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# Decision

**Matter of:** HPI Federal, LLC

**File:** B-422583

**Date:** August 9, 2024

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Dawn E. Stern, Esq., Christie M. Alvarez, Esq., and Andrew W. Current, Esq., DLA Piper LLP (US), for the protester.  
Jonathan T. Williams, Esq., Katherine B. Burrows, Esq., Eric A. Valle, Esq., and Dozier L. Gardner, Jr., Esq., PilieroMazza PLLC, for Transource Services Corp., the intervenor.  
Erika Whelan Retta, Esq., Colonel Patricia Wiegman-Lenz, and Major Danelle McGinnis, Department of the Air Force, for the agency.  
Nathaniel S. Canfield, Esq., and Evan D. Wesser, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## DIGEST

1. Protest challenging agency's acceptance of representation of Trade Agreements Act (TAA) compliance for certain quoted items as unreasonable is sustained where the representation does not state that the end products to be delivered are U.S.-made, qualifying country, or designated country end products, but only states that the quoted items are assembled in a designated country.
  2. Protest challenging agency's acceptance of representation of TAA compliance for another quoted item as unreasonable is denied where the quotation states the country of origin of the quoted item and the protester has not identified any information that reasonably should have caused the agency to believe that the firm will not provide compliant end products.
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## DECISION

HPI Federal, LLC, of Washington, D.C., protests the selection of Transource Services Corp., of Phoenix, Arizona, under request for quotations (RFQ) No. QEB2024B, issued by the Department of the Air Force for the provision of certain information technology (IT) products. The protester contends that the agency unreasonably determined that Transource's quotation complied with RFQ requirements for Trade Agreements Act (TAA) compliance.

We sustain the protest in part and deny it in part.

## BACKGROUND

The procurement at issue took place under the agency's Client Computing Solutions III (CCS-3) enterprise program, which facilitates the purchase of computing devices, associated peripherals, and incidental services utilizing General Services Administration (GSA) Federal Supply Schedule (FSS) contracts. Contracting Officer's Statement (COS) at 2. Under the CCS-3 program, the agency has established blanket purchase agreements (BPA) with seven vendors, including the protester and intervenor here, under their respective schedule contracts pursuant to Federal Acquisition Regulation (FAR) subpart 8.4. *Id.* The agency periodically defines and competes its IT requirements among the CCS-3 BPA holders, issuing an RFQ for various product categories. *Id.* Following evaluation of quotations, the agency selects a BPA holder to provide products under each product category, which agency personnel can order for the period of the buying cycle, which typically is six months. *Id.* at 2-3.

The agency issued the RFQ on February 29, 2024, and amended it once. *Id.* at 3-4; Agency Report (AR), Tab 9, Amended RFQ. Among the product categories included in the RFQ were 55-inch class display (55CD); 65-inch class display (65CD); and 75-inch class display (75CD) monitors; and office notebooks, including one mandatory and one optional docking station. *Id.* at 1; AR, Tab 10, Amended Technical and Price Response Template (TPRT) at 1. For those and other product categories, the RFQ provided that the agency would evaluate quoted products for compliance with mandatory specifications and requirements, with only compliant products being eligible for selection. Amended RFQ at 3. The agency then would make selections based upon the lowest total worldwide cost for each product category.<sup>1</sup> *Id.*

As relevant here, the RFQ required vendors to "provide a confirmation that the [quoted] end product for each product category is [TAA] compliant under the terms of this solicitation as required by [the vendor's] GSA schedule contract."<sup>2</sup> *Id.* at 2. The RFQ also included a supply chain risk management provision, which required vendors to identify the country of origin for certain component items of end products. *Id.* Thus, for example, the RFQ required vendors not only to confirm that the quoted office notebook,

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<sup>1</sup> The TPRT consisted of a spreadsheet that automatically calculated vendors' total worldwide costs for each product category based upon submitted prices and agency-provided estimated quantities. COS at 5. The protest allegations here do not concern the evaluated total worldwide costs.

<sup>2</sup> Each vendor's CCS-3 BPA established under its GSA schedule contract required that products comply with the TAA, and that, in accordance with Defense Federal Acquisition Regulation Supplement (DFARS) clause 252.225-7021, Trade Agreements, vendors provide a certificate pursuant to DFARS provision 252.225-7020, Trade Agreements Certificate, for each product offered in response to any solicitation issued under the BPA. See, e.g., AR, Tab 3, Transource CCS-3 BPA at 4.

as an end product, was TAA-compliant, but also to identify the country of origin of the motherboard within the quoted office notebook. AR, Tab 10, Amended TPRT at 7.

The agency received timely quotations from all seven CCS-3 BPA holders in response to the RFQ. COS at 4.

Relevant to the protest allegations, Transource quoted three LG monitors for the 55CD, 65CD, and 75CD monitor product categories. AR, Tab 12, Transource TPRT at 3-5. Transource's quotation also included an April 3, 2024, letter from an LG representative, styled as a "Country of Assembly Certification," certifying that the monitors quoted by Transource "are assembled [in] Mexico, a TAA compliant country[.]" AR, Tab 13, Country of Assembly Certification. With respect to the office notebook product category, Transource's quotation specified makes and models for both the mandatory and optional docking stations. AR, Tab 12, Transource TPRT at 2. The quotation also identified [DELETED] as the country of origin for both of those docking stations in required fields in the TPRT. *Id.*

The agency evaluated Transource's quoted products in the above-referenced categories as technically compliant, as well as having the lowest total worldwide cost for their respective categories. COS at 8-9; AR, Tab 14, Evaluation Memorandum at 5. Thereafter, on May 2, the agency notified Transource that it had been selected as the vendor for those product categories. AR, Tab 15, Transource Selection Notification at 1. That same day, the agency notified the protester that it had been selected for another product category, but the agency later rescinded that selection. AR, Tab 16, HPI Selection Notification at 1; Tab 18, Revised HPI Selection Notification; COS at 9 n.5. On May 7, the agency provided written feedback to the protester, in which the agency identified Transource as the selected vendor for the 55CD, 65CD, and 75CD monitor and office notebook product categories. AR, Tab 17, HPI Written Feedback at 1; COS at 9. This protest followed on May 13.

## DISCUSSION

As discussed above, the RFQ required vendors to confirm that their quoted products were TAA-compliant, consistent with the requirements of their CCS-3 BPAs, which in turn referenced the requirements of DFARS clause 252.225-7021, Trade Agreements. That clause requires that a contractor deliver only "U.S.-made, qualifying country, or designated country end products" unless certain circumstances not applicable here apply. DFARS clause 252.225-7021(c). Thus, the RFQ required vendors to confirm that their quoted items are TAA-compliant, *i.e.*, that they are U.S.-made, qualifying country, or designated country end products. The protester alleges that the agency unreasonably determined that Transource's quotation satisfied the RFQ's requirements in this regard.<sup>3</sup>

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<sup>3</sup> The protester also initially alleged that Transource's quotation did not include required DisplayPort adapters, see Protest at 13-14, but subsequently withdrew that allegation, see Comments at 5 n.3.

Where, as here, an agency issues an RFQ to FSS vendors under FAR subpart 8.4 and conducts a competition, we will review the record to ensure that the agency's evaluation is reasonable and consistent with the terms of the solicitation. *Digital Sols., Inc.*, B-402067, Jan. 12, 2010, 2010 CPD ¶ 26 at 3-4; *DEI Consulting*, B-401258, July 13, 2009, 2009 CPD ¶ 151 at 2. In reviewing a protest challenging an agency's technical evaluation, our Office will not reevaluate the quotations; rather, we will examine the record to determine whether the agency's evaluation conclusions were reasonable and consistent with the terms of the solicitation and applicable procurement laws and regulations. *OPTIMUS Corp.*, B-400777, Jan. 26, 2009, 2009 CPD ¶ 33 at 4.

### 55CD, 65CD, and 75CD Monitor Product Categories

The protester initially alleges that Transource's quotation could not satisfy the RFQ's requirements with respect to TAA compliance because LG had issued a letter to its partners on October 13, 2023, stating that certain products, including the quoted monitors, "have had a change in manufacturing at the component level and no longer meet TAA compliance requirements under the substantial transformation guidelines."<sup>4</sup> Protest at 11. In light of that letter, the protester alleges that Transource misrepresented the TAA compliance of its quoted products. *Id.* at 12 n.7.

In response, the agency points out that Transource's quotation here included the April 3, 2024, letter discussed above, certifying that the quoted monitors are assembled in Mexico, which is considered a designated country under the TAA.<sup>5</sup> Memorandum of Law (MOL) at 11. As that letter post-dated the October 13, 2023, letter cited by the protester by six months, the agency argues that it reasonably relied on the letter contained in Transource's quotation to determine that the quoted monitors were TAA-compliant. *Id.* at 12.

The protester contends that it was unreasonable for the agency to conclude that the April 3, 2024, letter provided the confirmation of TAA compliance required by the RFQ, as it certified only that the monitors are assembled in Mexico, not that the monitors are

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<sup>4</sup> We previously have recognized that the test to determine country of origin in the context of trade agreements is "substantial transformation," *i.e.*, whether an article is transformed into a new and different article of commerce, with a name, character, or use distinct from the original article. See, *e.g.*, *Sea Box, Inc.*, B-409963.3, Feb. 4, 2015, 2015 CPD ¶ 72 at 6 (citing Federal Acquisition Regulation (FAR) 25.001(c)(2); DFARS clause 252.225-7021).

<sup>5</sup> As relevant here, DFARS clause 252.225-7021 defines a designated country end product as "a [World Trade Organization Government Procurement Agreement (WTO GPA)] end product, a Free Trade Agreement [(FTA)] country end product, a least developed country end product, or a Caribbean Basin country end product." DFARS clause 252.225-7021(a). Under the clause, Mexico is a designated country by virtue of being an FTA country. *Id.*

an end product of Mexico. Comments at 5-9. Thus, the protester argues, Transource's quotation failed to satisfy the RFQ's requirement to provide a confirmation of TAA compliance.<sup>6</sup> *Id.* at 8-9.

We previously have stated that when a vendor or offeror represents that it will furnish end products of designated or qualifying countries (including domestic end products) in accordance with the TAA, it is obligated under the contract to comply with that representation. *Sea Box, supra* at 5. If, however, prior to award, an agency has reason to believe that a firm will not provide compliant end products, the agency should go beyond a firm's representation of compliance with the TAA. *W&K Container, Inc.*, B-422234.2, Mar. 12, 2024, 2024 CPD ¶ 72 at 6. Where the agency has no information which would lead to such a conclusion, the agency may reasonably rely upon a firm's representation without further investigation. *See, e.g., Coast to Coast Comput. Prods., Inc.*, B-419116, B-419116.2, Dec. 18, 2020, 2020 CPD ¶ 370 at 7-8; *Kipper Tool Co.*, B-409585.2, B-409585.3, June 19, 2014, 2014 CPD ¶ 184 at 5 (agency reasonably relied upon vendors' quotation sheets to determine quoted products were TAA-compliant); *Spectrum Sys., Inc.*, B-401130, May 13, 2009, 2009 CPD ¶ 110 at 3 (agency may accept a quotation's representation indicating compliance with the solicitation requirements, where there is no significant countervailing evidence

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<sup>6</sup> The intervenor seeks dismissal of this ground of protest, contending that the protester has raised an untimely supplemental protest argument in its comments on the agency report. In this regard, the intervenor asserts the protester initially alleges that Transource would not supply TAA-compliant monitors, and only later asserts that Transource's quotation did not comply with the requirement to confirm TAA compliance. Intervenor Supp. Resp. & Req. for Dismissal at 4-6. The intervenor contends that the protester raised the latter argument for the first time in its comments on the agency report, filed on June 24, which was more than 10 days after June 6, when the agency provided the parties with a copy of the LG letter as part of early document production accompanying the agency's 5-day letter. *Id.* at 4-5.

We disagree with the intervenor that the initial protest does not challenge the agency's acceptance of Transource's TAA compliance confirmation. The protest identifies the requirements both to confirm TAA compliance and to deliver TAA-compliant products, as well as alleges that Transource's offerings were not compliant with the RFQ's requirements. Protest at 11. The protester further alleges that "Tran[s]ource's quotation misrepresented the TAA status of its end products[.]" *Id.* at 12 n.7. The agency responds to those allegations by producing the LG letter, and the protester provides comments as to how that letter fails to rebut the protester's contentions. In that regard, the protester's comments merely represent an amplification of its original protest ground, not a supplemental protest ground. *See, e.g., High Noon Unlimited, Inc.*, B-417830, Nov. 15, 2019, 2019 CPD ¶ 387 at 4-5 (where protester initially alleged that product did not meet weight requirement, comments that agency used improper methodology to weigh the product did not constitute a supplemental protest); *United States Marine Corps—Recon.*, B-417830.2, Mar. 6, 2020, 2020 CPD ¶ 99 at 4-5 (affirming same).

reasonably known to the agency that should create doubt as to whether the vendor will or can comply with the requirement). When an agency has reasonably made award relying on a firm's representation, whether the firm ultimately delivers end products in accordance with its TAA representations as required by its contract is a matter of contract administration, which our Office will not review. Bid Protest Regulations, 4 C.F.R. § 21.5(a); see also *Coast to Coast*, *supra* at 8 n.12.

Thus, in the absence of a reason to believe that Transource would not provide TAA-compliant monitors, the agency was entitled to rely upon Transource's representation of compliance. Here, however, Transource did not provide a representation that it would supply TAA-compliant monitors. Rather, it provided a certification from LG that the monitors are assembled in Mexico, which is a designated country. As our Office has recognized, however, a product is not necessarily an end product of the country in which it was assembled, as assembly alone may not constitute substantial transformation. See, e.g., *W&K Container*, *supra*; *Sea Box*, *supra*; *Pacific Lock Co.*, B-309982, Oct. 25, 2007, 2007 CPD ¶ 191; *CSK Int'l, Inc.*, B-278111, B-278111.2, Dec. 30, 1997, 97-2 CPD ¶ 178. We therefore first must examine whether the agency reasonably determined that Transource's representation regarding assembly in Mexico was, in effect, a confirmation that the quoted monitors are TAA-compliant, as required by the RFQ.

In response to our request for additional briefing on this question, the agency contends that it reasonably concluded that LG's certification of assembly in Mexico constituted confirmation of TAA compliance, citing ruling letters issued by the Department of Homeland Security, U.S. Customs and Border Protection (CBP), stating that assembly of computer monitors constitutes substantial transformation.<sup>7</sup> Agency Supp. Resp. at 2-3 (citing CBP Headquarters Ruling Letter (HRL) 562385 (May 14, 2002); CBP HRL 560427 (Aug. 21, 1997); CBP HRL 734966 (Oct. 18, 1993); CPB HRL 734213 (Feb. 20, 1992); CPB HRL 734097 (Nov. 25, 1991)). Based on these ruling letters, the agency states that CBP "has ruled extensively that the assembly of computer monitors is considered a 'substantial transformation' under the definition in the TAA[.]" and argues that the agency therefore reasonably concluded that the representation that Transource's quoted monitors are assembled in Mexico constituted a representation that the monitors are TAA-compliant. *Id.*

The decision in each of those ruling letters, however, depended upon a fulsome recitation of facts regarding the nature of the components and the assembly process. As stated in the most recent ruling letter cited by the agency:

In determining whether the combining of parts or materials constitutes a substantial transformation, the issue is the extent of operations performed and whether the parts lose their identity and become an integral part of the

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<sup>7</sup> We previously have noted that CBP has the authority to make country of origin determinations relating to government procurements under the TAA. See *Sea Box*, *supra* at 6.

new article. Assembly operations which are minimal or simple, as opposed to complex or meaningful, will generally not result in a substantial transformation. The issue of whether a substantial transformation occurs is determined on a case-by-case basis.

CBP HRL 562385 (May 14, 2002) (citations omitted). In that ruling letter, for example, CBP recited extensive facts regarding the major components of a thin film transistor-liquid crystal display module, the assembly of one of those major components in China from Japanese parts, as well as the assembly process of the completed module. See *id.* Its decision that the assembly process that produced the module constituted a substantial transformation was expressly reliant upon those facts, concluding that “[t]he individual components . . . lose their identity and become [an] integral part of the new article[.]” and that “[t]he assembly operations are also not minimal or simple.” See *id.*

Here, by contrast, the LG letter included in Transource’s quotation contains no similar detail. It does not, for example, list the components of the monitors or describe what assembly operations occur in Mexico. Rather, it states only that the monitors are “assembled [in] Mexico[.]” AR, Tab 13, Country of Assembly Certification. It therefore does not provide the kinds of facts CBP has relied upon to determine--on a case-by-case basis--the extent of the assembly operations, whether the parts lose their identity and become an integral part of the new article, or whether the assembly operations are complex or meaningful, rather than minimal or simple, and consequently whether substantial transformation occurs through the assembly process. While the ruling letters cited by the agency do demonstrate, as the agency contends, “that assembly *can* consistently equate to substantial transformation for certain items,” Agency Supp. Resp. at 3 (emphasis added), the minimal facts provided here do not reasonably support the conclusion that this particular assembly process constitutes substantial transformation.

Under these circumstances, we do not agree with the agency that a certification regarding assembly in Mexico--a designated country under the TAA--equates to a confirmation of TAA compliance. We therefore conclude that the agency unreasonably determined that Transource provided confirmation of TAA compliance for the quoted monitors, as required by the RFQ, and sustain the protest on that basis.

#### Office Notebook Product Category

The protester also contends that Transource’s quotation similarly failed to satisfy the RFQ’s TAA compliance requirements with respect to the mandatory docking station under the office notebook category, based on publicly-available information that the protester contends indicates that Transource’s quoted manufacturer does not manufacture a TAA-compliant docking station. Protest at 12-13. While the parties disagree whether the RFQ required TAA compliance for that item, see MOL at 14-16; Comments at 9-10, we need not resolve that dispute because we conclude that the

agency reasonably relied upon Transource's representation of TAA compliance for the docking station.

As discussed above, Transource's quotation specified makes and models for both the mandatory and optional docking stations in the TPRT. AR, Tab 12, Transource TPRT at 2. The TPRT required vendors to input country of origin information for both of those items, and Transource identified [DELETED] as the country of origin for both docking stations. *Id.* Under DFARS clause 252.225-7021, [DELETED] is a designated country by virtue of being a WTO GPA country. DFARS 252.225-7021(a). Thus, unlike the monitors, Transource's quotation provided a confirmation that its docking stations are TAA-compliant, as Transource represented that their country of origin is a designated country.<sup>8</sup>

Additionally, the protester has not identified information that would provide the agency a reason to believe that Transource will not provide a TAA-compliant docking station. The protester cites information from the website of the docking station's manufacturer, which the protester states does not list the docking station among its TAA-compliant products, and further indicates that the docking station is made in China. Protest at 12-13. To whatever extent the protester's allegations might be true,<sup>9</sup> there was nothing on the face of Transource's quotation to reasonably indicate that Transource would not deliver TAA-compliant docking stations. See, e.g., *W&K Container, supra* at 7-8 (agency reasonably did not question or otherwise investigate TAA certification where nothing on the face of the proposal reasonably indicated the possibility of non-compliance). The protester further suggests that "the fact that Transource tried to circumvent the requirement to certify that its monitors were TAA[-]compliant should have reasonably put the [agency] on notice that further scrutiny of Transource's other country of origin representations was required." Comments at 10. As discussed above, however, Transource's representation regarding the docking station was materially different than that for the monitors. Transource expressly represented that the docking station's

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<sup>8</sup> HPI asserts, without support, that "[t]he country of origin of the docking station does not necessarily equate to TAA compliance." Comments at 10. This is at odds with the FAR, which contemplates that the purpose of the substantial transformation test is to determine the country of origin. See FAR 25.001(c)(2) ("Under the trade agreements, the test to determine country of origin is 'substantial transformation' (*i.e.*, transforming an article into a new and different article of commerce, with a name, character, or use distinct from the original article)."); see also *Sea Box, supra* at 6 ("[T]he test to determine country of origin in the context of trade agreements is 'substantial transformation[.]'"). Thus, the representation that the docking stations' country of origin is [DELETED] is, in effect, a representation that the docking stations are substantially transformed in that country, and therefore are TAA-compliant.

<sup>9</sup> As the agency points out, the protester's allegation that the quoted docking station is made in China is based upon a misidentification of the particular model number quoted by Transource. See COS at 16.



country of origin is [DELETED], not simply that the docking station is assembled in [DELETED].

Thus, in the absence of a reason for the agency to believe that Transource will not provide compliant end products, the agency reasonably relied on Transource's representation in this regard. *See, e.g., Kipper Tool, supra* at 5 (agency reasonably relied on country of origin information in quotation sheets). We therefore deny this ground of protest.

#### RECOMMENDATION

We recommend that the agency reevaluate Transource's quotation with respect to the 55CD, 65CD, and 75CD monitor product categories in a manner consistent with the discussion above and make a new selection decision based on that reevaluation. Should the agency conclude that a vendor other than Transource is in line for selection for those product categories, we recommend that the agency terminate Transource's selection for the convenience of the government, and select that vendor, if otherwise proper. We also recommend that the agency reimburse the protester the costs of filing and pursuing its protest, including reasonable attorneys' fees. 4 C.F.R. § 21.8(d)(1). The protester should submit its certified claims for costs, detailing the time expended and cost incurred, directly to the contracting agency within 60 days after receipt of this decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained in part and denied in part.

Edda Emmanuelli Perez  
General Counsel