

DECISION

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

FILE: B-211413

DATE: August 10, 1983

MATTER OF: Camex Industries, Inc.

DIGEST:

1. Protest challenging a prospective contractor's ability to supply items in accordance with the contract is a matter of responsibility, and GAO will not review agency's affirmative determination of responsibility unless there is evidence of fraud or a misapplication of definitive responsibility criteria.
2. Whether a firm actually fulfills its contract obligation is a matter of contract administration, which is the responsibility of the procuring agency, not GAO.

Camex Industries, Inc. protests the proposed award of a contract for Dataproducts Corporation hammer assemblies (components of high-speed printers) to Startek Industries, the low offeror under solicitation No. DLA 900-83-R-0654, issued by the Defense Logistics Agency. Camex alleges that Startek, which is planning to subcontract the entire requirement to Saga Engineering Inc., has submitted a proposal based on used surplus parts while misrepresenting these parts to the contracting officer as unused surplus. Camex argues that Startek thus gained an unfair competitive advantage over Camex, which submitted a proposal based on new, nonsurplus parts.

We dismiss the protest.

The solicitation permitted offers to furnish new, as opposed to used or reconditioned, surplus hammer assemblies. Startek represented in its offer that the hammer assemblies it will acquire are new surplus. During negotiations, Startek specifically agreed, as a condition of acceptance of its offer, to a Government source inspection assuring the hammer assemblies are new. In response to a request by the Government buyer, both Startek and Saga

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B-211413

individually confirmed by letter that the hammer assemblies are new items. Finally, the preaward survey team found that the assemblies indeed appeared to be "new, unused and serviceable."

In essence, Camex's protest challenges the contracting officer's determination that Startek is a responsible contractor, that is, that Startek will be able to supply the new items that it will be obligated to supply if its offer is accepted. This Office does not review affirmative determinations of responsibility unless there is a showing of fraud on the part of procurement officials or an allegation that definitive responsibility criteria were not applied. See Delta Elevator Service Corporation, B-208252, March 23, 1983, 83-1 CPD 299. There has been no suggestion of fraud in this case, and the new material requirement is not a definitive responsibility criterion. See E. J. Nachtwey, B-209562, January 31, 1983, 83-1 CPD 104.

Camex contends that Startek in fact may supply used surplus parts and therefore not perform in accordance with the contract. Whether Startek actually fulfills its contract obligation, however, is a matter of contract administration, which is the procuring agency's responsibility, not this Office's. See Markhurd Aerial Surveys, Inc., B-210108, January 17, 1983, 83-1 CPD 51.

The protest is dismissed.


for Harry R. Van Cleve
Acting General Counsel