

Protest of)
TENNIER INDUSTRIES, INC.) Date: November 23, 1988
Solicitation No. 337100-88-A-0120) P.S. Protest No. 88-71

DECISION

Tennier Industries Inc. protests any proposed award of a contract for insert canvas pursuant to Solicitation No. 337100-88-A-0120 to C.R. Daniels, Inc. Tennier claims that C.R. Daniels has submitted an ambiguous bid which should be rejected as non-responsive. The solicitation was issued by the Eastern Area Supply Center on September 29, 1988 with an offer due date of October 19. Five bids were received, with C.R. Daniels low and Tennier second low.

Tennier claims that C.R. Daniels has submitted an ambiguous bid because it has left blank the "Country of Origin" section of the buy American certificate.^{1/} Tennier claims that this gives C.R. Daniels the option of specifying whether it will provide foreign end product after bid opening, depending on whether its bid was 6 per cent below the next lowest bid or not. It states that this ambiguity enables C.R. Daniels to have "two bites at the apple" and renders its bid nonresponsive and unacceptable for award.

The contracting officer states that C.R. Daniels' failure to complete the buy American certificate is a minor informality which can be corrected after bid opening pursuant to PCM 2-405. He also notes that, since C.R. Daniels' price is more than 6 per cent below the next low bidder, correction of the omission will not displace or otherwise prejudice the rights of any other bidder and that a contemplated pre-award survey will confirm any question about the country of origin.

^{1/}The buy American certificate on P.S. Form 7319-B provides as follows:

The offeror hereby certifies that each end product, except any end products listed below, is a domestic source end product (as defined in the clause entitled Buy American Act) and that components of unknown origin have been considered to have been mined, produced, or manufactured outside the United States.

The certificate then provides two blank spaces where the bidder is to list "Excluded End Products" and "Country of Origin." C.R. Daniels' certificate has the word "NONE" entered in the "Excluded End Products" box.

C.R. Daniels has submitted comments which contend that it did not have to fill in the space under "Country of Origin" because it stated in its bid that it would produce no "Excluded End Products." It believes that the country of origin need only be specified when a foreign end product is offered and that its bid clearly showed an intent to furnish a domestic made end product.

The protester misunderstands the nature and effect of the certificate. According to the certificate's terms, the bidder undertakes to furnish domestic source end products unless the end products of non-domestic origin and their country of origin are identified in the spaces provided. Here, C.R. Daniels has indicated that none of its offered end products will be of non-domestic origin. There thus was no need to identify any country of origin in the certificate, and no possibility of the circumstance of which the protester complains. Cf. Good & Good Contractor, P.S. Protest No. 80-55, January 5, 1981, reaching a similar result even given the low bidder's failure to furnish the buy American certificate with its bid.

The protest is denied.

William J. Jones
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Office of Contracts and Property Law

[checked against original JLS 3/8/93]