

**DECISION**

**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

*McFadyey*  
*PL-F*  
*33310*

**FILE:**

B-221357

**DATE:** January 22, 1986**MATTER OF:**

American Hospital Supply, Equipping and Consulting

**DIGEST:**

1. Contracting agency properly declined to apply a Buy American Act evaluation preference factor against an offer of products manufactured in Italy, in favor of offer of domestic products, since Italy is a qualifying country, and Department of Defense regulations waive the Buy American Act preference for qualifying country offers.
2. Where solicitation did not provide for consideration of specific factors other than cost in the award determination, allegation that award should have been based on such additional factors is untimely, since it was not filed prior to the closing date for receipt of initial proposals.

American Hospital Supply, Equipping and Consulting (AHS) protests the award of a contract to Logos Scientific under request for proposals (RFP) No. DLA120-85-R-0257, issued by the Defense Logistics Agency (DLA) for quantities of coagulation timer systems.

AHS first contends that its product, priced only 2.5 percent higher than Logos', should have been accorded an evaluation preference since its product is domestic while the Logos product is manufactured in Italy.

The RFP did reference the Buy American Act, 41 U.S.C. § 10a, et seq. (1982), which, generally, provides for an evaluation preference for domestic goods over nonqualifying country end products. Under the Department of Defense (DOD) regulations implementing the act for DOD procurements, however, Italy is expressly exempted from the evaluation preference as a NATO country with a Memorandum of Understanding or other agreement with the United States. DOD Federal Acquisition Regulation Supplement § 25.7401 (Defense Acquisition Circular No. 84-1, March 1, 1984). Thus, DLA properly did not apply an evaluation preference against Logos' offer.

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AHS also argues that price should not have been the sole criterion for award. In this regard, AHS asserts that its offered product "is considered the benchmark" for coagulation in the United States; the Logos product would require the use of other than the most common clinical techniques; and, compared to AHS, foreign suppliers such as Logos would be less dependable sources of support items such as spare parts and reagents. AHS apparently believes these considerations should have had some bearing on the award decision.

Under our Bid Protest Regulations, a protest based on alleged deficiencies apparent on the face of a solicitation must be filed prior to the closing date for receipt of initial proposals. 4 C.F.R. § 21.2(a)(1) (1985). Therefore, if AHS believed the RFP should have provided that award would be based on specific factors in addition to price, it was required to so allege before the closing date. As AHS did not file its protest until after learning that it had not received the award, this allegation is untimely and will not be considered.

AHS has requested that a conference be held on the merits of the protest. No useful purpose would be served by holding such a conference, however, where, as here, it is clear from the initial protest submission that the protest is without merit. Libby Corp., B-218367.2, Apr. 10, 1985, 85-1 C.P.D. ¶ 412. For the same reason, we have reviewed this matter without requesting an agency report. See 4 C.F.R. § 21.3(f).

Finally, AHS requests reimbursement of the costs of pursuing this protest. Such costs are not recoverable where there has been no procurement impropriety. Feinstein Construction, Inc., B-218317, June 6, 1985, 85-1 C.P.D. ¶ 648.

The protest is dismissed in part and denied in part.

*for* *Stephen R. Efron*  
Harry R. Van Cleve  
General Counsel