

Shimamura



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: American Instrument Corporation

File: B-239997

Date: October 12, 1990

John R. Allard for the protester.
Philip F. Eckert, Jr., Esq., Defense Logistics Agency, for the agency.
Amy M. Shimamura, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Where contracting officer had information available which indicated that an offeror would provide a domestic end product, the contracting officer properly relied on the offeror's self-certification that a domestic end product would be furnished.
2. Protest that awardee falsely certified that it will provide a domestic end product as required by the solicitation's Buy American Act clause and that it will not incorporate required jewel bearings in its product is dismissed because the questions whether the awardee will provide a domestic end product, as it certified in its offer, or comply with the jewel bearings requirement, are matters of contract administration and are not for consideration under the General Accounting Office's bid protest function.

DECISION

American Instrument Corporation protests the award of a contract to Ideal Precision Meter Company under request for proposals (RFP) No. DLA400-90-R-1538, issued by the Defense General Supply Center, Defense Logistics Agency (DLA), Richmond, Virginia, for aircraft meter movements. American contends that Ideal falsely certified that it will provide a domestic end product and comply with the RFP's jewel bearings requirement.

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

The RFP requested proposals on supplying two line items of meter movements. The solicitation's item description identified both the protester's and awardee's products as acceptable items. The RFP included clause 52.208-2, "Jewel Bearings and Related Items Certificate," which required offerors to certify whether jewel bearings would be incorporated in the required item; and, if jewel bearings would be incorporated in the item, to certify that the jewel bearings would be purchased from the William Langer Plant, Rolla, North Dakota. Additionally, the RFP included the "Buy American-Balance of Payment Program Certificate," clause 52.225-7000, which required offerors to certify that the end product to be provided is a domestic end product, and to list end products that are not domestic end products. Further, under the RFP's "Place of Performance" provision, clause 52.215-20, the solicitation required offerors to indicate whether, in the performance of the contract, the offeror intended to use one or more plants or facilities located at an address different from the address of the offeror as indicated in its proposal.

American contends that Ideal will not provide a domestic end product, as certified in its proposal, because all of Ideal's manufacturing facilities were moved to Egypt and the awardee no longer manufactures meter movements in the United States. Additionally, American alleges that Ideal will not purchase jewel bearings from Langer as required by the RFP.

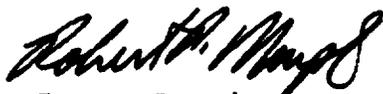
Ideal certified in its proposal that it would be providing a domestic end product and stated in its proposal that the place of manufacture will be its Brooklyn plant. By virtue of the certification, Ideal has bound itself to furnish a domestic end product. Berema, Inc., B-239212, June 22, 1990, 90-1 CPD ¶ 584.

As a general rule, agencies should go beyond a firm's self-certification for Buy American Act purposes and should not rely upon the facial validity of that certification where the agency has reason to believe, prior to award, that a foreign end product will be furnished. See, e.g., Autospin, Inc., B-233778, Feb. 23, 1989, 89-1 CPD ¶ 197. Where a contracting officer has no information prior to award which would lead to the conclusion that the product to be furnished is a foreign end product, the contracting officer may properly rely upon an offeror's self-certification without further investigation. Designware, Inc., B-221423, Feb. 20, 1986, 86-1 CPD ¶ 181.

Here, the contracting officer reasonably relied on Ideal's self-certification. In response to American's agency-level protest on the previous procurement of the same item, Ideal stated that it has manufacturing facilities in Brooklyn, New York, and in Cairo, Egypt, and that the Brooklyn plant manufactures the aircraft meter movements provided under the protested contract, whereas the Cairo plant manufactures other types of meters. Additionally, in March 1988, DLA had qualified meters produced at Ideal's Brooklyn facilities for inclusion on the Qualified Products List, and DLA requires Ideal to perform testing of specified products at its Brooklyn facility every 12 months. While the protester alleges that the meters will be manufactured in Egypt, it has provided no evidence in support of its allegation. The contracting officer therefore had no basis to question Ideal's self-certification that domestic end products would be provided under the protested contract. Whether Ideal complies with the certification is a matter of contract administration and is not for our consideration. 4 C.F.R. § 21.3(m)(1) (1990); see also Berema, Inc., B-239212, supra.

With regard to the jewel bearings requirement, Ideal indicated in its offer that jewel bearings would not be incorporated in its meter movements, so the requirement to purchase the item from Langer is not applicable here. Although American alleges, in its comments on the agency report on the protest, that meter movements cannot be manufactured without jewel bearings, this too is a matter of contract administration and not for our consideration. In any case, the record indicates that Ideal's meter movement was previously submitted to the agency for technical review and found to satisfy this requirement.

The protest is denied in part and dismissed in part.


for James F. Hinchman
General Counsel