



**G A O**

Accountability \* Integrity \* Reliability

**Comptroller General  
of the United States**

**United States Government Accountability Office  
Washington, DC 20548**

**DOCUMENT FOR PUBLIC RELEASE**

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

## **Decision**

**Matter of:** Pacific Lock Company

**File:** B-309982

**Date:** October 25, 2007

---

James H. Roberts, III, Esq., Van Scoyoc Kelly PLLC, for the protester.  
Nicole E. Goldstein, Esq., Edward H. Meyers, Esq., and Robert S. Ryland, Esq.,  
Kirkland & Ellis LLP, an intervenor.  
Robert L. Mercadante, Esq., Defense Logistics Agency, for the agency.  
Paula J. Haurilesko, Esq., and Ralph O. White, Esq., Office of the General Counsel,  
GAO, participated in the preparation of the decision.

---

### **DIGEST**

Protestor's allegation that the agency failed to apply the proper criteria in determining that protestor's offered padlocks did not comply with the solicitation's requirement for U.S.-made locks is denied where the agency reasonably concluded that a lock consisting of components made in China but assembled in the United States did not meet the requirements of the Trade Agreements Act.

---

### **DECISION**

Pacific Lock Company (PLC) protests the rejection of its proposal from the competitive range under request for proposals (RFP) No. SPM5L5-07-R-0056, issued by the Defense Logistics Agency (DLA), Defense Supply Center Philadelphia (DSCP), to purchase low security padlocks and padlock sets. PLC contends that the agency failed to use the proper criteria in determining that its products were not "U.S.-made end-products," as required by the RFP.

We deny the protest.

The RFP, issued on February 5, 2007, contemplated the award of one or more fixed-price, indefinite-quantity contracts for low security padlocks and padlock sets. RFP at 1, 7, and 55. The solicitation required offerors to provide "U.S.-made, qualifying

country, or designated country end products...”<sup>1</sup> RFP at 79. The solicitation also incorporated the clause at DFARS 232.225-7021(a)(12), which provides that

U.S.-made end product means an article that --

(1) Is mined, produced, or manufactured in the United States; or

(2) Is substantially transformed in the United States into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed.

RFP at 35.<sup>2</sup> [Emphasis added.]

PLC and three other companies submitted offers in response to the solicitation. Agency Report (AR) at 10. The other three companies indicated that their parts were manufactured in the United States, Germany, and Mexico, respectively. *Id.* PLC’s proposal was less clear about where its locks would be made; the initial proposal advised only that PLC was relocating its manufacturing operations from China to the United States, leaving the agency uncertain about whether the company intended to provide a U.S.-made end product. AR, Tab 6, Proposal. In response to a request for clarification from the agency, PLC advised that all of the components used in its locks would be manufactured in China and assembled in the United States, and provided cost information. AR, Tab 12, PLC letter, May 3, 2007, at 2, 5, and 7.

In evaluating PLC’s proposal, the contracting officer looked to prior determinations by the Bureau of Customs and Border Protection, Office of International Trade (OIT), and particularly to one OIT determination addressing four scenarios for manufacturing locks. AR at 6. In two of these scenarios, OIT found that substantial transformation did not occur where locking devices were assembled in the United States from imported parts. *TydenBrammall*, 41 Cust. B. & Dec. No. 10 at 8, (Feb. 28, 2007) at 4, 5. In the other two scenarios, locking devices were assembled in the United States, and domestic parts comprised a significant portion of the lock or a significant percentage of the total cost, leading OIT to conclude that the locking devices were substantially transformed. *Id.* at 4, 6. Based on its review of the OIT decision and the materials provided by PLC, DLA found that PLC’s plan to use

---

<sup>1</sup> “Designated” countries are listed at DFARS § 252.225-7021(a)(3); “qualifying” countries are listed in DFARS § 225-872-1. China is not included in either list; therefore, to be considered for contract award, PLC’s locks were required to meet the definition for “U.S.-made end product.”

<sup>2</sup> These clauses implement provisions of the Trade Agreements Act (19 U.S.C. § 2501 *et seq.*).

components made in China but assembled in the United States did not meet the requirement for a U.S.-made end product. AR at 6.

DLA notified PLC by letter that its proposal had been rejected. The agency letter stated, in relevant part,

It is DSCP's decision that Pacific Lock's proposed assembly of end item padlocks in the United States from 100% Chinese components does not meet the requirement of substantial transformation for conversion of its lock components to a U.S.-made end product....The determinations rendered by the Office of International Trade (OIT) find substantial transformation to exist only when foreign components ***are combined with significant domestic components and/or significant domestic production costs are involved...***

Protest, Enc. 1. [Emphasis in the original.]

PLC filed an agency-level protest on July 2, challenging the rejection of its proposal. The agency denied the agency-level protest, and this protest followed.

PLC contends that DLA improperly rejected its proposal because the agency used the wrong criteria in assessing whether PLC's padlocks could be considered U.S.-made end products. More specifically, PLC objects to DLA's determination that, because the company did not use any domestic components in its padlocks and/or incur significant production costs in the United States, PLC's padlocks could not be viewed as substantially transformed in the United States. Protest at 4.

As discussed above, the solicitation requires an offeror to either (1) produce an item in the United States (or other designated or qualifying country), or (2) show that the item was substantially transformed here. Since PLC acknowledges that the components of its padlocks were manufactured in China for assembly in the United States, it is clear that, for PLC's padlocks to meet the U.S.-made end product requirement, the company must be able to establish that the Chinese-made lock components are "substantially transformed" during the assembly process in the United States.

Neither the FAR nor DFARS provides guidance or examples to illustrate the circumstances under which an article is "substantially transformed" into a new and different item. Therefore, for clarification DLA looked to determinations by the OIT, which is responsible for issuing advisory and final determinations relating to whether an article can be considered a U.S.-made end product.<sup>3</sup> OIT decisions have held that, with respect to locks, substantial transformation occurs when (1) foreign

---

<sup>3</sup>19 C.F.R. §§ 177.21 et seq. (2007).

components are combined with significant domestic components and/or (2) significant domestic production costs are involved.<sup>4</sup> Prior decisions of our Office have also looked to these determinations for guidance. See, e.g., Becton Dickinson AcuteCare, B-238942, July 20, 1990, 90-2 CPD ¶ 55.

The protester contends that more assembly of its locks occurs in the United States than occurred in the first scenario discussed in the above-referenced OIT decision, and that, therefore, its locks should be viewed as substantially transformed in the United States. We disagree. The OIT decision did not establish the cited scenario as a bright line beyond which any additional assembly would automatically constitute substantial transformation. Instead, the decision outlines several scenarios so that agencies and vendors offering products can look to these scenarios for guidance.

In our view, the determination reviewed by DLA, which specifically addressed locks, reasonably led the agency to conclude that—as to locks—the agency should look for a showing that at least a portion of the lock components were domestically produced and/or that significant domestic production costs were involved. Since PLC failed to make either of these showings, we conclude that DLA reasonably decided that PLC’s proposal did not comply with the terms of the solicitation.<sup>5</sup> See CSK International, Inc., B-278111; B-278111.2, Dec. 30, 1997, 97-2 CPD ¶ 178.

The protest is denied.

Gary L. Kepplinger  
General Counsel

---

<sup>4</sup> PLC argues that DLA did not consider any other means of determining whether its products met the “U.S.-made end product” requirement. In fact, the record here shows that DLA has invited PLC to engage in a dialogue about how its products might eventually meet the requirements of the Trade Agreements Act. AR, Tab 9, DLA email, May 3, 2007.

<sup>5</sup> PLC also implies that, by evaluating the cost of the lock components, the agency conducted a Buy American Act-type review, even though procurements covered by the Trade Agreements Act are exempted from Buy American Act requirements. See DFARS § 225.103(a)(i)(B). To meet Buy American Act requirements for a domestic end product, the item must be manufactured in the United States, and domestic and qualifying country components must comprise more than 50 percent of the cost of all the item’s components. FAR § 25.101(a). In our view, DLA’s cost evaluation was simply an attempt to determine whether PLC’s locks were substantially transformed using the interpretation provided by OIT determinations; we see nothing improper in the agency’s review of PLC’s costs in reaching this conclusion.