DECISION

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

FILE: B-221313 **DATE:** April 22, 1986

MATTER OF: C.R. Daniels, Inc.

DIGEST:

1. Under applicable provision of Federal Acquisition Regulation a component of an end item need not qualify for inclusion on the qualified products list until time of award of a subcontract for the component. Where the solicitation did not require the bidders to identify the manufacturer of the fabric used in the end product being procured and low bid did not take any exception to the solicitation's requirements, protest that the low bid was nonresponsive for failure to offer an end product which was made of a qualified product list fabric is denied.

2. Whether bidders will provide component of an end item which is qualified for inclusion on qualified products list concerns matters of bidder responsibility and contract administration. General Accounting Office (GAO) will not review either matter. GAO does not review affirmative determinations of responsibility absent a showing of possible fraud or bad faith by contracting officials or that definitive responsibility criteria have not been applied. Contract administration is the responsibility of the agency and not GAO.

3. General Accounting Office will not consider protest that more restrictive specifications are required to meet the government's minimum needs.

C.R. Daniels, Inc. (Daniels) has protested a proposed award to AMI Industries, Inc. (AMI) under invitation for bids (IFB) No. DAAJ09-85-B-A411 issued July 16, 1985, by the Army Aviation Systems Command, St. Louis, Missouri, for troop seat cover assemblies for UH-60 aircraft. Daniels, the fourth low bidder under the solicitation, contends that it is the only bidder which can satisfy the solicitation's requirements that the fabric for the seat cover assemblies appear on the applicable qualified products list (QPL).

Daniels also objects to the agency's decision not to require a prequalification test for the fabric.

The protest is denied in part and dismissed in part.

The protest concerns a procurement of 10,366 troop seat cover assemblies for Sikorsky UH-60 helicopters. The IFB incorporated by reference the specifications in procurement package No. 70500-02161, which in turn refers to specification SS 9512, which provides that the cloth furnished under the specification shall be a product which has been tested, has passed the specification qualification tests, and has been listed on the QPL. Daniels asserts that AMI's bid is nonresponsive since AMI allegedly was unable to offer a qualified product at the time of bid opening. In response, the Army states that since the fabric is a component of the end item procured--troop seat cover assemblies--there is no requirement that the fabric have been qualified for QPL listing at the time of bid opening. The protester contends that the fabric is not a "mere component" of the troop seat cover assembly but constitutes over 80 percent of its value and virtually "all of its functional importance." The protester concludes that the government is in effect purchasing fabric with value added by the labor involved in cutting and fitting the fabric.

We reject the protester's contention that the fabric--not troop seat cover assemblies--is the real end item being procured. The solicitation provides for the procurement of troop seat cover assemblies and it is well established that an "end" product or item is the item to be delivered to the government as specified in the contract. See Dictaphone Corp., B-191383, May 8, 1978, 78-1 C.P.D. ¶ 343. The fact that the fabric may constitute "eighty percent" of the value of the seat cover assembly, as alleged by the protester, does not alter the fabric's status as a component of the end item being procured. The fabric, at a minimum, must be cut and sewed in order to be used in the troop seat cover assemblies, and must be combined with metal parts. The fact that this may not be a complex manufacturing process or may not alter the fabric in a significant way does not change the fact that it is only the total assembly, and not just the fabric, that the government is buying, and it is thus the seat cover assembly that properly must be viewed as the end product here. See generally Imperial Eastman Corp.; Thorsen Tool Co., 53 Comp. Gen. 726 (1974), 74-1 C.P.D. ¶ 153.

Accordingly, since the fabric is properly regarded as a component of the end item being procured, the situation is

governed by the Federal Acquisition Regulation (FAR), 48 C.F.R. § 9.206-1(b) (1984). Under this provision, if a prime contractor is to acquire a qualified product as a component of an end item, the contracting officer shall require the contractor to furnish a component that is a qualified product before award of a subcontract for the component. Thus, the fabric is required to be a qualified product by the time of a subcontract award for that component; it need not be qualified at the time of bid opening. Furthermore, there is no provision in the solicitation which required bidders to indicate that they would be furnishing fabric qualified for inclusion on the QPL or to identify the manufacturer of the fabric, and AMI's bid took no exception to the QPL requirement for the fabric. Accordingly, there is no basis to question the responsiveness of the bid submitted by AMI. See B-171831(1), June 9, 1971, and McIntyre Engineering Co., Inc., B-190136, Aug. 29, 1978, 78-2 C.P.D. ¶ 148 at 3.

Daniels asserts that even if the matter of the QPL requirement is viewed as a matter of bidder responsibility, the Army improperly determined AMI to be responsible because AMI allegedly cannot supply seat assemblies with a QPL fabric. Our Office will not review a contracting agency's affirmative determination of responsibility absent a showing of possible fraud or bad faith on the part of contracting officials or that definitive responsibility criteria in the solicitation have not been applied. Bay Cities Refuse Services, Inc., B-220164, Sept. 6, 1985, 85-2 C.P.D. ¶ 277. While the protester has not alleged fraud or bad faith on the part of agency officials, it has asserted that the qualified products requirement in the solicitation should be viewed as a definitive responsibility criterion since the protester views a firm's ability to meet the QPL requirement as being susceptible to objective measurement. Daniels points out that the contractor's obligation to meet the QPL is neither subjective nor vague but represents an obligation of the contractor which can be expressly evaluated in the same manner as definitive responsibility criteria set forth in a commercial product requirement or a minimum experience requirement.

A definitive responsibility criterion is an objective standard relevant to an offeror's ability to perform--such as a particular level of specific experience--that a bidder must possess as a prerequisite to award. See Aviation Contractor Employees, Inc.--Request for Reconsideration, B-219999.2, Sept. 6, 1985, 85-2 C.P.D. ¶ 276. The matter of

whether an offeror will furnish a component which is a qualified product before award of a subcontract for the component is not an objective standard related to an offeror's ability to perform. See American Athletic Equipment Division, AMF, Inc., 58 Comp. Gen. 381, 382 (1979), 79-1 C.P.D. ¶ 216 at 3, wherein we stated that the QPL system concerns the qualification of a product whereas definitive responsibility criteria are solely concerned with the responsibility of an offeror. See also Clausing Machine Tools, B-216113, May 13, 1985, 85-1 C.P.D. ¶ 533 at 3, 4, wherein we pointed out that our Office has recently recognized that generally a commercial product requirement in a solicitation is not a definitive criterion of responsibility but is like any other specification requirement concerning the product to be furnished in that the offeror's ability to meet the specification's requirements is encompassed by the contracting officer's subjective responsibility determination. Accordingly, we will not review the contracting officer's affirmative determination of AMI's responsibility. Whether AMI will in fact provide seat cover assemblies using a QPL fabric in conformance with the IFB requirements concerns a matter of contract administration which we do not review since it is the responsibility of the contracting agency. See S.A.F.E. Export Corp., B-213027, June 27, 1984, 84-1 C.P.D. ¶ 675. We note that the agency has advised that fabric which is a qualified product eligible for inclusion on the QPL is available from Burcott Mills, Inc. as well as from Daniels and that other sources may also be able to meet the QPL requirement for the fabric.

Daniels also objects to the agency's failure to require prequalification testing of the fabric assemblies offered by AMI. The protester asserts that since the stress characteristics of the fabric are an integral part of the seat's overall performance in passing the tests for the seat assembly QPL requirement, the government should also require the fabric assembly to meet tests which satisfy the QPL standards for the seat assembly. The agency responds that the qualification testing suggested by the protester exceeds the government's actual needs. The Army has determined that its minimum needs will be met by requiring bidders to provide component fabric from a QPL manufacturer and to pass a post award first article test before commencing production of the troop seat covers.

Daniels' protest of the IFB's failure to require prequalification testing for fabric is untimely since it was first filed after the September 16, 1985, bid opening. 4 C.F.R. § 21.2(a)(1) (1985). Furthermore, allegations to

the effect that a solicitation's specifications are not restrictive enough generally will not be considered by our Office. A protester's interest as a beneficiary of more restrictive specifications is not protectable under our bid protest function, which is intended to insure that the statutes and regulations requiring full and open competition in federal procurements are met. APEC Technology Limited, B-220644, Jan. 23, 1986, 65 Comp. Gen. ___, 86-1 C.P.D. ¶ 81 and MEPECC International, B-213960, May 1, 1984, 84-1 C.P.D. ¶ 487 at 3. Accordingly, we will not consider this aspect of the protest.

The protest is denied in part and dismissed in part.

for Seymour Efros
Harry R. Van Cleve
General Counsel