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*Revised*

**DECISION**



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

**FILE: B-203021**

**DATE: February 24, 1982**

**MATTER OF: Ampex Corporation**

**DIGEST:**

Recorder/reproducer system, including a foreign-made base unit which exceeds more than 50 percent of the cost of the system, is a foreign-source end product. Contracting agency's decision to the contrary, albeit based on a comparison of foreign component cost as a percentage of the proposed contract price rather than total component costs, is erroneous. The agency should perform a proper comparison of the foreign versus domestic component costs. In the event that the system offered is foreign, the bid must be evaluated by adding the 6-percent differential required by the Buy American Act, 41 U.S.C. §§ 10a-d (1973), and award should be made to the protester.

Ampex Corporation protests against the proposed award of a contract by the National Aeronautics and Space Administration (NASA) to Sony Corporation of America (Sony) for two video tape recorder/reproducer systems under invitation for bids (IFB) No. 10-0042-1. The protester contends that NASA erroneously determined that Sony offered only domestic-source end products and, therefore, failed to apply the 6-percent differential required by regulations implementing the Buy American Act, 41 U.S.C. §§ 10a-d (1976), in evaluating Sony's bid and concludes that proper bid evaluation would result in award to Ampex.

We agree with Ampex.

The IFB includes a schedule of 15 line items, solicits prices for items Nos. 1 through 13 and a trade-in allowance for the exchange of items

Nos. 14 and 15 and provides that bid evaluation and award will be based on the lowest overall cost to the Government.

Sony submitted the low evaluated bid of \$173,219.76, excluded no end products from its Buy American certificate and stated that approximately 39 percent of its proposed contract price represented foreign content or effort. The Ampex evaluated bid price of \$177,200 (2 percent higher than Sony) was second low. NASA derived the evaluated bid prices by deducting trade-in allowances and, in Sony's case, a 1-percent prompt-payment discount from the total price bid for items 1 through 13.

Ampex contends that, viewing the end product of the procurement as the recorder/reproducer system, the components of the system are those articles, materials and supplies directly incorporated in the system. In order to be a domestic-source end product, Sony's system must be manufactured in the United States and the cost of its domestic components must exceed 50 percent of the cost of all its components. NASA Procurement Regulation § 6.101(d) (1977 ed.). Ampex argues that bid items Nos. 1 (except standard features Nos. 1.1 and 1.2), 6 through 8, 11 and 13 are manufactured by Sony in Japan, shipped to the United States and directly incorporated into the system without further processing. Based on Sony's Federal Supply Schedule (FSS) catalog prices and published price lists, Ampex calculates the total price of Sony's foreign components at \$135,382 and that of its domestic components at \$72,130. The protester therefore concludes that less than 50 percent of Sony's component costs are domestic, making Sony's system a foreign end product.

NASA takes the position that the "end products" are the two systems and that the components of each system are the IFB line items Nos. 1 through 13. These items are: 1) the NTSC video tape recorder/reproducer, which includes eight enumerated items of standard equipment, 2) overhead monitoring bridge, 3) monitor cable kit, 4) NTSC color monitor, 5) vectorscope, 6) time code generator with control, 7) time code reader, 8) video time code processor, 9) time code editing system, 10) editor remote control panel, 11) service kit, 12) dual monitors and 13) set of operation/maintenance manuals for the above list of equipment.

Sony offered its model BVH-1100A Code 44 for line item 1 (including all eight items of standard equipment), stated that item 2 was part of the BVH-1100A Code 44, quoted a price of \$80,105.80 each for item 1 and stated that the price of items 2 through 8 was included in the price bid for item 1.

NASA insists that, although the Sony model BVH-1100A Code 44 listed on Sony's FSS contract is manufactured in Japan, this piece of equipment alone does not meet the requirements for IFB item 1. The contracting agency explains that, in order to meet the standard equipment features specified for that item, Sony must modify its base unit by incorporating these standard equipment features. The BVH-1100A Code 44 base unit, assembled in Japan, is shipped to Sony's Compton, California, plant where it is disassembled into five basic subassemblies. Four of the required standard equipment items are already part of the base unit; three more are added to it in addition to bid items Nos. 5 through 7. NASA asserts that integrating these items into the base unit is a true manufacturing process which takes several weeks and requires proper testing and calibration, citing Hamilton Watch Company, Incorporated, B-179939, June 6, 1974, 74-1 CPD 306. NASA therefore determined that item 1 is manufactured in the United States and that, because the price of that item is more than 50 percent of the cost of the system, the system is a domestic-source end product and the Buy American Act differential does not apply to Sony's bid.

While essentially concurring in NASA's position, Sony also argues that, assuming its system is foreign, compliance with the Buy American Act should be waived pursuant to the Trade Agreements Act of 1979, 19 U.S.C. §§ 2511, et seq. (Supp. III, 1979), and Executive Order No. 12260, 3 C.F.R. 311 (1981), 46 Fed. Reg. 1653 (1981). The regulation, implementing the act and the order, provides that the Buy American Act has been waived for eligible products originating in designated countries when the total price paid for a product equals or exceeds \$196,000. NASA Procurement Notice 81-2, February 2, 1981. Sony claims that it is entitled to waiver of the Buy American Act requirements because its video tape recorder/reproducer is eligible under several product categories, Japan is one of the designated countries and its bid has a total

value in excess of the \$196,000 threshold. Sony insists that the threshold value of its \$204,262.39 bid should be determined without regard to the trade-in allowance, citing 53 Comp. Gen. 225 (1973).

NASA asserts that the Trade Agreements Act of 1979 does not apply to the procurement because the IFB did not include any provisions implementing the act and these provisions cannot be included by operation of law because the "Christian Doctrine" applies to contracts, not to solicitations. See G.L. Christian and Associates v. United States, 312 F.2d 418, rehearing denied, 320 F.2d 345 (Ct. Cl. 1963), cert. denied, 375 U.S. 954 (1963), rehearing denied, 376 U.S. 929, 377 U.S. 1010 (1964). The contracting agency explains that, although provisions implementing the act were inadvertently omitted from the IFB, the act does not apply to the procurement because the bid prices offered have values less than \$196,000. NASA is of the opinion that the omission was neither prejudicial to the bidders nor a "compelling" reason to cancel the IFB.

Because Sony furnished information concerning the "domestic" nature of its products to NASA after the bid opening, the question of whether NASA properly evaluated its bid in light of the information received is appropriate for our consideration, notwithstanding Sony's Buy American certification that it would furnish domestic-source end products. See Bell Helicopter Textron, 59 Comp. Gen. 158, 161 (1979), 79-2 CPD 431.

While we agree with NASA and Sony that the recorder/reproducer system is manufactured at Sony's California facility, we find that it is a foreign-source end product. Manufacture in the United States, alone, does not suffice to make the system domestic. In addition, the cost of the domestic articles, materials and supplies directly incorporated into the system, the "components," must constitute 50 percent or more of the cost of all such items so incorporated in order for the system to be a domestic-source end product. See 46 Comp. Gen. 784 (1967).

We cannot concur in NASA's characterization of the system's components as the IFB line items. Although we have recognized that a contractor can separately manufacture both components and end products, 45 Comp. Gen. 658 (1966), we do not think that Sony manufactures

the item 1 BVH-1100A Code 44 recorder/reproducer, in addition to the recorder/reproducer system, Cincinnati Electronics Corporation, et al., 55 Comp. Gen. 1479, 1495 (1976), 76-2 CPD 286. Neither Sony's manufacturing process nor its bid pricing is consistent with the contention that the firm is engaged in separate component and end-product manufacturing operations, 48 Comp. Gen. 727 (1969). Sony's manufacturing process does not result in the assembly or manufacture of the item 1 recorder/reproducer, but includes the integration of other line items necessary to manufacture the "system." That Sony's manufacturing process is one of end-product (system) manufacture is further indicated by the price grouping of items on Sony's bid. As mentioned above, Sony's bid states that the overhead monitoring bridge (item 2) is part of the video tape recorder/reproducer (item 1); the price bid for the latter item expressly includes the price of items 2 through 8--contrary to NASA's assertion that these items are components of the "system" rather than integral parts of item 1. In addition, the bid states that the editor remote control panel (item 10) is part of the time code editing system (item 9).

In our opinion, because the Japanese-manufactured BVH-1100A Code 44 base unit is directly incorporated into the system during Sony's manufacturing process, it is a component of the system. The fact that the base unit is disassembled and reassembled in the process of manufacturing the recorder/reproducer system does not change the fact that it is manufactured in Japan. The base unit is, therefore, a foreign-manufactured component of the system. Bell Helicopter Textron, supra.

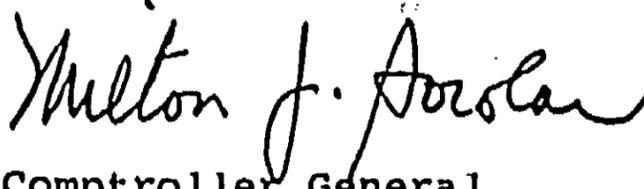
NASA states that the FSS contract price of Sony's Japanese-manufactured BVH-1100A Code 44 base unit is \$76,994 per unit. Following NASA's analysis, it makes no difference whether we consider the cost of the base unit in comparison with either Sony's total (\$102,131.20) or evaluated (\$88,609.88) bid price per system. The cost of the foreign base unit still constitutes more than 50 percent of the system price, rendering the Sony system a foreign end product and requiring application of the 6-percent differential in evaluating Sony's bid price. Application of the differential, of course, would affect the relative standing of the bidders, making Ampex the low evaluated bid.

NASA's analysis, however, focuses upon the cost of foreign components as a percentage of the proposed contract price. We have held that analysis on this basis does not establish whether the system being purchased is a domestic-source end product. Proper analysis requires a comparison of domestic and total component costs. Where, as here, the record does not show that the contracting agency has sufficient evidence to establish these costs, we have recommended that a more precise comparison of the cost of domestic versus foreign components be performed. TFI Corporation, 59 Comp. Gen. 405, 409 (1980), 80-1 CPD 287.

Although Sony contends that the Buy American Act should be waived for this procurement, we consider Sony's allegation in the nature of a counterprotest against an apparent solicitation deficiency which was not timely raised prior to the bid opening. Because Sony elected to compete under the terms of the IFB and failed to raise any objection until its competitive position was threatened by Ampex's protest, we find no reason to consider it at this late date. 4 C.F.R. § 21.2(b)(1) (1981).

Accordingly, we recommend that NASA perform a comparison of Sony's domestic and foreign component costs. The cost of the operation/maintenance manuals should not be used in the comparison, since the manuals are merely tools used to provide instruction rather than a result or product which can be directly incorporated into the end product. See Bell Helicopter Textron, supra. In the event that NASA finds that the cost of the foreign articles, materials, and supplies directly incorporated in the system exceeds by more than 50 percent the cost of all such items so incorporated, the 6-percent differential must be applied in evaluating Sony's bid and the contract should be awarded to Ampex.

We sustain the protest.

*for*   
Comptroller General  
of the United States