



**The Comptroller General  
of the United States**

Washington, D.C. 20548

*Cureio 8L-I*

## **Decision**

Matter of: Yohar Supply Company  
File: B-225480  
Date: February 11, 1987

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### **DIGEST**

Agency correctly determined that the foreign parts fabricated from domestic steel are the components of lock sets offered by the protester as end items where the parts are needed to manufacture the lock sets. Consequently, a Buy American Act differential properly was applied to the protester's bid.

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### **DECISION**

Yohar Supply Company (Yohar) protests the award of a contract to Yale Security, Inc. (Yale), under Defense Logistics Agency (DLA) invitation for bids (IFB) No. DLA500-86-B-1747, issued to procure lock sets. Yohar alleges that DLA erroneously determined that Yohar intended to supply a foreign source end product and, consequently, improperly added a Buy American Act differential to its low bid, thereby displacing Yohar as the low bidder. The resolution of the protest turns on what the components of the lock sets are.

We deny the protest.

The IFB specified that the lock's chassis, internal structural and operational components, latch bolts, face and strike plates, and knobs and roses be comprised of 300 series corrosion resisting steel. The IFB contained a Buy American Act certificate which required bidders to certify that except as they otherwise indicated, each product offered was a domestic source end item.

The Army received five bids in response to the invitation. Yohar submitted the low bid of \$38 per lock set, and Yale was second low at \$42.35 per set. Upon investigation (undertaken because Yohar's Buy American Act certification was unclear), DLA learned that Yohar intended to obtain the lock sets from Marks Hardware, Inc. (Marks), a domestic manufacturer located

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in New York. Marks was going to purchase the steel for the lock sets from ARMCO Steel of Butler Pennsylvania. ARMCO would roll the steel to the specified length and thickness, and the rolled steel would be shipped to Korea for fabrication into parts. After the fabrication the parts would be shipped back to New York and Marks would manufacture the lock sets from these parts, adding cylinders and keys manufactured in North Carolina. Based on this information, DLA determined that Yohar intended to supply a foreign source end item and added a Buy American Act differential to Yohar's bid. Yohar protests that it is offering a domestic source end item and, thus, that the differential improperly was applied.

While the Buy American Act, 41 U.S.C. § 10a-10d (1982), does not prohibit the purchase of foreign source end items, it does establish a preference for acquiring domestic end products over foreign end products. California Mobile Communications, B-224398, Aug. 29, 1986, 86-2 C.P.D. ¶ 244. This preference is implemented by the addition of a differential to the price bid for a foreign end product. The applicable regulations provide that in evaluating bids, each bid item offering a foreign end product is to be adjusted by adding to it 50 percent of the foreign bid exclusive of duty or 6 percent inclusive of duty (12 percent if a small business or labor surplus area concern is the domestic bidder), whichever results in the greater evaluated price. Federal Acquisition Regulation (FAR), 48 C.F.R. § 25.105(a) (1986); Department of Defense FAR Supplement, 48 C.F.R. § 225.105 (1986).

For purposes of the Buy American Act, a domestic end product is one that is manufactured in the United States if the cost of its components mined, produced or manufactured in the United States exceeds 50 percent of the cost of all its components. FAR, 48 C.F.R. § 25.101. In the present case, DLA and Yohar agree that the end product to be acquired under the solicitation is the lock sets. They disagree, however, on what components make up those lock sets. DLA contends that the lock sets are composed of the parts fabricated in Korea and the parts manufactured in North Carolina, and that only the costs of these components should be considered in determining if Yohar is offering a domestic end product. Yohar argues that the steel purchased in Pennsylvania does not lose its identity as domestic when shipped to Korea, so that the components of the lock sets include the Pennsylvania steel as well as the Korean and North Carolina parts. If we accept

DLA's position, the cost of the foreign components of the lock sets is greater than 50 percent of the cost of all the components and the Buy American Act differential correctly was applied. If we accept Yohar's position, however, the Buy American Act differential improperly was applied and Yohar should not have been displaced as the low bidder.

FAR, 48 C.F.R. § 25.101, defines a component as an article or material which is directly incorporated into the end product. In deciding whether the material of what clearly is a component of an end product should be considered a component for Buy American Act purposes, we have looked to whether the clear component was itself an end product of a manufacturing process performed on the material. If a manufacturing process performed on the material results in a separately identifiable component which in turn is integrated into the ultimate end product being procured, the material does not, in our view, constitute a component. See, e.g., Davis Walker Corp., B-184672, Aug. 23, 1976, 76-2 C.P.D. ¶ 182; 45 Comp. Gen. 658 (1966).

In Davis Walker Corp., the end item to be procured was galvanized wire. The protester alleged that the galvanized wire offered by the awardee was a foreign end product composed of foreign steel rod produced in Japan and domestic zinc, and that the Buy American Act differential should have been applied to the awardee's bid. The agency contended that the steel rod was not a component of the galvanized wire, but that the components instead were domestic bright wire and zinc. The agency based this position on the fact that the bright wire was a separately identifiable item which was obtained through a manufacturing process performed on the steel rod and the bright wire was directly incorporated into the galvanized wire. We agreed with the agency's position based on the view that there were two distinct manufacturing processes, one which turned the steel rod into bright wire, and one performed on the bright wire which resulted in the galvanized wire. In 45 Comp. Gen. 658, supra, we found that billets (bars), derived from a manufacturing process performed on steel ingots, were the components of steel reinforcing rods.

Yohar explains that the fabrication in Korea involves stamping out parts from the rolled sheets of steel, bending the parts into shape and, finally, smoothing them. The fabrication results in the stainless steel plates, knobs, latches, lock parts and strike plates that Marks will use to manufacture the lock sets in New York. Yohar argues that we

should consider the steel a component of the lock sets because the fabrication process does not change the physical or structural identity of the steel. Yohar compares its situation to that in 50 Comp. Gen. 239 (1970), in which the contracting agency considered imported stainless steel to be a component of the surgical steel blades being procured.

We disagree with Yohar's analysis. Initially, in 50 Comp. Gen. 239, the issue presented did not require us to decide whether stainless steel in fact should be viewed as a component of the steel blades that were being purchased. It nonetheless is clear from that decision that the stainless steel was not manufactured into any other part that became a component of the blades, but the steel blades instead were fabricated from the stainless steel. In Yohar's case, however, like the situation in Davis Walker Corp., the stainless steel rolled in Pennsylvania is not directly used in the end item. Instead, it has to be fabricated in Korea into separately identifiable parts required to manufacture the lock sets. We think it is clear from Yohar's description of the Korean process that it is the stamped-out, bent and finished parts that are the components, not the rolled steel, so that the steel cost becomes irrelevant in considering the Buy American Act's applicability. We therefore agree with DLA that the components of the lock set are the parts fabricated -- in Korea and the parts purchased from North Carolina, and that the Buy American Act differential properly was applied to Yohar's bid.

The protest is denied.

  
Harry R. Van Cleve  
General Counsel