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**DECISION**



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

FILE: B-201901

DATE: April 13, 1981

MATTER OF: Lederle Laboratories

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DIGEST:

Protest against award to bidder not offering United States product conforming to DAR § 7-2003.50 certification is denied. Requirement applies only to products which IFB identifies as intended for use in Military Assistance Program, product in question was not so identified, and product will not be used for that purpose.

Lederle Laboratories, a division of the American Cyanamid Company protests award of any contract under invitation for bids (IFB) DLA120-81-B-0398 issued by the Defense Logistics Agency. The protester states that the IFB contains the clause set out in Defense Acquisition Regulation (DAR) § 7-2003.50 (1976 ed.), which requires that offerors certify that only United States products are offered for use in the Military Assistance Program (MAP) (part of the Foreign Assistance Act of 1961, 22 U.S.C. § 2354 (1976)). According to the protester, it is the only domestic manufacturer of the tetracycline required by the Government, but it did not submit a bid because the procurement was solicited as a total small business set-aside. The protester says that DLA should not be permitted to make any award to a firm which does not intend to furnish domestic material, i.e., material furnished by Lederle.

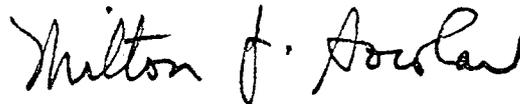
However, in a report to our Office DLA points out that the DAR provision cited applies by its own terms only "[t]o the extent that the Government specifies the items being purchased are in implementation of the Military Assistance Program." In this connection, DAR § 6-703.3 requires that MAP items be identified in a solicitation unless all items are intended for use in the MAP and the solicitation so states. In

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this respect, the IFB nowhere states that the tetracycline is to be used, and in fact it is not to be used, for MAP purposes. According to DLA, the supplies were being provided to replenish its depot inventories and the clause in question was erroneously included in the solicitation.

We find no merit to this protest because the clause in question, by its own terms, was clearly inapplicable to the procurement in issue. While the clause was included by error, the error was a harmless one insofar as Lederle is concerned. In this connection, Lederle cannot show that it was misled or otherwise prejudiced by inclusion of the clause in the solicitation since Lederle would necessarily be the supplier (assuming it is the only domestic producer of tetracycline) only if a MAP procurement were involved.

The protest is denied.



Acting Comptroller General  
of the United States