

DECISION

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

FILE: B-223089

DATE: May 22, 1986

MATTER OF: Sparklet Devices, Inc.

DIGEST:

1. Protest against apparent IFB improprieties is untimely where filed after bid opening.
2. GAO does not consider whether a bidder qualifies as a manufacturer or regular dealer under the Walsh-Healey Act.
3. GAO dismisses protest that dollar threshold established pursuant to Trade Agreements Act of 1979 for offers of eligible products originating in designated countries, over which amount domestic-preference provisions of Buy American Act are waived, is too low. Dollar threshold is determined by United States Trade Representative by direction of the President to implement the Act, and GAO has no legal authority to review it in a bid protest.
4. GAO will not review an affirmative determination of responsibility absent a showing of fraud or bad faith, or that a definitive responsibility criterion was not met.

Sparklet Devices, Inc. (Sparklet), protests certain provisions in Defense Logistics Agency (DLA) invitation for bids (IFB) No. DLA700-86-B-0078 and the proposed award of a contract under the solicitation to Leland Industries. We dismiss the protest.

Sparklet first contends that the solicitation does not include inspection requirements stringent enough to protect the government's interest.

This issue is untimely. Our Bid Protest Regulations require that a protest against alleged solicitation defects be filed before bid opening, 4 C.F.R. § 21.2(a)(1) (1985), and provide that if a firm protested a matter to the contracting activity before complaining to our Office, we will consider the complaint only if the initial protest was

035504

timely filed. 4 C.F.R. § 21.2(a)(3). Sparklet, however, first complained about the IFB's inspection requirements in a protest filed with DLA after bid opening.

In any event, absent evidence of possible fraud or willful misconduct by government officials, we consistently have refused to review allegations that a solicitation should have included more stringent requirements. The reason is that procuring officials and user activities, not our Office, are responsible for ensuring that solicitations include sufficiently rigorous specifications to meet the government's legitimate needs and to protect the government's interests, since they suffer the consequences of obtaining inadequate supplies. See Olson and Associates Engineering, Inc., B-215742, July 30, 1984, 84-2 C.P.D. ¶ 129.

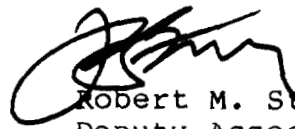
Sparklet next contends that Leland does not qualify as a manufacturer or regular dealer under the Walsh-Healey Public Contracts Act and, therefore, is not eligible for award. Our Office, however, does not consider whether a bidder so qualifies. By law, such matters are for determination by the contracting agency in the first instance, subject to final review by the Small Business Administration, if a small business is involved, and by the Secretary of Labor. See 4 C.F.R. § 21.3(f)(9).

Sparklet also suggests that the dollar threshold established pursuant to the Trade Agreements Act of 1979, 19 U.S.C. § 2501 (1982), for offers of eligible products originating in designated countries, over which the domestic-preference provisions of the Buy American Act are waived, is too low for this particular procurement.

We will not consider this matter. The dollar threshold in issue is determined by the United States Trade Representative by direction of the President, to implement the Trade Agreements Act. See Federal Acquisition Regulation, 48 C.F.R. § 25.402 (1984). Our Office has no legal authority to review that determination in a bid protest.

Finally, Sparklet contends that Leland is not a responsible concern for purposes of this contract effort. Our Office, however, does not review an affirmative determination of responsibility, which must precede any award to Leland, absent a showing that it was made fraudulently or in bad faith, or that definitive responsibility criteria in the solicitation were not met. 4 C.F.R. § 21.3(f)(5). These exceptions do not apply here.

The protest is dismissed.

A handwritten signature in black ink, appearing to read 'R. Strong', is written over the typed name.

Robert M. Strong
Deputy Associate General Counsel