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**DECISION**

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

8806

FILE: B-191337, B-192289

DATE: January 9, 1979

MATTER OF: Remcor, Inc.

DLG 00 547

**DIGEST:**

Agency's determination to include firm on qualified products list will not be questioned by GAO despite allegation that firm does not qualify for inclusion, since inclusion on list merely entitles firm to compete on same basis as other firms on qualified products list.

DLG 00 550

Remcor, Inc., protests the award by the Aviation Supply Office, Department of the Navy, of a contract for A-3 and A-4 aircraft tension bars to the Shultz Steel Company under invitation for bids No. NOO383-78-B-0015, a procurement limited to qualified products list (QPL) sources. Shultz was listed as a qualified source on the QPL. The Naval Air Systems Command (the testing and qualifying activity) had found the S3A aircraft (Part No. 517891-1) release elements submitted by Shultz for testing purposes acceptable-- qualification of the S3A element (or any tension bar/ release element) permitted the qualified source to bid on all other bars/elements on the QPL--for QPL listing. Remcor contends that this QPL listing was improper because the Shultz S3A release elements "qualified" did not comply with the requirements set forth in the S3A specification, MIL-T-23426B(AS), and that, consequently, Shultz was not qualified to receive an award on the protested items. Remcor subsequently protested any award to Shultz under invitation for bids No. NOO383-78-B-0423, issued by the same activity, on the same grounds. This procurement is for F-4 tension bars, again upon which Shultz was entitled to bid because of the qualification of its S3A element. A partial award was made on this item notwithstanding the protest.

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The S3A release element samples qualified by Shultz were finished items manufactured (final machined) from rough-machined forgings. Remcor contends that, under the specification and the print for the S3A element, finished items are required to be manufactured from rough-machined blanks cut from bar stock and that the use of a forging operation is neither envisioned nor permitted. Because of the forging operation used prior to the rough machining, Shultz allegedly does not meet the requirement that the rough-machined blank shall have been rough machined from a 2-3/4-inch x 5-inch blank cut from bar stock. Further, it is contended that because of the forging operation Shultz cannot meet the requirement that each rough-machined blank must be identified "'at the time it is cut from the raw metal bar.'"

It is the position of the contracting and the testing/qualifying activities that the use of a forging operation is permissible since it is not prohibited in the specification. Although the S3A release element print includes a depiction of the "rough machined blank" and although the blank is specifically referred to as a "rough machined blank," Government engineers state that the term "rough machined blank" is a term used merely as a nomenclature to describe the blank before it is given its final machining and not as a designation of the manner in which the blank is to be produced.

With respect to the manner of manufacture, apparently Shultz cut bar stock into "appropriate" release element lengths (using the same type bar stock utilized by Remcor), forged them into the "appropriate" shape of the element, and then rough machined them to the configuration and rough dimensions set forth in the "rough machined blank" portion of the print. While the engineers have advised that they do not consider the specification to preclude such a forging operation, they advise that--so as to preclude any further confusion--the word "machined" will be deleted as well as the words "machined" and "machining"

Also, the Government engineers and the contracting officer believe that Shultz complies with the identification marking requirements. The purpose of this marking is to identify, on each tension bar (element), the raw metal bar from which it was cut. Apparently, Shultz

marks its elements at the time they are cut from the raw metal bar stock (as required in the specification), but, since rough machining of the ends of the blanks is required after the forging operation, remarking is required before delivery to the Government. It is stated that, although such remarking is not required when the forging operation is not used, marking and then remarking is not contrary to the specification.

While it is conceded by the contracting officer that the S3A release element qualified by Shultz is not identical to, or produced in the same manner as, the tension bars (A-3, A-4 and F-4) Shultz would be required to furnish under the contracts (they would be manufactured without the use of a forging operation), it is not conceded that this should preclude the awards to Shultz. The contracting officer states:

"\* \* \* A mandatory specification requirement \* \* \* is not necessarily binding on the contractor as far as the qualification sample is concerned--that is, the qualifying agency may qualify a concern for a product even though the product tested does not meet all requirements of the specification. It was for this reason that the Contracting Officer made a point of noting that Shultz's A-3 and A-4 tension bars were to be manufactured in accordance with the specification as interpreted by Remcor, that it is on the Shultz S-3 tension bar that was qualified that Shultz did not comply with the specification as interpreted by Remcor, and that--whether or not Remcor is correct in its interpretation of the S-3 tension bar specification requirements--approval of Shultz as a qualified supplier of the A-3 and A-4 tension bars based upon the S-3 submission was appropriate. Of course, the deviation from the specification in the manufacture of the qualification test sample cannot be one of substantial significance. For example, the qualifying agency would have no difficulty in approving a tension bar that was painted red when the specification contains a mandatory requirement that the tension bars

be painted yellow if the tension bar met all other applicable specification requirements. This is so, notwithstanding that specified colors are mandatory specification requirements (for color-coding purposes to provide for immediate identification of the various aircraft tension bars) since the qualifying agency could grant its qualification approval with a notation in its qualification letter advising that, notwithstanding the granting of qualification approval that was based on the test of a red tension bar, the tension bars furnished under a contract must be painted yellow as required by the specifications. As further discussed hereinafter, the cognizant engineers consider that a forged/machined tension bar is sufficiently similar to a completely machined tension bar so as to justify the qualification of a concern for a completely machined tension bar on the basis of a 'forged/machined' tension bar that was submitted for qualification test purposes. To require the contractor to manufacture and the Government to test additional test samples under this circumstance would be to impose an unnecessary time-consuming and expensive burden on the contractor and to subject the Government to an equally unnecessary time-consuming and unjustified expense of funds."

The activity has advised that, irrespective of whether the specification permitted the S3A element to be forged, since the processes utilized by Shultz are substantially similar to those used in the manufacture of a bar without forging, Shultz was qualified to furnish the tension bars called for in the contracts. This similarity is evident because the forging operation is one that is added to all the other operations performed on a tension bar to reduce the machining required to be performed on that bar rather than an operation that completely replaces the machining operation. The tension bar Shultz qualified was produced from the required bar stock; it was heat treated as required; it was both rough and finish

machined; and proper identification marking was maintained. (The fact that Shultz does less rough machining due to the use of the forging operation is considered nonconsequential as it has still demonstrated an ability to rough machine.)

We do not believe that it would be appropriate for our Office to disturb the Navy's determination to qualify Shultz to compete for the protested procurements. So far as the record shows the Navy has not waived any of the specification requirements for Shultz under the protested solicitations. It has merely concluded, based on an examination and test of the Shultz S3A release element, that the firm is qualified to manufacture a number of other aircraft tension bars including those being procured under the protested solicitations. As recognized in McIntyre Engineering Company, Inc., B-190136, March 7, 1978, 78-1, CPD 177, listing a product on a QPL merely indicates that at the time of qualification the manufacturer has the ability to make a product meeting the specification requirements. The manufacturer is not thereby relieved from having to furnish a product conforming to the solicitation specification in the event of an award. This being so, we see no reason to question the Navy's technical judgment that Shultz is qualified to produce the items in question.

The protests are denied.

  
Deputy Comptroller General  
of the United States