

BURTON
PL2

18425

DECISION



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

FILE: B-202152

DATE: June 12, 1981

MATTER OF: Easco Tools, Inc.

DIGEST:

1. Protest that method of award clauses in solicitation required that import duty be deducted from bid price is timely even though filed after bid opening as actual award criteria were not questioned.
2. Import duty which forms part of bid price may not be deducted from bid price in evaluation pursuant to method of award clauses which state that award is to be made to lowest bidder without mention of separate consideration of import duty, since IFB must list exact basis upon which bids will be evaluated and if any factor is to be added or deducted from bid price, IFB must advise all bidders of such factors.
3. There is no indication in Trade Act of 1974 that exemption from import duties is not to apply to Government procurement and fact that Act may give one bidder competitive advantage does not have to be considered in bid evaluation.

Easco Tools, Inc., protests the award by the Federal Supply Service, General Services Administration of a requirements contract to American Kal Enterprises, Inc., under solicitation No. FTN-SR-A5032-A-11-13-80 for adjustable wrenches. Easco argues that the price of its Japanese manufactured wrenches, which were subject to an import duty, should have been evaluated without reference to that duty as the Korean manufactured wrenches offered by Kal were not subject to such a duty. It is Easco's view that since its net price excluding the

017207

115481

duty is low and since the duty goes to the Government, its bid represents the lowest overall cost to the Government. We think the agency's evaluation was proper for the reasons set forth below and the protest is denied.

The solicitation called for bids on various types of wrenches and provided in a clause entitled "Method of Award" that award would be made on an item-by-item basis to "the low responsive offerors." The solicitation also incorporated Standard Form 33-A which provided "the contract will be awarded to that responsible offeror whose offer conforming to the solicitation will be most advantageous to the Government, price and other factors considered." The solicitation, in addition, provided that bids offering domestically manufactured end products would normally be evaluated against bids offering foreign manufactured end products by having a factor of 50 percent added to the latter, exclusive of import duties.

Fourteen bids were received on the subject item. After the low evaluated bid was determined to be nonresponsive, the contracting officer awarded the contract to Kal at \$2.70 per unit. Easco's bid of \$2.84 per unit included an import duty of \$.25 per unit. Kal's Korean made wrenches were not subject to an import duty because the Republic of Korea has been determined a "beneficiary developing country" under Section 501 of the Trade Act of 1974, 19 U.S.C. § 2461 (1976) and thus entitled to duty-free treatment.

The agency contends the protester's argument that bid prices should have been evaluated by reducing the prices by the amount of the import duty is, in effect, a challenge to the "Method of Award" clause in the solicitation and is therefore untimely because it was not filed until after bid opening. See our Bid Protest Procedures, 4 C.F.R. § 20.2(b)(1) (1980). We disagree. Easco's protest is not that the "Method of Award" clause in the solicitation was improper but that the clause, in conjunction with the award clause in Standard Form 33-A, required that the import duty be deducted from the protester's bid price. Since the protest was filed within 10 days of the award it was timely filed. 4 C.F.R. § 20.2(b)(2).

The exact basis upon which bids will be evaluated and award made, including any Government costs to be added or deducted, must be stated in the IFB. Federal Procurement Regulations § 1-2.201(a). If any factor other than bid price is to be considered in determining the low bidder, the IFB must advise all bidders of such factor so that all bidders are on an equal footing in submitting bids. Teledyne McCormick-Selph, B-180468, April 25, 1974, 74-1 CPD 214. Here, both of the clauses describing the award factors contain standard language indicating that award is to be made to that bidder offering the lowest price. Nowhere in the IFB is it indicated that import duties are to be separately considered (either added or deducted) in the evaluations of bids offering foreign source products, where no domestic bid is under consideration. Thus, it is our view that the Kal and Easco bids were properly evaluated. The import duty was merely one of a number of costs that the protester must have incurred in order to supply its product to the Government. The fact that import duties may benefit the Government in general is not relevant. It would have been no more proper to have excluded that cost in the evaluation than the costs that same firm must incur to ship the items from Japan to this country or to meet its Federal tax liability.

Easco complains that the exemption of Kal's product from import duty creates an unfair competitive situation in Government procurement not contemplated by the Trade Act of 1974. There is nothing in the Act which indicates that its exemptions are not to apply in Government procurements. In fact, it appears that the purpose of the Act was to give the products of certain foreign countries such as Korea an advantage in all marketplaces over the products of other more developed foreign countries. In this regard, we have long held that certain firms may enjoy a competitive advantage by virtue of their incumbency or their particular circumstances or as a result of Federal or public programs which do not have to be considered in the evaluation of bids. See 55 Comp. Gen. 656 (1976); 43 Comp. Gen. 60 (1973).

Based on the above we believe the bids were properly evaluated and the protest is denied.



Acting Comptroller General
of the United States