

**DECISION**



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

**FILE:** 3-218588.2      **DATE:** June 20, 1985

**MATTER OF:** AME Matex Corporation

**DIGEST:**

1. To be considered an "interested party" so as to have standing to protest under the Competition in Contracting Act of 1984 and GAO's implementing Bid Protest Regulations, a party must be an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a contract or by the failure to award a contract. A potential supplier of domestic materials to firms competing for an overseas construction project cannot be considered an actual or prospective bidder or offeror.
  
2. The provisions of the Buy American Act, 41 U.S.C. §§ 10a-d (1982), are only applicable to contracts for the construction, alteration, or repair of public buildings or public work in the United States. Acquisitions for use outside the United States are governed by the Balance of Payments Program set forth in Federal Acquisition Regulation, which requires the use of domestic construction materials in overseas projects except where the cost of such materials, including transportation and handling, exceeds the cost of foreign materials by more than 50 percent.

AME Matex Corporation protests the lack of a Buy American Act provision in request for proposals (RFP) No. 62321-85-R-0046, issued by the Department of the Air Force. The procurement is for the repair of 322 military family housing units, including the replacement of heat pumps, at Kadena Air Force Base, Okinawa, Japan. AME Matex, an exporter of domestic construction materials, complains that the lack of such a provision in the solicitation is a violation of Department of Defense

policy and is especially egregious given the current United States trade deficit with Japan. We dismiss the protest.

From AME Matex's own submissions, it is apparent that the firm is not an actual or prospective offeror under the RFP in issue, but rather is a potential supplier to firms competing for the project. Hence, AME Matex is not an "interested party" to have its protest considered by this Office.

In this regard, GAO Bid Protest Regulations, 4 C.F.R. § 21.0(a) (1985), define an "interested party" as "an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a contract or by the failure to award a contract." Our regulations implement 31 U.S.C. § 3551, et seq., as added by section 2741(a) of the Competition in Contracting Act of 1984 (CICA), Pub. L. No. 98-369, 98 Stat. 1175, 1199, which contains precisely the same definition. Therefore, in accordance with the CICA and our implementing regulations, we will only consider protests filed by parties which come within the statutory definition of an "interested party." PolyCon Corp., B-218304 et al., May 17, 1985, 85-1 CPD ¶ \_\_\_\_\_. AME Matex, as only a potential supplier of materials, does not meet that definition.

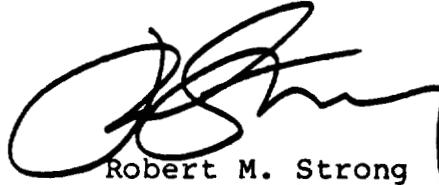
In any event, the provisions of the Buy American Act, 41 U.S.C. §§ 10a-d (1982), are only applicable to contracts for the construction, alteration, or repair of public buildings or public work in the United States. See the Federal Acquisition Regulation (FAR), 48 C.F.R. § 25.200 (1984). Acquisitions for use outside the United States are governed by the Balance of Payments Program, FAR, 48 C.F.R. § 25.300, et seq., which specifically provides that the use of domestic construction materials shall be required in overseas contracts except where their cost, including transportation and handling, exceeds the cost of foreign materials by more than 50 percent. FAR, 48 C.F.R. § 25.302(c).

Here, the Air Force states that it determined that the required use of United States-origin materials would increase overall material costs by 76 percent over the cost of local materials, with the sole exception of heat pumps, the cost of which would be prohibitive if purchased locally. Therefore, apart from heat pumps, the solicitation did not require the use of domestic materials

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(although we note that the use of domestic materials has not been precluded by the Air Force's determination). Accordingly, there is no legal basis for protest in this matter.

The protest is dismissed.

A handwritten signature in black ink, appearing to read 'R. Strong', is written over the typed name.

Robert M. Strong  
Deputy Associate General Counsel