

Protest of)
RIDDLE CORPORATION) Date: March 13, 1989
Solicitation No. 337100-89-B-0137) P.S. Protest No. 89-16

DECISION

Riddle Corporation protests the award of a contract for pouch closure devices to Plastokit, Ltd., under Solicitation No. 337100-89-B-0137. Riddle states that award to Plastokit, a foreign company, violates the terms of the solicitation.

Invitation for Bids (IFB) 337100-89-B-0137 was issued by the Eastern Area Supply Center on November 3, 1988 with a bid opening date of December 6. Bids were received from 14 bidders with Plastokit, an Israeli concern, low at \$1.82 per thousand and Riddle second low at \$1.96. After a pre-award survey, award was made to Plastokit on January 23, and Riddle's timely protest followed.

Riddle alleges that, under the terms of the solicitation, it was required to certify that its raw material would be domestic, and therefore, more expensive, than that of Plastokit, and that acceptance of Plastokit's bid violates the solicitation's Buy American clause because Plastokit's items will be manufactured outside of the United States and composed of foreign raw materials. In his report to our office, the contracting officer notes that the solicitation's Buy American clause, and Postal Contracting Manual (PCM) 1-1800 et seq. implementing the Postal Service's Buy American policy, only gives domestic manufacturers a preference, and is not an absolute bar to contracting with foreign sources. This preference is the addition of 6% to any foreign bid; once this 6% factor is taken into account, award is made to the low, responsive, responsible bidder, which was, in this case, Plastokit.^{1/} Riddle responds that it is unaware of the source of and basis for the 6% factor used to compare the two bids, and strenuously maintains that this factor is unrealistic, given the substantially higher costs and numerous statutory and regulatory restrictions under which domestic manufacturers must labor.

^{1/}Plastokit's American agent, Optica Manufacturing Corp., has submitted comments supporting the contracting officer's position.

The protester's contentions are mistaken. The PCM^{1/} provides for the six percent evaluation factor. 1-1804.4(b), J.C. Truck Equipment, Inc., P.S. Protest No. 78-38, October 17, 1978. That evaluation factor is the same as the factor prescribed by Executive Order 10582 in the implementation of 41 U.S.C. " 10a-10d.^{1/} We do not understand this factor to represent a thorough attempt to equalize costs between foreign and domestic competitors, but rather to express a policy determination that domestic firms are to be given a preference in the amount of the factor. See Spacemakers, Inc., P.S. Protest No. 75-32, June 20, 1975. This factor was correctly applied in the present case, and Plastokit was the low evaluated bidder. Therefore, award was properly made to it.

The protest is denied.

William J. Jones
Associate General Counsel
Office of Contracts and Property Law

[checked against original JLS 5/11/93]

^{2/}This procurement was conducted under the PCM. Its successor, the Procurement Manual, also provides a 6% price evaluation factor to be placed on foreign proposals. PM 10.3.2.e.

^{3/}We note that acquisitions of Israeli end products by other government agencies under the United States-Israel Free Trade Area Implementation Act of 1985 (19 U.S.C. ' 2112) are, in many cases, exempt from even the 6% factor. Federal Acquisition Regulation 25.402.