The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: The Pratt & Whitney Company, Inc.; Onsrud Machine Corporation

File: B-232190, B-232190.2

Date: December 13, 1988

DIGEST

1. Protest that awardee will not supply machine tool of United States origin, notwithstanding certification in offer to that effect, is denied where contracting officer obtained price breakdown of component parts which showed more than 50 percent domestic components and survey of awardee by Defense Contract Administration Services Management Area stated awardee can perform as certified.

2. An offeror's actual compliance with restriction on the acquisition of foreign machine tools certifications is a matter of contract administration for determination by the agency, not the General Accounting Office.

3. Experience of an offeror is a matter of responsibility and where contracting officer makes an affirmative responsibility determination, our Office does not review such determination except under limited circumstances not present here.

DECISION

The Pratt & Whitney Company, Inc., and Onsrud Machine Corporation protest the award of a contract to IMTA for a Vertical CNC Six Axis Machining Center under request for proposals (RFP) No. F33601-88-R-0017 issued by Wright-Patterson Air Force Base Contracting Center on March 21, 1988. Pratt & Whitney, and Onsrud contend that: (1) an award to IMTA will be violative of the Congressional restriction on the acquisition of foreign machine tools because the machine tool offered by IMTA will be manufactured in Italy, not in the United States, as certified in the firm's bid; (2) the Air Force failed to adequately investigate challenges to the awardee's certification

concerning its contractual obligation to supply products of domestic origin; and (3) the awardee is not a responsible contractor because it lacks financial resources and a record of performance and experience. We deny the protests.

The solicitation contained the clause set forth at Department of Defense Acquisition Regulation Supplement (DFARS) § 52.225-7023 (DAC 86-16), requiring machine tools to be of United States or Canadian origin. This clause specifies that an item is of United States or Canadian origin if it is manufactured in either country and the cost of its United States or Canadian manufactured components exceeds 50 percent of the cost of all its components. The Air Force also required offerors to certify that, except as otherwise indicated, each end product was of United States or Canadian origin. Each of the offerors represented that all end items to be furnished under the contract would be manufactured in accordance with these requirements.

Offers were submitted by Onsrud, IMTA and Pratt & Whitney. Award was made to IMTA at a price of $1,299,531 on August 5, following best and final offers (BAFO). Upon learning of the award, Onsrud and Pratt & Whitney protested to our Office.

Initially, the Air Force argues that Onsrud is not an "interested party" under our Bid Protest Regulations (4 C.F.R. § 21.0(a) (1988)) since Onsrud would not be in line for award if the protest were sustained because Onsrud did not respond to the request for BAFOs and did not price line item No. 7, "Foundation" in its initial offer. Onsrud argued initially in its protest that it called the contracting officer and orally confirmed its initial proposal, but subsequently argues, following a conference on the protest, that it never received the request for a BAFO.

We find the resolution of this issue to be unnecessary because the issues raised by Onsrud are essentially the same to those of Pratt & Whitney and, therefore, are being decided by our Office in any event.

The protesters contend that IMTA is a foreign dealer, not an American manufacturer; the machine tool offered by IMTA is a foreign end product manufactured by JOBS spa in Piacenza, Italy; the contracting officer was aware of this fact prior to award; IMTA's certification to the contrary should have been questioned; and there is no justification for the Air Force having approved IMTA's proposal. The protesters argue that a Dun and Bradstreet report lists IMTA as a wholesaler with 16 employees located in a 2,500 square foot building in Des Plaines, Illinois. In addition, the International Trade

Administration (ITA), Department of Commerce has questioned whether IMTA is a manufacturer and can obtain the facilities to perform the contract.

The Air Force points out that IMTA's proposal contained a certification that the machine tool it intended to furnish would be manufactured in the United States and that more than 50 percent of the item would be domestic content. See DFARS § 52.225-7023 (DAC 86-16). IMTA also furnished the Air Force, on June 6, 1988, prior to award, with a price breakdown of the components of its product that showed that approximately 61 percent of its proposed contract price represented domestic content. On the basis of this information, the Air Force states that its contracting officer determined IMTA's proposed item to be a product of domestic origin.

Although domestic origin certifications are usually accepted at face value, this Office has held that an agency should not automatically rely on them when it has reason to question whether a domestic end product will in fact be furnished. Wire Rope Corporation of America, Inc., B-225672, Mar. 13, 1987, 87-1 CPD ¶ 286.

The contracting officer explains that she did not initially question IMTA's certification because IMTA represented in its proposal that it was the manufacturer of the end product and that the principal place of performance of the contract would be Des Plaines, Illinois, and it also furnished the pricing information referred to above. However, following the filing of the Pratt & Whitney protest she requested the Defense Contract Administration Services Management Area, Chicago (DCASMA), to conduct a survey of IMTA. DCASMA's response of August 9 to the contracting officer states:

> "After reviewing the contractor's facility and discussing manufacturing capability, it is the opinion of the Industrial Specialist that IMTA can perform on the above subject contract. Contractor will be buying components that are 39 percent Italian made (including labor, material and purchased components) and 61 percent American made. He will be leasing a building in Rockford with 40,000 square feet with an option to buy. Personnel have been interviewed who will be available to start when production commences."

The contracting officer contends that she has made every reasonable effort to assure that the prospective contractor is complying with the governing regulations. We agree. She had no information at hand which was inconsistent with

IMTA's proposal certification until after she had awarded the contract. IMTA had made the appropriate certifications without qualification and we see nothing in its proposal that would have indicated to the contracting officer that the firm was intending to supply other than a domestic end product. Following the Pratt & Whitney protest, she took the additional step of contacting DCASMA, whose survey confirmed her award decision.

While in its protest Pratt & Whitney places considerable emphasis on a brochure describing the brand name Jo'Mach machining center, we do not find that this requires a different result. The brochure indicates that it was printed in Italy and lists, in Italian, the name and address of the company that Pratt & Whitney insists actually manufactures the awardee's product, JOBS spa of Piacenza, Italy. However, this brochure only shows where the item has been made in the past. Here, IMTA has stated that this will be the first time the machine has been produced outside Italy. IMTA's compliance with its domestic content certifications is an issue of contract administration for the Air Force to monitor during the course of contract performance. See Autoclave Engineers, Inc., B-217212, Dec. 14, 1984, 84-2 CPD ¶ 668.

To the extent that Pratt & Whitney and ITA question the status of IMTA as a manufacturer, this Office does not determine the legal status of a firm as a regular dealer or a manufacturer within the meaning of the Walsh-Healey Act, 41 U.S.C. §§ 35-45 (1982). By law, this matter is to be decided by the contracting agency, in the first instance, subject to review by the Small Business Administration, where a small business is involved, and the Secretary of Labor. Hewlett Packard Co., B-228271, Dec. 3, 1987, 87-2 CPD ¶ 545. We are unaware of any appeal being taken to Labor or SBA of IMTA's status.

Pratt & Whitney also contests the Air Force's determination that IMTA is a responsible offeror capable of meeting its obligations under the contract. If an offeror does not exclude an end product from a domestic origin certification in its proposal, and does not otherwise indicate that it is offering something other than a domestic end product, acceptance of the offer will result in an obligation on the part of the offeror to furnish a domestic end product. Whether the offeror has the ability, however, actually to furnish a domestic end product is another question, which is to be resolved within the context of a responsibility determination. Canadian General Electric Company, Ltd., B-223934.2, July 10, 1987, 87-2 CPD ¶ 29. An affirmative determination of IMTA's responsibility was made before the

contract award. Our Office does not review such a determination absent a showing of possible fraud on the part of procuring officials or an allegation that the solicitation contained definitive responsibility criteria that were not applied. Clausing Machine Tools, B-216113, May 13, 1985, 85-1 CPD ¶ 533. Neither exception applies here.

Finally, the protesters have expressed concern over the award price to IMTA of $1,299,531. They state that IMTA's initial proposal was for $1,598,231, which price IMTA stated remained firm in its BAFO. However, the difference in the two prices results from subtracting IMTA's price for line item No. 9, which item was deleted during the procurement by the requiring activity and not evaluated for any offeror.

The protests are denied.

James F. Hinchman
General Counsel