



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20543

40044

B-179502

October 10, 1973

Miller Printing Machinery Co.
1101 Reedsdale Street
Pittsburgh, Pennsylvania 15233

Attention: Mr. Donald V. Weber
Vice President, Sales and Service

Gentlemen:

This is in response to your letters of September 25 and August 21, 1973, which protested against award of a contract to any other bidder under invitation for bids (IFB) No. 5324, issued by the United States Geological Survey, Department of the Interior. Your protest questions the correctness of the Government's evaluation of your bid under the Buy American Act, 41 U.S.C. 10a-d, and implementing regulations, Federal Procurement Regulations (FPR) subpart 1-6.1. You contend that the 6-percent differential factor prescribed by the regulations should be added to your foreign bid only after your offered price for trade-in items has been deducted. Award under the solicitation is being withheld pending our Office's decision on your protest.

For the reasons which follow, your protest is denied.

The IFB, issued June 4, 1973, contained two items. Item IA called for bids on furnishing, delivering, installing, and demonstrating the satisfactory operation of a five-color offset printing press. Item IB provided as follows:

"B. TRADE-IN: The contractor shall remove from the Government's GSA Building all of the items listed below (see Part II):

1. One Michle Single Color Offset Press, 42" x 58", 15 years old, Serial No. 21822. . . . \$ _____
2. One Harris Single Color Offset Press, 50" x 72", Model LRQ, 22 years old, Serial No. 102 \$ _____
3. One Harris Two Color Offset Press, 22" x 34", Model LTP, 22 years old, Serial No. 375 \$ _____

PUBLISHED DECISION
53 Comp. Gen. _____

091578 72008

- 4. One Harris Two Color Offset Press,
23" x 36", Model LTP, 14 years old,
Serial No. 529 \$_____

TOTAL PRICE OF ITEM I.A. LESS THE TRADE-IN PRICES . \$_____

NOTE: Consideration of the trade-in items is required and shall be an evaluation factor in determining the successful bidder. See Part II. for further information on the trade-in items."

Five bids were submitted on July 24, 1973, but for the purposes of your protest we need consider only your bid and the bid of the Harris-Seybold Company, the only concern which offered a domestic-made press. The prices offered for the two items were as follows:

	<u>Harris-Seybold</u>	<u>Miller</u>
Item IA	\$735,208.16	\$735,815.00
Total for Item IB	61,500.00	101,000.00

In evaluating Harris-Seybold's bid, the contracting officer deducted item IB from item IA, resulting in an evaluated net price of \$673,708.16. Since your concern offered a foreign end product under item IA, the contracting officer added the 6-percent factor provided for in FPR sec. 1-6.104-4 to your price for item IA before deducting your trade-in price for item IB. The resulting evaluation is as follows:

Item IA	\$735,815.00
Buy American factor	+ 44,143.90
	\$779,958.90
Total for Item IB	- 101,000.00
Evaluated Net Price	\$678,958.90

Your earlier protest against this evaluation was denied by the contracting officer in his letter of August 14, 1973. The contracting officer pointed out that item IA represents the only end product which is being procured by the Government, and that item IB calls only for the removal and acceptance of four old presses as trade-ins. Since your bid for item IA offered a foreign end product, the contracting officer believed that it would be inappropriate to consider item IB in the Buy American evaluation, although bids on both items are to be evaluated.

We agree with the contracting officer's determination. The Buy American Act requires that only such manufactured "articles, materials, and supplies" as have been manufactured in the United States substantially.

all free articles, materials, or supplies mined, produced, or manufactured in the United States shall be acquired for public use unless it is determined to be inconsistent with the public interest, or that the cost is unreasonable. 41 U.S.C. 10a. Executive Order 10502, December 17, 1934, as amended by Executive Order 11051, September 27, 1962, provides that the price of domestic articles is unreasonable if it exceeds the cost of foreign articles plus a differential—generally 6 percent, or 12 percent for small business concerns and labor surplus areas. In addition, the applicable regulations provide that "end products" are articles, materials, and supplies which are to be acquired for public use (FPR sec. 1-6.101(a)); that a "foreign bid" is the bid or offered price for a foreign end product (FPR sec. 1-5.101(g)) and that "Each foreign bid shall be adjusted for purposes of valuation by adding to the foreign bid (inclusive of duty) a factor of 6 percent of that bid * * *." (FPR sec. 1-5.104-4(b).)

Here, it is apparent that the end product consists only of item IA. No articles, materials, or supplies are to be acquired for public use under item IB. Since your "foreign bid" related only to item IA within the meaning of the Buy American Act as implemented, we conclude that the contracting officer acted properly in applying the 6-percent differential only to that item. And this is so even though the bid value of the trade-in items was an evaluation factor. Bids on both items were to be considered together in arriving at evaluated net prices after the Buy American differential was applied to foreign bids.

Your letter of September 25, 1973, also objects to the method of evaluation used because it is "fallacious." You point out that you could have bid \$634,814 for item IA and \$1 for item IB. The evaluated net price of this hypothetical bid would be \$672,901.84. Your argument is that by incorporating the trade-in deduction in your price for item IA, you could have been the low bidder; instead of so bidding, you state that you bid both items in good faith and at fair market value.

The terms of the solicitation permit the submission of a bid in the manner suggested. This is not, however, a situation where the possibility of unbalanced bids, that is, bids based on speculation as to which items will be purchased by the Government in greater quantities, is involved. See 49 Comp. Gen. 330, 335 (1960). Generally, bidders may calculate their bids as they see fit in accordance with the terms of the solicitation. The fact that you could have bid differently, but did not do so, furnishes no basis for sustaining the protest.

Sincerely yours,

R.F.KELLER

Deputy Comptroller General
of the United States