

DECISION



21715 *PL-1*
Wotherspoon
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

1180276

FILE: B-206633

DATE: April 30, 1982

MATTER OF: Fordice Construction Company

DIGEST:

Bidder acknowledged an amendment that included a certification that all end products were domestic by stating acknowledgement on its bid form. Protester argues that bid is nonresponsive because certification was not filled out and included with bid. Bid is responsive, however, because acknowledgement incorporated certification into bid, and certification does not require bidder to fill in anything when bidding only domestic end products. Additionally, statement in bid that zero percent of the contract price represents foreign content is consistent with bidding domestic end units.

Fordice Construction Company (Fordice) protests the proposed award of a contract for the manufacture of articulated concrete mattresses to the J.F. Barton Contracting Company (Barton) under invitation for bids No. DACW38-82-B-0002, issued by the Department of the Army, Corps of Engineers (Corps), Vicksburg, Mississippi, District.

Fordice, the second low bidder, contends that Barton, the apparent low bidder, submitted a non-responsive bid because it did not complete the Buy American - Balance of Payments Certificate contained in amendment No. 1 to the solicitation.

We deny the protest.

The solicitation contained the following paragraph K-20, at page K-8:

"K-20. PERCENT FOREIGN CONTENT (1978 SEP.) Approximately _____ percent of the proposed contract price represents foreign content or effort. (Defense Acquisition Regulation [DAR] 7-2003.81)"

Amendment No. 1 provided that:

"Page K-9 (there was, however, no original page K-9) is replaced by revised Page K-9, Paragraph K-22. BUY AMERICAN-BALANCE OF PAYMENTS PROGRAM CERTIFICATE (1980 OCT) is added."

The amendment then set forth, as revised page K-9, paragraph K-22, the standard clause required by DAR § 7-2003.47 (DAC 76-25, (October 31, 1980)). That clause provides, in pertinent part:

"K-22. BUY AMERICAN - BALANCE OF PAYMENTS PROGRAM CERTIFICATE (1980 OCT).

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

Excluded End Products

| <u>Line Item No.</u> | <u>Country of Origin</u> |
|----------------------|--------------------------|
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |

(List as necessary"

The amendment stated that bidders could acknowledge the amendment by signing and returning a copy of the amendment, by acknowledging receipt

of the amendment on the bid form, or by separate letter or telegram.

Barton inserted "-o-" in the blank of paragraph K-20 of its bid, indicating that approximately zero percent of its bid price represented foreign content or effort. Barton also acknowledged receipt of amendment No. 1 on its bid form, but did not return a copy of the amendment.

Fordice admits that Barton properly acknowledged receipt of the amendment, but argues that Barton was required to fill in the certificate. First, Fordice contends that the intent of the amendment was to replace paragraph K-20 with paragraph K-22. Under this theory, since Barton did not submit K-22 and the information in K-20 had no effect, as it had been replaced, then Barton's bid did not contain the necessary information required for bid evaluation and must be rejected as nonresponsive.

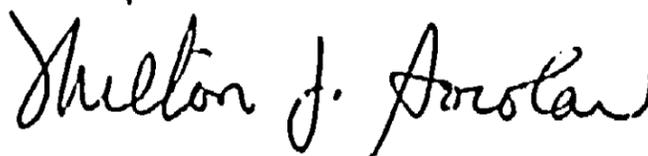
As an alternate argument, Fordice contends that paragraphs K-20 and K-22 must be read together. Fordice notes that K-20 uses the term "approximately" when referring to percent of foreign content or effort. The common meaning of approximately is "close or near." Therefore, Fordice argues, Barton merely stated in K-20 of its bid that the amount of foreign content was near zero, but not exactly zero. This, asserts the protester, does not satisfy the requirement in K-22 that the exact amount of foreign end products be stated. Again, the requirement of K-22 has not been fulfilled, and Barton's bid must be rejected as nonresponsive.

It is clear that the amendment did not replace paragraph K-20 with K-22, but rather added K-22 to the solicitation. Page K-8 and paragraph K-20 were not deleted by the amendment, and the amendment added page K-9 and paragraph K-22, both properly numbered in sequence after page K-8 and paragraph K-21 which is on page K-8. Additionally, the two paragraphs concern related, but different, subject matter and reference different DAR provisions. Paragraph K-20 requests the percentage of the total contract price represented by foreign content or effort, while K-22 is a certificate that all end products except those listed are domestic end products.

We conclude that the only reasonable reading of Barton's bid is that no foreign end products are being bid. By acknowledging the amendment, Barton incorporated it into its bid. While Fordice argues that a bidder must insert "zero" or "none" in the blanks in paragraph K-22 to certify that all end products are domestic, the paragraph has no such requirement. The plain language of the paragraph states that the bidder certifies that each end product is domestic, except those listed. Therefore, if no end products are listed, the bidder is certifying that all end products are domestic. No more is required. Therefore, by acknowledging the amendment and thus incorporating paragraph K-22 into its bid, Barton certified that each end product in its bid is domestic. The acknowledgement accomplished the same result as either returning the amendment blank or inserting "none," as the protester did.

Additionally, the information contained in paragraph K-20 of Barton's bid makes it clear that the bid does not include foreign end items. First, the paragraph, not Barton, uses the term "approximately," and we find that a reasonable reading of an entry of zero is that none of the bid price represents foreign content or effort. In any event, even if we read it to mean a very small amount approaching zero, as Fordice argues, the result would be the same. As we pointed out in Aul Instruments, Inc., B-199416.2, January 19, 1981, 81-1 CPD 31, a domestic end product is one in which the cost of its components which are mined, produced or manufactured in the United States exceeds 50 percent of the cost of all of its components. Consequently, it is not inconsistent to have some percent of the total contract price represent foreign content or effort and still have each end product be domestic.

Protest denied.



Acting Comptroller General
of the United States