

DECISION**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 2054860874⁸

FILE: B-184767

DATE: May 17, 1976

98938

MATTER OF: Cameron Manufacturing Company

DIGEST:

1. Determination whether bidder is qualified as regular dealer or manufacturer under Walsh-Healey Public Contracts Act, 41 U.S.C. § 35, is not for consideration by GAO, since responsibility for determining such qualifications rests in first instance with contracting officer subject to review by Secretary of Labor.
2. Where bid documents taken together clearly indicate which items of multi-item bid are proposed to be supplied from domestic manufacturing sources and which items are of foreign manufacture, bid can be evaluated for compliance with Buy American Act requirements even though Buy American Certificate submitted with bid was incomplete.
3. Where a sample "representative" of a class of items in multi-item bid is to be submitted "from the production of the manufacturer whose product is to be supplied," one set of samples may be submitted by such manufacturer in support of its bid on that item and on behalf of an affiliated bidder as representative of other bid items within specified class of items. Government's right to require that products delivered under resulting contract strictly comply with sample submitted is not diminished.

This is a bid protest filed by counsel for Cameron Manufacturing Company (Cameron) of Emporium, Pennsylvania concerning the award of any items to the Century Tool Company (Century) of Ivyland, Pennsylvania under General Services Administration Invitation for Bids No. FPWN-F2-55395-RA (IFB). The solicitation contemplated a requirements-type contract to supply various types of pliers (hand tools - FSC 5120).

The record discloses that Century's bids on items 10, 13 and 16 initially were rejected as nonresponsive, on the ground that it had failed to provide bid samples as required in the IFB. Award was made to Cameron on items 13 and 16, among others, but subsequently, Century orally protested to GSA the rejection of its bids on items 10, 13, and 16. Upon reconsideration, GSA reversed its position and determined that Century had substantially complied

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with the IFB requirement for submission of bid samples. GSA then notified Cameron that it intended to terminate the contract for items 13 and 16, for the convenience of the Government and subsequently Cameron agreed to a no cost termination of these items.

First, Cameron asserts that "Century is ineligible for an award under the Walsh-Healey Public Contracts Act in that Century does not meet the Act's definition of a manufacturer or regular dealer." The Walsh-Healey Act, 41 U.S.C. § 35 (1970), vests in the Secretary of Labor the authority to make final administrative determinations regarding the interpretation of such terms as "regular dealer" and "manufacturer" as used therein. Moreover, the responsibility of determining whether a bidder is qualified as a regular dealer or manufacturer rests in the first instance with the contracting officer and is subject to review by the Secretary of Labor and not by the General Accounting Office. Corbin Sales Corp., B-181454, October 29, 1975, 75-2 CPD 261; F & H Manufacturing Corp., B-183491, April 29, 1975, 75-1 CPD 266. Accordingly, we must decline to consider Century's eligibility under this Act.

Next Cameron asserts that Century's bid is nonresponsive in that it is unclear from its Buy American Certificate (Standard Form (SF) 33, Paragraph 7) whether Century proposes to supply domestic end products, or if not, which items are excluded. In addition, the protester argues that Century has misconstrued the requirements for qualifying products as domestic source end products and has requested that we examine the manufacturer's costs and manufacturing operations to assure that its planned method of production will result in domestic source end products.

Century's bid is reflected in two documents, an initial submission of executed bidding forms and a subsequent timely telegram in which Century, in part, submitted bids for the additional items which are in question here. The former contained the Buy American Certificate, which Century completed and submitted, as follows:

The offeror hereby certifies that each end product, except end products listed below, is a domestic source end product * * * and that components of unknown origin have been considered to have been mined, produced, or manufactured outside the United States.

<u>Excluded End Products</u>	<u>Country of Origin</u>
Items	Japan

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Furthermore, Century listed all items in its initial bid as being manufactured in Japan by "Truecraft" as well as the amount of duty included in each bid price. Century's bid for the items in question subsequently was forwarded in a telegram which stated, in part, that the items would be "manufactured by Utica Tool Company, Shipping and Inspection Point Ora[ng]eburg, S.C." and that "All other Terms and Conditions Apply."

In our opinion, it is relatively clear if all of Century's bidding documents are read together that the firm offered domestic source end products for items 10, 13 and 16. Century had submitted a Buy American Certificate stating that unless specifically excluded each end product would be a domestic source end product. The only items excluded by Century were those in its initial bid which the solicitation clearly indicated would be manufactured in Japan. None of Century's bidding documents, including its telegram, excludes the items in question from its Buy American Certificate for this procurement. Rather, Century stated in its telegram that the items in question would be manufactured by Utica Tool and that all other terms and conditions of the solicitation would apply.

As to the protester's request that we examine Century's planned method of production to establish that it will in fact furnish domestic source end products, we note that the contractor's compliance with its obligation in this regard is a matter of contract administration and does not affect the validity of the awards. Unicare Vehicle Wash, Inc. B-181852, December 3, 1974, 74-2 CPD 304. As indicated above we believe the award to Century obligated it to furnish domestic source end products for the items in question. In this connection, however, we are advised by GSA that it has examined the manufacturing operations of Utica Tool and has determined that the items to be supplied are of domestic origin.

Cameron's third complaint is that "Century is ineligible for award because GSA improperly accepted bid samples from another company (Utica Tool) for use as Century's Bid Samples." Century did not itself submit a sample. Rather, the record discloses that Century incorporated by reference samples submitted by Utica Tool, a sister corporation, for item 12 on the same solicitation. Century stated on GSA Form 434: "Items * * * 10, 13, 16 * * * use sample of Item #12 as supplied by Utica Tool Company."

We note that the solicitation permitted the use of a sample of item 12 as representative of the items in question. Also, the IFB (Article 215, paragraph (a)) provided that:

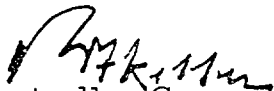
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"Bid samples, in the quantities, sizes, etc., required for the items so indicated in this Invitation for Bids, must be (1) furnished as a part of the bid, (2) from the production of the manufacturer whose product is to be supplied, and (3) received before the time set for opening bids. * * *" (Emphasis supplied.)

Both Century's Form 434 and the Utica sample were received prior to bid opening. Since Century's bid stated that these items would be manufactured by Utica, an affiliate of Century's parent company, it is our opinion that Century's use of the sample supplied by Utica substantially meets the solicitation's bid sample requirement. Century's bid does not limit any right of the Government to require that products delivered under the resulting contract strictly comply with Utica's approved sample.

Accordingly, Cameron's protest is denied.

Finally, we note that Century argued to this Office in favor of dismissing Cameron's protest on the bases that the protest was untimely filed, and that Cameron was not an interested party. We do not feel compelled to address these issues in this decision since we have, in any event, denied Cameron's protest. However, we refer Century to prior relevant decisions concerning such matters. See, for example, Pauli & Griffin Company, Inc., B-183797, March 16, 1976, 76-1 CPD 178 and Electronic Associates, Inc., B-184412, February 10, 1976, 76-1 CPD 83.


Deputy Comptroller General
of the United States