awarded the contract, complies with that obligation is a matter of contract administration, and has no impact on the validity of the contract award.

Arizona's protest is denied.


Deputy Comptroller General
of the United States