



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Atlas Powder Company
File: B-227812
Date: September 11, 1987

DIGEST

Where offeror certifies in accordance with the Buy American Act that it intends to supply a domestic product, offer is not subject to addition of evaluation factor, and firm is obligated to abide by its certification upon acceptance of its offer.

DECISION

Atlas Powder Company protests the Department of the Army's award of a contract to Ensign-Bickford Company under request for proposals No. DAAA09-86-R-1196, for a quantity of time blasting fuses. We deny the protest.

Although Atlas was the apparent low, acceptable offeror, the firm had indicated in the Buy American Act certification in its proposal that it intended to supply fuses produced or manufactured in Brazil. Atlas' proposal therefore was considered to offer a nondomestic end product, resulting in the addition of a 50 percent evaluation factor to its offer. This in turn resulted in Atlas being displaced by Ensign-Bickford as the low acceptable evaluated offeror.

Atlas contends that the only domestic manufacturer of fuses cannot produce the M700 time blasting fuse as specified in the specifications; that all offerors thus had to be offering nondomestic fuses; and that all offerors, including Ensign-Bickford, should have been treated the same. Atlas contends that the domestic manufacturer can produce an equivalent fuse of slightly different specifications, and that it had intended to request a variance permitting it to furnish this fuse had it received the award.

Atlas' proposal properly was evaluated with the Buy American Act factor added because Atlas indicated in its proposal that it would not furnish domestic end items. Notwithstanding that Atlas stated it intended to seek a variance after award, evaluation in this manner was in accordance with the terms of the Buy American Act provisions in section K of the

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RFP, and was required under the Federal Acquisition Regulation, 48 C.F.R. Part 25 (1986).

By the same token, the Buy American Act evaluation factor properly was not added to Ensign-Bickford's proposed price since that firm certified that it would furnish domestic end items. Although Atlas believes no domestic firm is capable of manufacturing an acceptable fuse, we see nothing in the record suggesting that the agency had any reason to question this certification. Moreover, during the course of a preaward survey, it was specifically determined that while some of the fuse assembly was to take place in the awardee's Mexico plant, final assembly of the fuse would take place in Connecticut.

Before accepting Ensign-Bickford's offer, the contracting officer determined that the firm was capable of furnishing domestic items, i.e., was a responsible concern. Despatch Industries, Inc., B-225063, Nov. 5, 1986, 86-2 CPD ¶ 524. Our Office does not review such affirmative responsibility determinations, except in limited circumstances not applicable here. 4 C.F.R. § 21.3(f)(5)(1987). Further, as Ensign-Bickford's offer has been accepted, it is now obligated to supply domestic products.

The protest is denied.


for Harry R. Van Cleve
General Counsel