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Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: New York Elevator Company, Inc.

File: B-250992

Date: March 3, 1993

Stuart R. Wolk, Esq., Wolk, Neuman & Maziarz, and Bernard Kane for the protester.
Mary Beth Bosco, Esq., Michael J. Schaengold, Esq., and Scott N. Stone, Esq., Patton, Boggs & Blow, for Armor Elevator Company, Inc.; and Laurence Schor, Esq., Miller & Chevalier, and David A. Cole, Esq., for Millar Elevator Industries, Inc., interested parties.
Lionel G. Batley, Esq., and Amy J. Brown, Esq., General Services Administration, for the agency.
Henry J. Gorczycki, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

On a construction contract incorporating the Buy American Act provisions, which require the supply of domestic construction materials, a contracting officer may rely on an offeror's representation that it will furnish domestic construction material, without further investigation, unless the contracting officer has reason to doubt the representation.

DECISION

New York Elevator Company, Inc. protests an award to Armor Elevator Company, Inc. under request for proposals (RFP) No. GS02P92CUC0078(N), issued by the General Services Administration (GSA) for the design, construction and maintenance involved in the modernization of elevators at the Jacob K. Javits Federal Building and U.S. Court of International Trade, New York, New York.

We dismiss the protest.

The RFP contained Federal Acquisition Regulation (FAR) clause 52.225-5, "Buy American Act--Construction Materials," under which the contractor agrees to use only domestic

construction materials[1] for contract performance. GSA awarded the contract to Armor on September 30, 1992. New York Elevator protested to our Office on October 19, alleging that Armor was a wholly-owned subsidiary of KONE Corporation of Finland and arguing that Armor could not or would not perform in accordance with the Buy American Act.

When the Buy American Act, 41 U.S.C. §§ 10a-10d (1988), applies to a procurement, the successful bidder or offeror represents in its bid or offer whether it will furnish domestic or foreign products. When a bidder or offeror represents that it will provide domestic products, it is obligated to comply with that representation. If prior to award an agency has reason to believe that a firm will not provide domestic products, including domestic construction material, the agency should go beyond a firm's representation of compliance with the Buy American Act; however, where the contracting officer has no information prior to award which would lead to such a conclusion, the contracting officer may properly rely upon an offeror's representation without further investigation. See Oliver Prods. Co., B-245672, Jan. 7, 1992, 92-1 CPD ¶ 33; Cryptek, Inc., B-241354, Feb. 4, 1991, 91-1 CPD ¶ 111; American Instr. Corp., B-239997, Oct. 12, 1990, 90-2 CPD ¶ 287.

Here, GSA reasonably relied on Armor's representation of compliance with the Act. Armor's proposal did not qualify or take exception to the Act clause, FAR § 52.225-5. Armor's proposal did not propose, or even suggest, the use of any foreign construction materials to perform this contract. Armor also represented that it is a domestic corporation and that its parent company is KONE Holdings, Inc. The contracting officer states that he knew KONE Holdings to be a domestic subsidiary of foreign-owned KONE, but states that he knew that Armor has offices throughout the United States and that its manufacturing facilities are located in Louisville, Kentucky. In this regard, the Act is concerned with the place of manufacturing (or mining or production) and not the nationality of the offeror. See Patterson Pump Co.; Allis-Chalmers Corp., B-200165; B-200165.2, Dec. 31, 1980, 80-2 CPD ¶ 453. Accordingly, there is no basis to conclude that the contracting officer had reason to question Armor's agreement to comply with the

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[1]FAR § 25.201 defines "domestic construction material" as (a) an unmanufactured construction material mined or produced in the United States, or (b) a construction material manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components.

Act, and therefore the contracting officer reasonably relied on Armor's representation that it would furnish domestic contracting material without investigating the matter further.

New York Elevator alleges in its comments on the agency report that "there have been, or soon will be significant layoffs at Armor's plant in Louisville, Kentucky," and thus contends that Armor will not be able to provide domestic construction materials. Aside from the fact that this is an unsupported supposition by the protester, the record provides no basis for us to conclude that, even if this supposition is true, the contracting officer knew of it at the time of award, or that, even if he had, this should have caused him to question the accuracy of Armor's representation that it would comply with the Buy American Act.

Accordingly, the contracting officer's reliance on Armor's representation at the time of award was reasonable. In any event, after this protest was filed, Armor sent a letter to GSA confirming its representation to comply with the Act and designating the specific percentage of domestic construction material components that will comprise the construction material at issue here; this documentation shows that domestic construction material will be furnished under the contract. Armor is bound under this contract to comply with the Act; any alleged breach of that duty is a matter of contract administration which is not subject to resolution under our Bid Protest Regulations. 4 C.F.R. § 21.3(m)(1); see Autospin, Inc., B-233778, Feb. 23, 1989, 89-1 CPD ¶ 197.

The protest is dismissed.

James A. Spangenberg
Assistant General Counsel