

DECISION



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

Suberina

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FILE: B-212569; B-213262

DATE: January 23, 1984

MATTER OF: American Medical Instrument
Corporation

DIGEST:

Protest that bidder does not comply with Buy American provisions of solicitation concerns a matter of responsibility which GAO will not review and contractor's compliance with certification concerns administration of contract which is not for resolution under GAO Bid Protest Procedures.

American Medical Instrument Corporation (AMICO) protests the proposed award of two contracts for suture needle holders to American Instrument Manufacturing Corporation (AIM) under solicitations Nos. DLA120-83-B-1020, and DLA120-83-B-1471, issued by the Defense Logistics Agency (DLA).

AMICO asserts that award to AIM would be improper because AIM will not comply with its Buy American certification. AMICO contends that AIM's holders should be considered a Pakistani product because an integral production process is performed in Pakistan and, therefore, manufacture of the holders will not be performed substantially in the United States.

We dismiss the protests.

The Buy American Act provides, in general, that only such unmanufactured articles, materials and supplies as have been mined or produced in the United States and only such manufactured articles, materials and supplies which have been manufactured in the United States substantially from articles, materials or supplies mined, produced or manufactured in the United States shall be acquired for public use. 41 U.S.C. § 10(a) (1976). The act does not prohibit the procurement of foreign end products or supplies, however, and under the implementing regulations, a preference for domestic items is established through the use of an evaluation differential (in most cases 6 percent

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of the price of the foreign item) which is added to the price of the foreign item. See Rogers, Golden & Halpern, B-208014, January 3, 1983, 83-1 CPD 4; Executive Order No. 10582, December 17, 1954, as amended, and Defense Acquisition Regulation (DAR) § 6-104.4 (1976 ed.).

AIM checked the Buy American certification in its bids without listing any excluded foreign end products, thereby certifying that it was offering a domestic end product. In addition, under the place of performance clause of its bids, AIM listed five operations in the manufacturing process of its holders, four of which are performed in the United States and one of which (heat treatment and grinding) is performed in Pakistan. After DLA conducted a preaward survey, the DLA contracting officer determined that AIM is offering a domestic end product, that is, a product manufactured in the United States totally of domestic components, thereby meeting the United States end product definition under DAR § 6-001(d) (1976 ed.).

To the extent that AMICO is contending that the contracts should not be awarded to AIM because of its inability to comply with the solicitation's Buy American requirements, it is challenging AIM's responsibility. Mutual Industries, Inc., B-210968, June 10, 1983, 83-1 CPD 643. DLA is required to make a responsibility determination in order to make award to AIM, and our Office does not review protests alleging the nonresponsibility of a competitor, except in circumstances not present here. Aesculap Instruments Corporation, B-208202, August 23, 1983, 83-2 CPD 228.

In addition, compliance during contract performance with the Buy American certification in a bid is a matter of contract administration for resolution by the contracting agency, not our Office. Central States Associates, B-210549, February 16, 1983, 83-1 CPD 162.

We dismiss the protests.

Harry R. Van Cleve
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Acting General Counsel