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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-207346

DATE: November 29, 1982

MATTER OF: E. Miltenberg, Inc.

DIGEST:

Offer to supply product made of foreign specialty metal was properly rejected for not complying with the Preference for Domestic Specialty Metals clause in the solicitation.

E. Miltenberg, Inc. (EMI), protests the award of a contract to the Hu-Friedy Manufacturing Company, Inc., under request for proposals (RFP) No. DLA120-82-R-0810 issued by the Defense Logistics Agency, Defense Personnel Support Center (DPSC), for the purchase of single-ended and double-ended amalgam carriers (dental instruments used to deliver dental amalgam into teeth cavities).

The protest is denied.

The items were solicited on a brand name or equal basis. One of the enumerated salient characteristics required the amalgam carriers to be made "of suitable grade stainless steel." Since stainless steel is a specialty metal within the meaning of the annual Department of Defense Appropriations Act, the solicitation incorporated by reference DPSC Clause I42 (DAR § 7-104.93(b))--Preference for Domestic Specialty Metals (October 1980). The clause, as revised by amendment 0001, provided in relevant part:

"(a) The contractor agrees that any specialty metals (as hereinafter defined) furnished by it or purchased by it for direct incorporation in any article delivered to the Government under this contract shall have been melted in the United States, its possessions, or Puerto Rico."

Amendment 0001 additionally contained this notice provision:

"Any article to be furnished hereunder which is to be comprised solely of specialty metals shall be considered a specialty metal to be furnished under the contract within the meaning of Clause I42, entitled 'Preference for Domestic Specialty Metals.'"

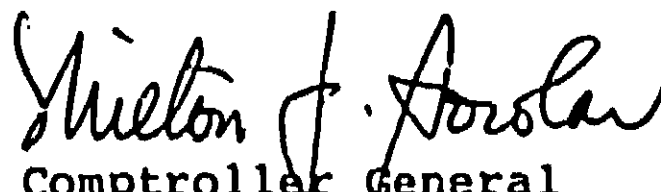
EMI's offer of amalgam carriers produced of foreign metals was rejected under clause I42.

EMI protests that, within the meaning of clause I42, EMI is not proposing to furnish any specialty metals or to purchase any specialty metals for direct incorporation in the articles to be delivered under the contract, since EMI is offering the product of a foreign subcontractor. However, since EMI failed to rebut the DLA position to the contrary, the protester appears to have conceded this issue.

EMI also protests that its amalgam carriers are not specialty metals under the above notice since they contain colored vinyl identification rings embedded in the stainless steel and, therefore, are not comprised solely of specialty metals. The protester points out that the word "solely" was dropped from a subsequent DLA solicitation, which allegedly supports its interpretation. DLA disagrees with EMI's "overly strict" interpretation. The agency notes that EMI's identification rings were offered gratuitously, whereas the solicitation required only a product "made of a suitable grade of stainless steel." In these circumstances, the notice applied to this item which was to be comprised solely of specialty metals and the offer was properly rejected.

While we can understand EMI's interpretation of the notice, we favor the agency's interpretation, based on the governing statute and regulations which preclude any award to EMI. In this regard, section 723 of the Department of Defense Appropriations Act, 1982, 95 Stat. 1565, provides that no part of any appropriation, with exceptions inapplicable here, shall be available for a procurement of foreign specialty metals. To the same effect, DAR § 6-302 (DAC #76-25, October 31, 1980) provides that supplies consisting in whole or in part of any foreign specialty metals cannot be acquired.

Protest denied.

for 
Comptroller General
of the United States