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

Decision

Matter of: Discount Machinery & Equipment, Inc.

File: B-242793

Date: June 6, 1991

Joseph Press and Michael Ray, for the protester.
Harriet J. Halper, Esq., and John Masterson, Esq., Department of the Navy, for the agency.
M. Penny Ahearn, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO participated in the preparation of the decision.

DIGEST

Calculation of domestic content of milling machine listed under Federal Supply Class (FSC) 3417 by including accessory items listed under FSC 3460 was improper, since statute separately prohibits procurement other than domestic or Canadian origin milling machines and accessories by referring to the separate FSC of each; separate calculation of the domestic content of each therefore is required. However, the improper calculation here does not provide a basis to sustain the protest, since the corrected calculation does not reduce the domestic content of the milling machine below 50 percent.

DECISION

Discount Machinery & Equipment, Inc. protests the award of a contract to James McGraw Company for a Bridgeport milling machine and related components and accessories, under request for proposals (RFP) No. N00014-91-R-BD01, issued by the Naval Research Laboratory. Discount contends that McGraw's machine does not comply with the Department of Defense Federal Acquisition Regulation Supplement (DFARS) requirement that machine tools, such as the milling machine here, be manufactured in the United States or Canada.

We deny the protest.

The foreign machine tools restriction reflected in the DFARS is imposed by the National Defense Authorization Act, Fiscal Year 1989 (the Act), 10 U.S.C. § 2507 (1988), which states that during fiscal years 1989, 1990, and 1991 funds appropriated or otherwise made available to the Department of Defense (DOD) may not be used to enter into a contract for the procurement of machine tools in certain specified federal

supply classes (FSC) unless they are manufactured in the United States or Canada.1/ The restricted FSCs include two of relevance here, FSC 3417, milling machines, and FSC 3460, machine and tool accessories. The statutory restriction is implemented in DFARS § 225.7012 et seq., which requires the DOD to purchase machine tools of United States or Canadian origin. Under this regulation, a machine tool is considered to be of United States or Canadian origin if the cost of its United States or Canadian manufactured components exceeds 50 percent of the cost of all of its components. For solicitations and contracts for machine tools, the regulation also requires the insertion of the clause found at DFARS § 252.225-7023, in which the contractor agrees that those machine tools within the restricted FSCs to be delivered under the contract as end items will be of United States or Canadian origin. DFARS § 225.7012-5.

The RFP here was issued on a brand name or equal basis, specifying a "Bridgeport Model 12BR2J milling machine or equal" and various Bridgeport model number or equal components or accessories by line item. Award was to be made to the low-priced, technically acceptable offeror. The solicitation did not contain the required DFARS clause found at § 252.225-7023. However, the solicitation did contain the Buy American Act/Balance of Payments Program certificate, under which offerors were to certify that, except as otherwise indicated, each end product offered was a domestic source end product. Foreign end products were to be listed with the country of origin. See DFARS § 252.225-7000. Under this certificate, a domestic end product is defined essentially the same as an item of United States origin under the DFARS provision for the acquisition of machine tools, that is, as an item manufactured in the United States where the cost of its components which are manufactured in the United States exceeds 50 percent of the cost of all of its components.

The Navy received five offers, all of which were determined to be in the competitive range. After conducting discussions, the agency requested best and final offers (BAFO). McGraw submitted the low-priced BAFO, offering equal items at $21,090, and Discount submitted the second-low BAFO at $25,231. McGraw left the Buy American Act certificate blank, thereby certifying, according to the language of the provision, that the product it offered was a domestic end product. See Designware, Inc., B-221423, Feb. 20, 1986, 86-1 CPD ¶ 181.

1/ Similar restrictions on purchases of machine tools were included in Continuing Appropriations for Fiscal Year 1987, Pub. L. No. 99-591, § 101(c), 100 Stat. 3341-126 (1986), and in legislation appropriating funds to the Department of Defense for fiscal years 1988 and 1989.

Under a separate solicitation clause for identification of the offeror's place of performance, McGraw designated South Bend Lathe, Inc. as the manufacturer and South Bend, Indiana as the place of performance. Determining that McGraw's offer complied with all solicitation requirements, the contracting officer awarded the contract to McGraw as the firm submitting the lowest-priced offer. Discount thereupon filed this protest with our Office. Because the protest was filed more than 10 calendar days after award, there was no requirement under the Competition in Contracting Act to stop performance pending our decision. See 31 U.S.C. § 3553(d)(1) (1988). The agency has informed our Office that it has received delivery of the milling machine.

Subsequent to award, but prior to the protest, the contracting officer obtained from McGraw a listing, by line item component, of the percentage of United States and foreign content (Canadian content is not in issue) of the firm's offered machine. This listing showed that the cost of the components to be manufactured in the United States would total 68 percent of the cost of all components.

Discount argues that the agency improperly relied on McGraw's certification without further investigation of whether McGraw would furnish a product manufactured in the United States. Based on its own analysis of the cost of the foreign and domestic components in McGraw's machine, Discount contends that the cost of the domestic components does not exceed 50 percent of the cost of all of the machine's components, as required.

The Navy responds that it properly relied on McGraw's Buy American Act self-certification that the offered item was a domestic end product in determining the United States origin of McGraw's milling machine under the DFARS requirement. The Navy notes in this regard that the United States origin requirement under the DFARS provision for the acquisition of machine tools is consistent with the definition of domestic end product under the Buy American Act certificate included in the solicitation and to which McGraw did not take exception. The agency reports that the contracting officer had no information prior to award that would lead it to question whether the machine McGraw offered was a domestic end product. Consequently, the agency maintains, it was under no obligation to investigate the matter further (even though its subsequent request for information from McGraw established, according to the Navy, compliance with the domestic manufacture requirement).

Generally, an agency should not automatically rely on a domestic end product self-certification if it has reason to question whether a domestic product will in fact be furnished.

However, where a contracting officer has no information prior to award indicating that the product to be furnished is a foreign end product, the contracting officer properly may rely on an offer's self-certification without further investigation. American Instrument Corp., B-239997, Oct. 12, 1990, 90-2 CPD ¶ 287; Autospin, Inc., B-233778, Feb. 23, 1989, 89-1 CPD ¶ 197.

There was nothing on the face of McGraw's bid calling into question the verity of its domestic end product certification, and there is no evidence that the contracting officer otherwise was on notice that the certification was not accurate.2/ Therefore, under the above standard, the contracting officer reasonably relied on the certification. However, the record brings to light an underlying issue--in calculating the domestic content of the milling machine, the agency included component and accessory items because they were deemed necessary for the milling machine to comply with the agency's needs. Consequently, while McGraw's base milling machine was represented as only 32 percent domestic origin, when the domestic content of the machine's components and accessories was considered, the total domestic content of the machine was calculated at 68 percent.

This method of calculation was incorrect under the circumstances here. While the domestic content of a milling machine generally may be calculated by including line item components that are necessary for the machine to meet the agency's needs, see Manufacturing Technology Solutions, B-237415, Jan. 22, 1990, 90-1 CPD ¶ 88, aff'd, B-237415.2, May 4, 1990, 90-1 CPD ¶ 447; Morey Mach., Inc., B-233793, Apr. 18, 1989, 89-1 CPD ¶ 383, we interpret the statutory restriction on the procurement of foreign machine tools as prohibiting the inclusion of machine tool accessories in the calculation when those accessories are set forth in the separately restricted FSC 3460.

2/ Although the agency included the Buy American certification in the RFP instead of the required DFARS certification covering machine tools, we agree with the agency that this did not diminish the effect of McGraw's certification since, as indicated above, the relevant definitions under the two certifications are the same: "domestic end product" under the Buy American Act certification and "United States origin" under the DFARS provision both require that more than 50 percent of the cost of each end item's components be domestic. Consequently, McGraw's certification that each end product was a domestic end product, for all intents and purposes, was equivalent to the required certification of United States origin.

Our interpretation is based on the Act's specific prohibition against the procurement of items other than those of United States or Canadian origin under several listed FSCs, including FSC 3417, milling machines, and FSC 3460, machine and tool accessories. (The implementing regulation also specifically identifies restricted "machine tools" as those "tools" listed under both FSC 3417 and FSC 3460. DFARS § 225.7012-1.) Since the statute provides that items under several different FSCs may be purchased only if they are of domestic (or Canadian) origin, we think it follows that the domestic content of each different item under each different restricted FSC must be calculated independently. That is, in order to give effect to the statutory intent, the domestic content of items under one restricted FSC cannot be used to enhance the domestic content of items under a separate restricted FSC. Thus, while nonrestricted component items generally may be included in the calculation of the domestic content of a milling machine,3/ items classified as accessories under FSC 3460 cannot be included in the calculation.

Applying this method of calculating domestic content does not change the outcome in this case. We have identified four line items which are classified as accessories under FSC 3460, and which therefore should not have been included in the calculation of the domestic content of the milling machine: line item number 0011, vise, with 100 percent domestic content; line item number 0015, rotary table, with 100 percent domestic content; and line item numbers 0019 and 0020, keyless chucks, each with 37 percent domestic content. (The other line item components, which the agency has determined are necessary for the milling machine to meet its needs, do not appear to be included under FSC 3460 and therefore properly were included in the domestic content calculation for the

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3/ For example, as we recently concluded, there would be nothing improper in including a component such as a coolant system (a separate line item in the procurement here, which is not listed under FSC 3460 as a machine tool accessory), in the calculation of the domestic content of a milling machine. See A & D Mach. Co., B-242546 et al., May 16, 1991, 91-1 CPD ¶ __.

milling machine. See footnote 3 above.) See DOD Federal Supply Classification Listing of DOD Standardization Documents, July 1, 1990 (hard copy listing); see also 41 C.F.R. § 101-30.201 et seq. (refers to microfiche FSC listing).4/ The net effect of deleting these four line items (including those with greater than 50 percent foreign content) from the calculation of the domestic content of the milling machine would still result in an overall relative domestic content of the milling machine and components of greater than 50 percent. Consequently, the incorrect calculation of the domestic content of McGraw's milling machine and components and accessories, does not provide a basis for sustaining the protest.

The protest is denied.

James F. Hinchman
General Counsel

4/ To the extent that the acquisition of the accessories in line item numbers 19 and 20, each with majority foreign content, would be prohibited, this should have been a matter for competitive range discussions if the agency had been aware of our interpretation expressed here, particularly since McGraw offered the lowest price. See Diverco, Inc.; Metalcastello, B-240639.2 et al., Dec. 21, 1990, 90-2 CPD ¶ 512. For this reason, and because Discount has not raised this issue, we will not consider it further.