

Protest of) Date: February 8, 1993
LAMINATION SERVICES, INC.)
Solicitation No. 16990-92-A-0037) P.S. Protest No. 92-96

DECISION

Lamination Services, Inc., protests the evaluation of offers and the contract award under solicitation no. 16990-92-A-0037 for badge clip holders. The solicitation, issued by the Central Procurement and Material Management Center, Chicago, IL, requested offers for a quantity of 600,000 badge clip holders. Section L. 10 of the solicitation, the Buy American certificate, stated that the offeror certified that each end product to be furnished under the contract, other than any end product which the offeror listed as an "excluded end product" in the space provided at the end of the certificate, would be a "domestic-source end product" as defined in the clause Preference for Domestic Supplies at section H. 22 of the solicitation. Under that clause and Procurement Manual (PM) 10-3, offers to furnish domestic-source end products would receive a six percent proposal evaluation preference over offers to furnish end products of other origin.

Lamination Services offered a nondomestic-source end product at a unit price of \$.074; All Star Identification, Inc., offered a domestic-source end product (that is, All Star's Buy American certificate did not indicate that the item proposed was not of domestic origin) at a unit price of \$.075. Lamination Services' price was adjusted by the six percent evaluation factor; as so adjusted, it became \$.078. Award was made to All Star on the basis of its lower price.

Lamination Service's protest asserts that its experience in supplying this product suggests that All Star must have intended to furnish a non-domestic product, and contends on that basis that All Star's price should have been evaluated in the same manner as Lamination Service's price was. The protester seeks the award.

The contracting officer's statement confirms that All Star's supplier intends to furnish a badge clip "manufactured and assembled overseas." The . supplier indicates its ability to furnish a badge clip of domestic manufacture, but only at a cost two or three times that of the foreign product. In the absence of any indication that All Star intends to offer a domestic product, the contracting officer concurs with the protester's assertion that All Star's offer should have been evaluated as offering a foreign end product. The contracting officer advises that All Star's contract performance has been suspended pending the outcome of this protest.

Discussion

"The determination that the Buy American certification did not require the addition of the six percent evaluation factor is part of the contracting officer's affirmative determination of [All Star's] responsibility." International Business Machines Corporation, P.S. Protest No. 90-66, January 11, 1991. Contracting officers "should not automatically rely on [Buy American] certifications . . . when [they have] reason to question whether a domestic product will be furnished." Ibid. Here, however, nothing suggests that the contracting officer had any reason to question All Star's certification prior to contract award.

Once award occurred, All Star was obliged, by the terms of its certification, to supply badge holder clips of domestic origin. Safety Technology, Inc. and Con-Serv, Inc., P.S. Protest Nos. 85-85 and 86, December 31, 1985. However, given its apparent intention not to furnish domestic items and the obvious price disadvantage of doing so, we would have no objection if All Star's contract were terminated by mutual agreement and award was made to Lamination Services on the basis of its lower-priced offer.

The protest is sustained to the extent indicated.

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Contract Protests and Policies