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**DECISION**



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

B-221423

**FILE:**

**DATE:** February 20, 1986

Designware, Inc.

**MATTER OF:**

**DIGEST:**

1. Contracting officer's reliance on blank Buy American/Balance of Payments Program certification which obligates bidder to supply domestic source end product is not objectionable where, contrary to protest allegation, contracting officer had no actual knowledge that color monitors offered were in fact of foreign origin.
2. When a protest is without merit, GAO will deny a claim for bid preparation expenses and the costs of pursuing the protest.

Designware, Inc. (Designware), protests the award of a contract to Rocky Mountain Trading Company (RMTC) under invitation for bids (IFB) No. DAKF11-85-B-0148 issued by the Department of the Army, Fort McPherson, Georgia.

We deny the protest.

The IFB requested bids for monochrome and color computer monitors and specified AMDEK (310A and 600) or equal. The IFB also contained a Buy American/Balance of Payments Program (BA/BPP) certificate as required by the Department of Defense (DOD) Federal Acquisition Regulation (FAR) Supplement, (48 C.F.R. § 225.109(a)(S-70) (1984), in which bidders were to certify that, except as otherwise indicated, each end product offered was a domestic source end product. Foreign end products were to be listed with the country of origin. The regulation provides that, for evaluation purposes, each bid item offering a foreign end product is to be adjusted by adding to it a factor of 50 percent, exclusive of duty, or 6 percent, inclusive of duty, whichever results in the greater evaluated price. See DOD FAR Supp., 48 C.F.R. § 225.105(S-71)(1) (1984).

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Fifty-two bids were received in response to the IFB. The low bidder, RMTC, offered to supply Samsung monochrome and color monitors. RMTC left the BA/BPP certificate blank, thereby certifying that the product it offered was a domestic end product. See Law Enforcement Associates, Inc., B-205024, Apr. 5, 1982, 82-1 C.P.D. ¶ 304. As a result, no upward adjustment was made to RMTC's bid and the Army awarded the contract to RMTC.

Designware argues that all Samsung monitors are manufactured in Korea and, therefore, RMTC's bid offering Samsung monitors should have been adjusted upward because it offered foreign end products. The protester contends that the acceptance of the RMTC bid was made with the knowledge that the products bid by RMTC were "likely to be of foreign origin even though the Buy American/Balance of Payments certificate implied that the products were of domestic origin."

Prior to making award, the contracting officer, having no information concerning the origin of the specified Samsung products, asked the Army contract attorney whether he could rely on RMTC's certification that the products in the RMTC bid were not foreign. The contract attorney advised the contracting officer that, by leaving the BA/BPP certificate blank, RMTC implied that it was offering and was obligated to furnish American made end items. The contracting officer states that he had no information concerning the origin of Samsung monitors or their components. Based on RMTC's certification and a technical evaluation indicating that the monitors bid by RMTC were equal to the AMDEK equipment, the contracting officer made the award to RMTC, the low bidder.

As a result of a protest on this matter by Designware to the Army, the Army learned, after award, that, in fact, all Samsung monitors are foreign made. The monitors have been delivered and distributed. The Army states that it is presently taking administrative action against RMTC due to RMTC's failure to comply with its domestic end product certification.

Because RMTC left the BA/BPP certificate blank and its bid did not otherwise indicate that the items to be supplied might be of foreign origin, it was obligated to furnish a domestic end product. See Law Enforcement Associates, Inc., B-205024, supra; compare, Airpro Equipment, Inc., B-209612, Jan. 31, 1983, 83-1 C.P.D. ¶ 105 (where bidder left BA

certificate blank, but elsewhere in bid identified the country of manufacture as "USA/England," bid was properly evaluated as offering a foreign end product).

Designware specifically contends that the contracting officer should have had a strong reason to believe that the products offered were of foreign origin. Moreover, Designware states that, in an October 4 (post-award) conversation with the contracting officer, Designware was told that the contracting officer thought that the Samsung products offered by the awardee might be of foreign origin. Designware contends that a phone call to RMTc or to Samsung Electronics America would have revealed, before award, that the items offered were completely of foreign origin.

As stated above, however, the contracting officer has reported that at the time of award he had no information, other than RMTc's certification, concerning the origin of the Samsung monitors. We are not prepared to say in these circumstances that the offer of Samsung monitors alone was sufficient to require the contracting officer to inquire as to the origin of the monitors. We think here the contracting officer relied in good faith on the certification since he had no actual knowledge that the monitors were in fact of foreign origin. We note that the contracting officer determined as a result of the protest after award that the monitors offered were made in Korea and the contracting officer has initiated action against RMTc for RMTc's failure to comply with the certification.

The protest is therefore denied.

The protester has requested that it be paid bid preparation expenses and its cost in pursuing its protest. However, since we find the protest to be without merit, we deny the claim for costs. R. S. Data Systems, B-220961, Nov. 21, 1985, 65 Comp. Gen. \_\_\_\_\_, 85-2 C.P.D. ¶ 588.

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