

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-184672

DATE: August 23, 1976

MATTER OF: Davis Walker Corporation

61382

098643

498643

DIGEST:

Determination that galvanized wire qualifies as domestic end product under Buy American Act, 41 U.S.C. § 10a-d (1970) will not be questioned since contracting officer's conclusion that manufacture is traditionally performed in more than one stage cannot be said to be incorrect. However, recommendation made to define "manufacture" as used in Buy American Act.

Davis Walker Corporation protests the award to the R. H. Pines Corporation (Pines) of item 0003 under invitation for bids (IFB) DSA500-75-B-2427 on the grounds that the steel wire offered by Pines should have been evaluated as a foreign source end product under the Buy American Act, 41 U.S.C. §§ 10a-d (1970).

The subject IFB was issued on May 6, 1975, by the Defense Industrial Supply Center (DISC) for two national stock numbers (NSN) of wire, steel, and carbon. The item in question is described under NSN 9505-00-596-9648 as wire, steel, carbon, round, 0.162 inches in diameter, 14.29 feet per pound, 100 pounds per coil, in accordance with Federal Specification QQ-W-461g dated March 15, 1968, 1010 steel, medium temper, finish 5, class I. Finish 5 is defined, under paragraph 1.2.2 of QQ-W-461g, as zinc-coated. Class I indicates that the zinc-coated wire shall be furnished in a weight designated as light.

The following four bids were received by bid opening on May 27, 1975.

098643-498643

B-184672

| <u>Bidder</u> | <u>Origin</u> | <u>Destination</u> | <u>Discount</u> | <u>Delivery</u> |
|----------------------------|---------------|--------------------|-------------------|-----------------|
| R. H. Pines Corp. | -- | \$0.2350 | 2%-20 days | 240 days |
| Davis Walker Corp. | -- | 0.2615 | 1%-20 days | 180 days |
| CF&I Steel Corp. | \$0.2680 | 0.2851 | 1/2% - 10 days | 90 days |
| Modern International Corp. | 0.32 | 0.365 | 1/2% - 30 days | 180 days |

Pines represented itself as a regular dealer and indicated that the supplies which it offered under item 0003 would be manufactured by the Titan Steel and Wire Co. (Titan) of North Surrey, British Columbia.

Under this procurement, an offer to supply Canadian end products is evaluated on an equal basis with an offer to supply United States end products. See Armed Services Procurement Regulation (ASPR) § 6-103.5(a) (1975 ed.).

ASPR § 6-101(b) (1975 ed.) provides:

"Canadian end product means an unmanufactured end product mined or produced in Canada, or an end product manufactured in Canada if the cost of its components which are mined, produced, or manufactured in Canada or the United States exceeds 50 percent of the cost of all its components. The cost of components shall include transportation costs to the place of incorporation into the end product. See 6-103.5."

By letter dated June 20, 1975, to DISC, Davis Walker protested any award to Pines for item 0003 on the grounds that

such an award would be in contravention of the Buy American Act, 41 U.S.C. §§ 10a-d, as implemented by 32 C.F.R., part 6 (1975). The referenced letter read in part:

"Galvanized wire is manufactured by 'drawing' carbon steel wire rod into wire and applying a zinc coating to the wire. There are, therefore, only two components: steel rod and zinc. Since the amount and cost of the zinc involved in galvanized wire is minimal compared with the amount and cost of the steel rod, it would seem to be impossible for galvanized wire manufactured from Japanese steel rod to be other than a 'foreign end product' as that term is defined in 32 C.F.R. 6.101(c)."

In response to Davis Walker's protest, Pines furnished the following explanation to the contracting officer by letter dated July 3, 1975:

"Titan imports rod from Japan as a sub-component. In the first manufacturing process it draws this rod into bright wire in Canada. This is a process which involves heavy machinery, and substantially changes the granular structure and metallurgical characteristics of the steel.
* * *

"The Canadian drawn bright wire component is then manufactured into the galvanized wire product. This second manufacturing process uses Canadian zinc and other Canadian components.

"Thus Davis-Walker is in error when it lists two components, steel rod and zinc. The steel component before the galvanization manufacturing process is Canadian made drawn bright wire.

"Our counsel informs us that the Comptroller General has long held that the criterion in such

cases is to look at the end product and determine the source of the immediate components (See 45 Comp. Gen. 658)."

By telex dated June 30, 1975, Titan listed the following as the operations to be performed at that facility:

- "(1) The steel arrives from Japan in rod form.
- (2) The rod is cleaned and coated (in Canada by Titan) in preparation for drawing.
- (3) The clean rod is drawn (in Canada by Titan) to the size wire required.
- (4) The drawn wire is passed through zinc (of Canadian origin) and galvanized (in Canada by Titan).
- (5) The galvanized wire is prepared for shipment (in Canada)."

The contracting officer concluded that the bright wire manufactured in Canada and not the steel rod produced in Japan is the component directly incorporated in the end product and on that basis determined that the supplies offered by Pines qualified as Canadian end products as defined in ASPR § 6-101(b).

On July 26, 1975, contract DSA500-76-C-0231 for item 0003 was awarded to Pines. In a letter filed with our Office on August 6, 1975, counsel for Davis Walker protested the award to Pines. This protest was filed with our Office within 10 working days after the July 23, 1975, receipt of the contracting officer's decision and is, therefore, timely under our Bid Protest Procedures, 4 C.F.R. § 20.2 (1975).

There is no dispute in this case that the end product is galvanized steel wire. The dispute centers on determining what the components of the end product are and whether there are one or two manufacturing processes involved in producing the end product. Counsel for Davis Walker contends that the basic component of the galvanized steel wire is "steel rod" which represents from 50 to

70 percent of the total cost of galvanized wire, and that the process of galvanization is a mere finishing operation rather than a manufacturing operation. Counsel further contends that there is only one continuous manufacturing process involved in converting the Japanese steel rod into galvanized steel wire and that the components of the end product are steel rods and zinc.

In reaching his conclusion that the bright wire manufactured in Canada and not the steel rod produced in Japan is the component directly incorporated in the end product, the contracting officer states that he was influenced by the following:

"a. The Decision of the Comptroller General reported in 45 Comp. Gen. 658.

"b. Steel rod is recognized as a basic mill product, but wire is not considered to be a basic mill product. (Thus, IFB 2427 includes none of the specially designed clauses, such as Clauses J-46, 48 and 49, which are utilized by DISC only in the procurement of basic mill products.)

"c. The Government, in all of its cataloging and product classification and identification systems and programs, maintains a sharp distinction between steel rod and steel wire.

"d. The process of drawing rod into wire involves machinery and is recognized as a manufacturing operation.

"e. The process of drawing rod into wire effects changes to the granular structure and metallurgical characteristics of the steel."

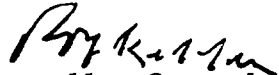
Since ASPR § 6-001(b) (1975 ed.) defines components to mean "those articles, materials, and supplies, which are directly incorporated in end products," the contracting officer determined that the basic component for the end product offered by Pines is the bright wire which is drawn in Canada and that it is this component which is manufactured into the galvanized wire product, the end item described in the contract. Whether the manufacture of the galvanized

B-184672

wire from the steel rods is traditionally performed in one or two stages is in dispute. If the manufacture of the wire is traditionally performed in one continuous stage, as Walker contends, then the source of the steel rod must be considered to determine whether the end product should have been evaluated as foreign under the Buy American Act, 41 U.S.C. § 10a-d (1970), as implemented by 32 C.F.R. part 6 (1975).

In the present situation we cannot say that the contracting officer's conclusion was incorrect. However, we believe this case illustrates the need for guidance in defining the term "manufacture" as used in the Buy American Act so that procuring agencies will be able to insure that only domestic source end products are acquired for public use. Therefore, by letter of today to the Director of the Defense Supply Agency, we are recommending that consideration be given to amending ASPR to define and clarify the requirement that items acquired for public use be "manufactured in the United States."

Deputy


Comptroller General
of the United States