



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Baldt Inc.

File: B-278648

Date: February 23, 1998

Glenn Suplee for the protester.

Michael P. Chiffolo, Esq., Defense Logistics Agency, for the agency.

Susan K. McAuliffe, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest of alleged violation of statutory requirement (at section 8016 of the Department of Defense Appropriations Act, 1998) for domestic manufacture of anchor chain is denied where record shows that award complies with statutory requirements for domestic manufacture of the chain (the studs and links will be welded, and the stud link chain will be produced, in the United States), and for the components of that chain to be substantially manufactured in the United States (only one component (the studs) will be manufactured outside of the United States, the aggregate cost of which is substantially less than the aggregate cost of the components manufactured in the United States).

DECISION

Baldt Inc. protests the award of a contract to Lister Chain & Forge Inc. under request for quotations (RFQ) No. SPO490-97-Q-1043, issued by the Defense Logistics Agency for flash butt welded, stud link (1-3/8-inch) anchor chain, National Stock No. 4010-00-149-5609.¹ Baldt contends that the agency improperly failed to evaluate Lister's compliance with the domestic manufacturing requirements at section 8016 of the Department of Defense (DOD) Appropriations Act, 1998, Pub. L. No. 105-56, 111 Stat. 1203, 1224 (1997).

We deny the protest.

BACKGROUND

Lister submitted the lowest-priced quotation, with a unit price of \$6,098 and an extended price of \$60,980; Baldt submitted the highest-priced quotation, with a unit price of \$7,125 and an extended price of \$71,250. In its quotation, Lister identified its address as a domestic one--in Blaine, Washington--and stated that the same

¹This type of chain involves a stud crossing the center of the link.

address applied to the place of inspection and shipping. An award was made to Lister on October 31, 1997. Baldt learned of the award on November 6, and filed its protest with our Office on November 14.

On November 21, the agency and Lister entered into a bilateral modification agreement incorporating the terms of Defense Federal Acquisition Regulation Supplement (DFARS) § 252.225-7019, Restriction on Acquisition of Foreign Anchor and Mooring Chain, into the award documentation; the provision had been inadvertently omitted from the RFQ.² This DFARS provision implements (and adopts the language of) section 8016 of the DOD Appropriations Act, 1998 (the Act), supra, which provides, in pertinent part, as follows:

None of the funds in this Act may be available for the purchase by [DOD] (and its departments and agencies) of welded shipboard anchor and mooring chain 4 inches in diameter and under unless the anchor and mooring chain are manufactured in the United States from components which are substantially manufactured in the United States: *Provided*, That for the purpose of this section manufactured will include cutting, heat treating, quality control, testing of chain and welding (including the forging and shot blasting process): *Provided further*, That for the purpose of this section substantially all of the components of anchor and mooring chain shall be considered to be produced or manufactured in the United States if the aggregate cost of the components produced or manufactured in the United States exceeds the aggregate cost of the components produced or manufactured outside the United States

On November 24, Lister submitted a letter with additional information to the agency, regarding its manufacturing process, in which Lister stated, on page 1, as follows:

All manufacturing of large diameter chain (3/4" to 3") is conducted on the premises of Lister Chain & Forge, Division of Columbus McKinnon Corporation located at 3810 Loomis Trail Road, Blaine, Washington. . . . The only component[s] not manufactured at the Blaine facility are the studs, which are produced at Lister Bolt & Chain [Canada], utilizing U.S. manufactured steel provided by Lister Chain & Forge. The cost of the studs represent less than 3 percent of the final price of the chain, this would be even less if you subtract the money paid by Lister Bolt to Lister Chain & Forge for the material.

²Baldt does not challenge the propriety of the modification.

DISCUSSION

Baldt contends that, in view of the Act's requirement that certain manufacturing occur in the United States, the award here is improper, because, first, Lister's quotation did not provide sufficient information to establish with certainty that the manufacture of the chain would comply with the Act, and, second, had the contracting officer properly evaluated Lister's intended manufacturing process, he could not have concluded that Lister's proposal complied with the Act.

Our review of the record and the cited statutory requirements provides no support for the protester's contentions. The RFQ did not contain a request for information, or any certification requirements, regarding compliance with the Act. (The protester, in its own quotation, also did not specifically certify its compliance with the Act or expressly demonstrate that every manufacturing process listed in the Act would be performed in the United States--such showing simply was not required.) However, it is clear that Lister, in its quotation, did not make any affirmative statement that its manufacture of the chain would be other than in the United States, or other than in compliance with the Act. The awarded purchase order, the terms of which govern the awardee's performance, in fact specifies the "plant location" for performance of the contract as Lister's Blaine, Washington facility. Under the circumstances, contrary to Baldt's contentions, we cannot conclude that Lister's quotation provides evidence of a material flaw in the award of the contract.

Baldt next contends that, if the contracting officer had properly evaluated the Lister manufacturing process, he would have found that award to Lister violates the Act, since, according to Baldt, Lister admits that it will "manufacture" in Canada. Specifically, in its December 26 comments on the agency report, Baldt contends that the above-quoted language from Lister's November 24 letter shows that Lister's "stud link" will be manufactured (including required "forging") at Lister Bolt & Chain in Canada.³ Baldt comments at 6. Baldt contends that, in accordance with section 8016 of the Act, the forging of the stud links must be performed in the United States, since the Act specifically includes the process of forging in defining the term "manufactured."

We have reviewed the allegation in light of Baldt's contention that, due to this alleged admission by Lister, the award of the contract cannot stand. As discussed below, however, we find that the protester's challenge is flawed by a critical factual inaccuracy regarding Lister's intended manufacturing in Canada, as well as an unreasonable interpretation of the statutory language.

³Applicable military specifications require a forging process in the manufacture of the studs.

The factual inaccuracy on which Baldt's position is based becomes evident by comparing the above-quoted portion of Lister's November 24 letter explaining the firm's intended manufacture of "studs" in Canada, to Baldt's comments that the Lister "stud links" (which are links with welded studs, joined to make the stud link chain) will be manufactured in Canada. In fact, Lister's November 24 submission, complete with detailed attachments explaining the intended manufacturing process and available equipment, demonstrates that only the studs, and not the stud links, will be manufactured in Canada. This documentation shows that the stud links to be used by Lister in the manufacture of the anchor chain will be manufactured in the United States--that is, at Lister's Blaine, Washington facility, the Canadian-manufactured studs will be welded to domestically-manufactured links to produce the stud links and, subsequently, the stud link anchor chain.

The issue thus is whether the Act requires that the studs be manufactured in the United States. By its terms, the Act imposes an absolute domestic restriction only on the manufacture of the chain itself; the chain's components need only be "substantially manufactured" in the United States, so that the aggregate cost of the components manufactured in the United States exceeds the aggregate cost of the components manufactured (including those that are forged) outside the United States.⁴ Accordingly, determining whether Lister may provide studs manufactured in Canada depends on whether the studs properly may be characterized as components of the chain.

The agency states that the two components in the manufacture of the stud link chain to be procured here are the stud and the link, which, when welded together and joined in a series, become the anchor chain product procured. As discussed below, we believe the agency reasonably views the stud here as a component meeting the statutory requirements.

The Act does not identify the "components" of the stud link anchor chain or define at what stage of the process the grouping of materials becomes the "manufacture" of "the chain" separate from any manufacture of components. Nor is there any explanatory legislative history as to the intended definition of the chain components. Under these circumstances, in considering the reasonableness of the agency's interpretation, we review the matter by analogy to other instances where we have interpreted the concept of manufacturing for compliance with domestic content requirements. In cases involving the Buy American Act, 41 U.S.C.

⁴Baldt contends that the Act's inclusion of forging in the provision's definition of "manufactured" means that all forging (including the forging involved in the manufacture of the studs) must be done in the United States. The Act, however, clearly does not impose such a requirement since, as stated above, some manufacturing of components is expressly allowed, as long as it complies with the stated cost parameters.

§§ 10a-10d (1994), for example, we have focused on the completion of the article in the form required for use by the government in defining manufacturing for purposes of meeting the domestic manufacturing restrictions in that statute; the term "components," on the other hand, has been defined as "those articles, materials and supplies directly incorporated into end products." DFARS § 252.225-7001(a)(1); STD Research Corp., 72 Comp. Gen. 211, 213 (1993), 93-1 CPD ¶ 406 at 3; A&D Mach. Co., B-242546, B-242547, May 16, 1991, 91-1 CPD ¶ 473 at 3.

Applying these concepts here, we agree with the agency that the stud (separate from the link or any other component) is reasonably characterized as a component of the stud link anchor chain. The studs are not the end products here--the agency is buying anchor chains, not studs. Instead, the studs are one of the items directly incorporated into the end product; the chain is produced by welding together the studs and the links, and joining the resulting stud links in a series to form the chain. Given this description of the chain manufacturing process, we think it clearly was reasonable for the agency to treat the studs as components of the chain. In light of this conclusion, foreign manufacture of the studs is not prohibited by the Act as long as the stated cost parameters are met. The record shows that at least 97 percent of the cost of the components used in the manufacture of the Lister stud link anchor chain in Blaine, Washington, relates to domestically-manufactured

components and, accordingly, that Lister was reasonably found to be in compliance with the domestic manufacturing requirements of the Act.⁵

The protest is denied.

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⁵Baldt cites a close association of Lister to Lister Bolt & Chain in Canada (in terms of shared brochures, and individuals from the Canadian affiliate serving as directors of Lister, among other things), in an attempt to raise an appearance of impropriety in the award. We have reviewed the allegations, as well as evidence presented by Baldt in its effort to show that, under prior unrelated contracts, Lister Bolt & Chain in Canada did a substantial amount of work for Lister. This information, however, relates to separate procurements at different contracting installations, and there is no indication that the contracting officer here should have known the information, or that such information required the contracting officer here to question Lister's compliance with the Act. As stated above, the awardee here is obliged to perform in accordance with the Act. Whether the awardee in fact complies with that requirement is a matter of contract administration not for our review. 4 C.F.R. § 21.5(a) (1997). The protester also argues that, since the companies may have some shared indirect or other management costs, cost accounting principles require consideration of those costs in determining foreign manufacturing costs under the contract. Our Office recently denied this contention in another protest filed by Baldt against a separate award to Lister, and we see no reason to revisit the matter here. See Baldt Inc., B-278422, Jan. 28, 1998, 98-1 CPD ¶ 36 at 5-6.