



UNITED STATES GENERAL ACCOUNTING OFFICE

WASHINGTON, D.C. 20548

OFFICE OF GENERAL COUNSEL

B-222993

May 21, 1986

The Honorable Robert W. Davis  
House of Representatives

Dear Mr. Davis:

This responds to your letter dated April 21, 1986 concerning the Maritime Administration's acceptance of a foreign end product from a bidder that certified in its bid that it was offering a domestic end product. The agency accepted the foreign end product because the bidder's price was more than 12 percent lower than the next low bid. While you do not dispute the award to that bidder, you have asked whether the bidder is nonetheless obligated to provide a domestic end product because of its certification.

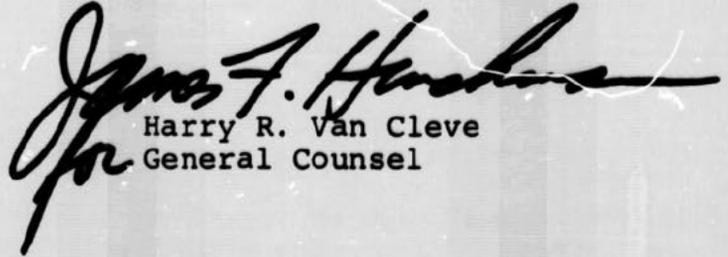
The Buy American Act, which applies to federal agency purchases of foreign products, does not prohibit the agency procurement of foreign end products. Rather, the act and implementing regulations provide a preference for domestic items which is established through the use of an evaluation differential (in this case, 12 percent of the price of the foreign item) which is added to the price of the foreign item. Bender Shipbuilding & Repair Co., Inc., B-219629, Oct. 25, 1985, 85-2 CPD ¶ 462.

Generally, a bidder's certification that a domestic end product will be provided does result in an obligation on the part of the bidder to furnish a domestic end product. Newman Machine Co., B-220854, Oct. 29, 1985, 85-2 CPD ¶ 487. However, where, as here, a bidder's Buy American Act certification that a domestic product will be offered is found to be mistaken, the bid is evaluated by adding the price differential required by the Buy American Act. See, e.g., Ampex Corp., B-203021, Feb. 24, 1982, 82-1 CPD ¶ 163. Since the Buy American Act does not prohibit

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the purchase of a foreign product but only requires that an evaluation differential be applied, the agency's acceptance of the foreign end product offered by the bidder is not improper. See Bender Shipbuilding & Repair Co., Inc., supra; Ampex Corp., supra.

Sincerely yours,



James F. Hinckley  
for Harry R. Van Cleve  
General Counsel