



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Saginaw Machine Systems Inc.

File: B-238590

Date: June 13, 1990

James E. Buckley, for the protester.
Craig Hodge, Esq., and Cpt. Timothy Pendolino, Esq., Office of Command Counsel, Department of the Army, for the agency.
John Formica, Esq., and John Brosnan, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Drilling machine accessories required for the machine to meet solicitation's operational and performance requirements may properly be considered in determining whether the cost of the components of the machine manufactured in the United States or Canada exceeds 50 percent of the cost of all its components.
2. An agency's evaluation of a product as domestically manufactured will not be disturbed where a foreign manufactured base machine is transformed into a finished drilling machine by a domestic manufacturer who installs domestically manufactured components and the domestic components constitute more than 50 percent of the cost of all its components.
3. The submission and acceptance of below cost bids are not legally objectionable. Whether the low-priced bidder can meet the contract requirements in light of its bid price concerns the agency's affirmative responsibility determination which the General Accounting Office generally does not review.

DECISION

Saginaw Machine Systems Inc. (SMS) protests the award of a contract to IMTA Incorporated, under invitation for bids (IFB) No. DAAA08-89-B-0184, issued by the Rock Island Arsenal for a computer numerically controlled deep hole drilling machine. SMS contends that the machine offered by IMTA does not comply with the requirement that the machine be manufactured in the United States or Canada, and

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questions IMTA's ability to meet the solicitation requirements at its bid price.

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

The solicitation, which was issued on July 21, 1989, required the machine to be manufactured in the United States or Canada, and contained a provision stating that a machine shall be considered so manufactured if the cost of its components manufactured in the United States or Canada exceeds 50 percent of the cost of all of its components.^{1/} Accordingly, bidders were required to certify the total cost of components in their machines, the cost of components manufactured in the United States or Canada, and the percentage of foreign components.

IMTA's bid of \$997,575, and SMS' bid of \$3,127,110, were the only bids received in response to the solicitation. Because of the price disparity between the bids, IMTA was requested to confirm its bid, which it did.

IMTA's bid contained a certification that the cost of foreign components represented 35.5 percent of the machine's total cost, and certified that the cost of components manufactured in the United States or Canada totaled \$642,620. However, literature submitted with its bid indicated that the machine being offered was from an Italian manufacturer. Because of this, the contracting officer requested that IMTA provide information supporting its certification that it would supply a machine of United States or Canadian manufacture, as defined in the solicitation. On receipt of information concerning the machine's foreign and domestic components, the contracting officer determined that the cost of the machine's components manufactured in the United States or Canada exceeded 50 percent of the cost of all its components, and concluded that IMTA would thus be in compliance with its certification and the solicitation's requirements.

SMS first argues that IMTA's machine does not meet the 50 percent domestic content test, and that the Army concluded otherwise because it improperly permitted IMTA to certify what SMS refers to as the machine's accessories, as part of the machine's domestic components. SMS contends that for purposes of the domestic content test, IMTA's base

^{1/} Department of Defense Federal Acquisition Regulation Supplement § 225.7008 (DAC 88-14), governing the acquisition of machine tools, limits the Army to purchasing domestic or Canadian machines of the type in this solicitation.

machine should be evaluated independently of its accessories. In its protest, SMS concedes, however, that these accessories are needed to enable the machine to meet the operational and performance requirements of the solicitation.

We addressed arguments similar to this in a number of recent protests concerning the acquisition of machine tools to which the restriction that the tools be of United States or Canadian manufacture applied. In those decisions, we found that where the agency was purchasing machines with accessory parts which are necessary for the units to comply with agency needs, it would not be reasonable to exclude the costs of these parts in determining whether the machines are domestic products. Manufacturing Technology Solutions, B-237415, Jan. 22, 1990, 90-1 CPD ¶ 88, request for reconsideration denied, Manufacturing Technology Solutions--Request for Recon., B-237415.2, May 4, 1990, 90-1 CPD ¶ _____; Morey Mach., Inc., B-233793, Apr. 18, 1989, 89-1 CPD ¶ 383. Therefore, we reject SMS' argument that the agency acted improperly by allowing IMTA to certify the machine's accessories as part of its domestic components.

SMS further argues that our determinations in Manufacturing Technology Solutions, B-237415, supra, and Morey Mach., Inc., B-233793, supra, cannot be considered valid precedents because in the first case there is a pending reconsideration request,^{2/} and in the second case the underlying procurement was canceled. We cite the two decisions because they concerned the issue raised by SMS and because we consider our analysis to be applicable here. We simply believe that it makes sense to count the cost of accessory items needed to enable a machine to meet the agency's stated requirements in determining the machine's domestic content and we would so hold whether or not we had decided the issue previously.

SMS also appears to argue that IMTA's machine does not meet the solicitation's requirement for United States or Canadian manufacture, because IMTA's base machine is actually of Italian manufacture. Implicit in this argument is the contention that IMTA's assembly at its facility in Rockford, Illinois, of the domestic components on the Italian base machine does not constitute manufacturing.

^{2/} As noted in citation to the case, the request for reconsideration of Manufacturing Technology Solutions has now been denied.

We conclude that the process performed by IMTA at its Illinois facility constitutes manufacturing. It is not disputed that the imported base machine, without the added process undertaken by IMTA at its facility, would not meet the operational or performance requirements of the solicitation. Further, it is not necessary for the process performed by IMTA to result in a substantial or fundamental change to the physical character of the imported base machine in order to constitute manufacturing, as SMS appears to suggest. The requirement for domestic manufacture is met where a firm assembles the components necessary to transform an imported base machine into a machine which meets solicitation specifications. See Manufacturing Technology Solutions, B-237415, supra.

SMS finally argues that the awardee cannot meet the solicitation's requirements at its proposed price. Whether a contract can be satisfactorily performed at the price bid is a matter of responsibility. The submission and acceptance of a below-cost bid is not in itself legally objectionable. Whether the prospective contractor can meet contract requirements in light of its low bid is a matter to be considered by the contracting officer in assessing that bidder's responsibility, affirmative determinations of which our Office will review only in limited circumstances not alleged or evident here. Paige's Sec. Servs., Inc., B-235254, Aug. 9, 1989, 89-2 CPD ¶ 118.

Accordingly, the protest is denied in part and dismissed in part.



for James F. Hinchman
General Counsel