



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: CSK International, Inc.

File: B-278111; B-278111.2

Date: December 30, 1997

James P. Rome, Esq., for the protester.

John E. Rodgers for Barco Industries, Inc., an intervenor.

Marie Adamson Collins, Esq., General Services Administration, for the agency.

Christina Sklarew, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Under procurement subject to the Trade Agreements Act (TAA), agency properly rejected a bid offering a tool that consists of a tool head produced in a nondesignated country and a tool handle produced in the United States; assembly of the tool head and handle does not represent the type of "substantial transformation" of these elements required to qualify as a "U.S. made end product" for TAA purposes.

DECISION

CSK International, Inc. protests the rejection of its bid by the General Services Administration (GSA) under invitation for bids (IFB) No. 7FXI-J6-97-5102-S for a quantity of pulaski tools and handles.

We deny the protest.

The IFB, issued on May 30, 1997, contemplated the award of a requirements contract for a pulaski tool, which is a combination axe and mattock of forged steel, fastened to a hickory wood handle, that is used primarily for clearing brush, small logs, and other surface debris, and for digging in the soil to construct fire lines in wildfires and controlled burn operations. In addition to the axe head and handle, the IFB required an equal number of replacement handles in anticipation of their eventual need, since the handle typically cracks or breaks before the axe head is worn out. The IFB identified the axe head and handle by national stock numbers and included specifications and drawings, supplied by the Forest Service, describing the exact item required.

The IFB indicated that it was subject to the Trade Agreements Act of 1979 (TAA), 19 U.S.C. §§ 2501-2582 (1994), pursuant to which the President waived the provisions of the Buy American Act. The TAA is implemented by Federal

Acquisition Regulation (FAR) Subpart 25.4 which requires offerors/contractors to deliver under the contract only eligible products,¹ unless a waiver (based on national interest) has been granted to permit delivery of ineligible country products. FAR 25.402(c). The IFB incorporated by reference a General Services Administration Acquisition Regulation clause, 48 C.F.R. § 552.225-9, implementing provisions of the TAA, which provides that, under certain circumstances, an end product made of components from nondesignated countries,² but assembled in the United States, may be considered a "U.S. made end product," as follows:

"U.S. made end product," as used in this clause, means an article which (1) is wholly the growth, product, or manufacture of the United States, or (2) in the case of an article which consists in whole or in part of materials from another country or instrumentality, has been 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 so transformed.

The agency received five timely bids, including CSK's. When the bids were opened, it was apparent that CSK had submitted the low price. The contracting officer ordered pre-award surveys on CSK in anticipation of awarding the contract to the firm. During an inspection of CSK's facility, it was discovered that the axe head that the firm had offered and intended to furnish was manufactured in China, a nondesignated country. The contracting officer determined on this basis that CSK's offer failed to comply with the requirements of the TAA and therefore rejected the bid.

CSK protests that its bid was improperly rejected because its pulaski tool qualifies as a U.S.-made end product.³

¹Eligible products include U.S.-made end products, designated country end products, Caribbean Basin country end products, Canadian end products or Mexican end products. See FAR 25.401.

²Pursuant to the definition of "nondesignated country end products" in 48 C.F.R. § 552.225-9(a), "nondesignated countries" are those other than the United States, designated countries, Caribbean Basin Countries, Canada and Mexico.

³CSK argues that its pulaski tool qualifies either as a U.S.-made end product under the GSA clause or as a domestic end product under FAR 25.101. However, the cited FAR provision implements the Buy American Act (BAA) and is not applicable to this procurement. While CSK "agrees that the core issue is whether its actions with respect to the head imported from China constitute substantial transformation," quoting the standard for U.S.-made end products established in the GSA clause, it
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Under the applicable GSA clause, the pulaski tool will only be considered a U.S.-made end product if the component parts have been "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 so transformed." 48 C.F.R. § 552.225-9.

CSK argues that in order to determine whether "substantial transformation" has occurred, one must compare the character of a component prior to its incorporation into an end product and its character after such incorporation. Applying that methodology here, CSK reasons that, because "the head component of the end product, the Pulaski Tool, has no value or use standing alone," but becomes useful when it is combined with other components, i.e., the handle, the assembly of the axe head and handle represents a "substantial transformation." On the other hand, CSK also argues that "the evaluation should be of the entire end product, not whether one component is intrinsically or physically changed."

In our view, these arguments fail to establish that fastening the pulaski tool head together with its wooden handle substantially transformed these materials into a new and different article of commerce with a name, character, or use distinct from that of the article or articles (i.e., the tool head and handle) from which it was so transformed. None of these three indicia of transformation is present here. The pulaski tool head and handle retain their original names after they are fastened together. They retain their character: the main feature of the axe head is its ability to cut materials such as brush and small logs and to dig in soil, while the handle serves to aid in manipulating the object to which it is attached. The components' use is predetermined at the time they are manufactured, and does not change as a result of the assembly process. We think it is clear that the "substantial transformation" standard has not been met by the assembly process that occurred in this case.

This conclusion is consonant with that of the United States Court of Federal Claims, which, when faced with strikingly similar facts, decided that cookware could not be characterized as a "U.S. made end product" (under the same GSA clause as is at issue in this case) based on the contractor attaching handles to the pans and covers after they were received in the U.S. from China. Ran-Paige Co., Inc. v. United

³(...continued)

repeatedly refers to the issue as "whether the end product qualifies as a domestic item." The standard for "domestic items," which involves the percentage of components of domestic origin, pertains to a BAA evaluation, which is inapplicable here.

States, 35 Fed. Cl. 117, 120-22 (1996).⁴ Our conclusion is further supported by the fact that the procurement included replacement handles, which would be inserted by the end-user at a later time; this demonstrates that the components retained their single, predetermined purpose, and that the assembly process was minimal. Accordingly, CSK's bid was properly rejected because CSK was offering to provide an article which did not qualify as a U.S.-made end product.

The protest is denied.

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⁴See also Becton Dickinson AcuteCare, B-238942, July 20, 1990, 90-2 CPD ¶ 55 at 4-6, in which our Office determined that the requirement for substantial transformation was not met by the folding of articles, manufactured elsewhere, into an innerwrap and insertion into envelopes which were then sealed within a TAA-qualified country.