



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Autospin, Inc.
File: B-233778
Date: February 23, 1989

DIGEST

1. Where a firm certifies in its offer that it will supply a machine tool of United States origin, it is obligated to do so upon acceptance of the offer, and whether the firm meets its obligation is a matter of contract administration, which the General Accounting Office does not review.
2. Protest filed more than 10 working days after basis of protest is known or should have been known is untimely.

DECISION

Autospin, Inc., protests the award of a contract to the Davis-Taylor-Forster Company (D-T-F) under request for proposals (RFP) No. N00600-88-R-0161, issued by the Navy for a metal spinning machine, including installation and training, for the Puget Sound Naval Shipyard in Bremerton, Washington. Autospin contends that, despite the awardee's certification otherwise, D-T-F has not offered and will not supply a machine tool manufactured in the United States or Canada, as required by the RFP. Autospin alternately contends that if the machine offered by the awardee does satisfy the domestic content requirement, then it cannot comply with the solicitation's requirement that the machine must be a current production model on the date the solicitation was issued.

We deny the protest in part and dismiss it in part.

The solicitation, issued on March 14, 1988, contains a clause from the Department of Defense Acquisition Regulation Supplement (DFARS), 48 C.F.R. § 252.245-7000, requiring machine tools to be manufactured in the United States or Canada. This clause was subsequently revised and incorporated into DFARS § 252.225-7023 (DAC 86-16), which requires machine tools to be of United States or Canadian origin. Under this clause, an item is considered to have

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been manufactured in the United States or Canada (and be of United States or Canadian origin) if the cost of its United States or Canadian manufactured components exceeds 50 percent of the cost of all its components.

Three offers were submitted in response to the RFP by the April 14 closing date. The low offeror, D-T-F, and the next low offeror, Hallide Machine Company, both offered to supply the same model machine from Leifeld Machinery Corporation, a West-German firm with a plant in the United States. Both of these offerors have certified that the Leifeld machine they offered, model PNC-350, complies with the solicitation's domestic content requirement. Autospin, the high-priced offeror, proposed a machine of 100 percent United States components.

In its offer, D-T-F stated that it had available a model PNC-350 with more than 50 percent United States content, if required. D-T-F was subsequently informed by the agency that a machine in excess of 50 percent domestic content was required and that its interpretation of how the content requirement was determined was incorrect. D-T-F was also informed of the costs that could be included as domestic content. The contracting officer then sought, initially by telephone, additional information from D-T-F regarding the foreign content of the machine it offered. By letter of July 12, at the agency's request, D-T-F provided the contracting officer with a cost and percentage breakdown of the foreign and domestic content of its proposed machine which on its face indicated compliance with the certification. The agency thereafter requested a more detailed cost breakdown, identifying the location and name of the manufacturer of the machine's components. On July 29, Navy contract personnel met with D-T-F representatives to clarify what items were to be considered foreign content. In response to the Navy's request, D-T-F submitted by letter of August 17, a detailed breakdown of the cost and origin of the components of its proposed machine. The Navy's technical personnel verified a domestic location for each manufacturer listed and found D-T-F in compliance with the RFP's domestic content requirement. Award was made to D-T-F, as the lowest technically acceptable offeror, on October 17. On October 25, Autospin filed an agency-level protest which was denied by the Navy by letter of November 16, and received by Autospin on November 20. Autospin filed its protest with our Office on December 5.

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 product will in fact be

furnished. See Designware, Inc., B-221423, Feb. 20, 1986, 86-1 CPD ¶ 181. In this case, the contracting officer did not rely on the certification alone. She contacted D-T-F several times to specifically discuss the foreign content of D-T-F's product. As a result, at time of award, the contracting officer had D-T-F's certification, two itemizations of component costs and origin, and information that Leifeld maintains a United States plant which offers a machine that consists of components produced by domestic manufacturers, except for one foreign component which D-T-F accounted for in its price breakdown. Under these circumstances, it appears that the contracting officer did all that was reasonably necessary to ensure that D-T-F would in fact deliver a product that complies with the solicitation's domestic content requirement. See Hewlett-Packard Co., B-228271, Dec. 3, 1987, 87-2 CPD ¶ 545. Other than the protester's speculation, there is no basis in the record to question D-T-F's certification and its supporting cost breakdown information. Further, D-T-F has affirmed in writing that its offered product is less than 50 percent foreign. We find the contracting officer relied in good faith on the certification and component cost information and acted reasonably in accepting D-T-F's offer.

To the extent that Autospin contends that D-T-F will provide a machine in excess of 50 percent foreign content, we note that since D-T-F's proposal contains the necessary certification, the acceptance of D-T-F's offer obligates the firm to supply a machine that complies with the solicitation's domestic content requirement. Whether the awardee ultimately does, in fact, comply with this obligation is a matter of contract administration and is not for consideration under our bid protest function. See Astro-Med, Inc., B-228420.2, Dec. 10, 1987, 87-2 CPD ¶ 577; 4 C.F.R. § 21.3(m)(1) (1988). We note that Autospin alleges that a major component which is foreign made is improperly considered in D-T-F's cost breakdown as domestic. However, the agency states that the awardee has confirmed that this component was part of its reported foreign content costs and thus Autospin's contention in this regard is without merit.

As to Autospin's contention that D-T-F's proposed machine is not a current production model as required under the RFP, we find this protest ground untimely since the record indicates that Autospin knew or should have known this basis of protest at least at the time it filed its agency-level protest and its protest of this issue was filed substantially more than 10 working days after the filing of that agency-level protest. 4 C.F.R. § 21.2(a)(2). We therefore dismiss this issue as untimely filed. We note, however, that the record shows the contracting officer confirmed that

the awardee's machine was a current production model, as defined under the RFP, and that the protester provides no evidence to support its contention otherwise.

The protest is denied in part and dismissed in part.

for Seymour Egan
James F. Hinchman
General Counsel