

United States Government Accountability Office  
Washington, DC 20548

# Decision

**Matter of:** Pacific Lock Company

**File:** B-405800

**Date:** December 27, 2011

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Bob McDonough for the protester.

Elizabeth Rose, for Chinrose International, the intervenor.

Thomas Dougherty, Esq., Defense Logistics Agency, for the agency.

Peter D. Verchinski, Esq., and Guy R. Pietrovito, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## DIGEST

1. Protest that a delivery order was issued to a vendor that would not provide a domestic end item is denied where the agency reasonably relied upon the vendor's certification that it would provide a domestic part in the absence of any information to the contrary.
  2. Protest that an agency extended the required delivery schedule in its issuance of an order is denied where the protester does not show that it was competitively prejudiced.
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## DECISION

Pacific Lock Company of Honesdale, Pennsylvania, protests the issuance of a delivery order to Chinrose International, of Cornelius, Oregon, under request for quotations (RFQ) No. SPM5L2-11-Q-1172, issued by the Defense Logistics Agency (DLA), for 6,000 padlock sets.

We deny the protest.

## BACKGROUND

On April 20, 2011, DLA issued solicitation SPM5L2-11-Q-0706, as a small business set-aside, for the issuance of a fixed-price delivery order for 7,500 padlock sets. Legal Memorandum at 1. The agency did not issue an order under that solicitation, but re-issued the solicitation on July 12 as an unrestricted procurement. Id. Pacific

Lock filed an agency-level protest challenging the unrestricted nature of the solicitation, and the agency canceled the solicitation.

On August 3, the agency issued this RFQ, as a small business set-aside, for 6,000 padlock sets. RFQ at 1, 3. The solicitation required vendors to certify that they would provide “a domestic part,” and incorporated Federal Acquisition Regulation (FAR) clause 52.219-6, “Notice of Total Small Business Set-Aside,” which states in relevant part that a small business “shall furnish, in performing the contract, only end items manufactured or produced by small business concerns in the United States or its outlying areas.” RFQ at 2, 10. The solicitation also indicated that the agency may conduct product verification testing.<sup>1</sup> The RFQ provided that delivery was required within 90 days after the date of the order, *id.* at 1, but also provided the following contract line item: “Special Testing 60 DAYS.” *Id.* at 7.

The agency received quotations from PLC and Chinrose. The agency issued a delivery order to Chinrose on August 25, which provided that the padlock sets were to be delivered within 180 days after the date of the order.

## DISCUSSION

Pacific Lock protests that Chinrose will not provide a domestic end item. In this regard, the protester contends that, based on its industry knowledge, Chinrose does not manufacture locks in the United States.<sup>2</sup> Protest at 4.

When a vendor responds to a solicitation by representing that it will furnish products that comply with a solicitation’s domestic production requirements, the vendor is contractually obligated to comply with such representation. Simba USA, LLC; New Western Supply, LLC, B-401971, B-401971.2, Dec. 28, 2009 2009 CPD ¶ 265 at 2. Absent a basis to question a vendor’s representation in this regard, the agency may properly rely on the representation in making its source selection decision. However, where an agency has reason to believe that the firm will not provide compliant products, the agency should go beyond the firm’s representations to verify compliance, and our Office will review a procuring agency’s actions to ensure that the agency’s assessments and conclusions were reasonable. See, e.g., Pacific Lock

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<sup>1</sup> The solicitation stated that the agency reserved the right to invoke product verification testing at the time of award, and that the locks must pass this testing prior to receiving authorization to ship the locks. RFQ at 2.

<sup>2</sup> The protester also contends, citing a printout from DLA’s Internet Bid Board System, that the agency made an award under solicitation No. SPM5L2-11-Q-0706. DLA explains that this printout was an error, and that no award had in fact been made. Contracting Officer’s Statement at 2.

Co., B-309982, Oct. 25, 2007, 2007 CPD ¶ 191 at 4; General Kinetics, Inc., Cryptek Div., B-242052.2, May 7, 1991, 91-1 CPD ¶ 445 at 7.

Here, Pacific Lock has not shown that the agency had any reason to question Chinrose's representation, given that nothing on the face of its quotation indicated that the firm would not provide a domestic part. We see no basis to question the agency's reliance on Chinrose's certification that it would comply with the solicitation's requirement for a domestic part.

The protester also complains that agency extended from 90 days to 180 days the time for delivery in the order issued to Chinrose. The agency responds that it extended the delivery schedule to accommodate product verification testing. We need not resolve this dispute because Pacific Lock does not show that it was prejudiced by the agency's actions. Competitive prejudice is an essential element of a viable protest, and where the protester fails to demonstrate prejudice, our Office will not sustain a protest. See Armed Forces Hospitality, LLC, B-298978.2, B-298978.3, Oct. 1, 2009, 2009 CPD ¶192 at 9-10; McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3. Here, Pacific Lock does not state what it would have done differently had it been aware that the agency would accept a longer delivery schedule for the locks.

The protest is denied.

Lynn H. Gibson  
General Counsel