



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Supreme Edgelight Devices, Inc.

File: B-261667

Date: September 28, 1995

Sam Zalman Gdanski, Esq., for the protester.

Niketa L. Wharton, Esq., Defense Logistics Agency, for the agency.

Katherine I. Riback, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protester's assertion that it can supply satisfactory airplane cockpit light panels does not establish that the contracting agency's requirement for qualification testing is unreasonable where the part is critical to the safe, effective operation of the aircraft, and protester's preference not to undergo prequalification testing does not call into question the propriety of the testing requirement.

DECISION

Supreme Edgelight Devices, Inc. protests the terms of request for quotations (RFQ) No. SPO400-95-T-F752, issued by the Defense General Supply Center (DGSC), Defense Logistics Agency (DLA), for certain aircraft cockpit light panels. Supreme contends that DLA has improperly restricted competition to products listed on the applicable Qualified Products List (QPL). Supreme argues that the testing necessary for its products to be listed on the QPL is expensive and thus unduly restrictive of competition, particularly for small businesses like itself.

We deny the protest.

DLA issued the RFQ on May 27, 1995, for 130 indicating panel transmitting lights, national stock number (NSN) 6220-01-003-1929, which are identified as critical items. The subject light panels are to be manufactured in accordance with the Magnavox drawing for MESC Electronic Systems, Inc., part number (P/N) 155229-4. MESC Electronic Systems, Inc., Magnavox, is the original equipment manufacturer for this stock number. According to the Magnavox drawing for this part number, the light panels to be acquired under the RFQ are described by military specification MIL-P-7788. This specification requires specific materials, processes, and photometric testing to assure that the light panels meet certain lighting requirements in aircraft cockpits, and requires that the furnished panels be listed on

the applicable QPL. In this regard, the RFQ provided that only products listed on an applicable QPL, which is based upon MIL-P-7788, would be acceptable. The QPL is administered by the Naval Air Warfare Center (NAWC), Aircraft Division, Indianapolis, Indiana. At the time the RFQ was issued, the QPL included 16 manufacturers of these light panels.

Supreme Edgelight, which has not submitted its light panel to the agency for prequalification testing, argues that the prequalification testing requirements necessary to become included on the QPL are unreasonable and unduly restrict competition.

The use of a QPL in the procurement of qualified products is inherently restrictive of competition. McGean Rohco, Inc., 64 Comp. Gen. 752 (1985), 85-2 CPD ¶ 140. The purpose of the QPL system is to allow the efficient procurement of items which require substantial testing to demonstrate compliance with specification requirements. D. Moody & Co., Inc.; Astronautics Corp. of Am., 55 Comp. Gen. 1 (1975), 75-2 CPD ¶ 1. The procurement of qualified products is a two-step process in which (1) products are tested for compliance with specifications and, if found in compliance, listed on the appropriate QPL, and (2) products on the QPL may then be procured. T.G.L. Rubber Co., Ltd., B-206923, Sept. 20, 1982, 82-2 CPD ¶ 239. Under 10 U.S.C. § 2319(b) (1994) potential offerors are to be provided an opportunity to demonstrate their ability to provide an acceptable product and an agency must promptly advise offerors whether qualification was attained and if not, why not. NASCO Eng'g, Inc., B-224292, Jan. 14, 1987, 87-1 CPD ¶ 57. While 10 U.S.C. § 2319(d)(1) provides that the contracting agency shall bear the cost of testing and evaluating the product of a small business concern, where there are less than two qualified products and where projected savings justify such action, this provision is not applicable here because the applicable QPL lists 16 manufacturers of light panels. See Vac-Hud Corp., 64 Comp. Gen. 658 (1985), 85-2 CPD ¶ 2.

According to the agency, military specification MIL-P-7788, which lists all the tests the light panels must pass before they are listed on the QPL, is the recognized panel manufacturing standard used for manufacturing and for performing photometric testing. The agency explains that the qualification testing of the light panels is necessary to ensure the safe operation of the light panels and to prevent hazards to pilots due to poor readability of the displayed information. While Supreme Edgelight argues that military specification MIL-L-85762, Night Vision Imaging Systems Compatible Aircraft Interior Lighting, which is referenced in MIL-P-7788, is inapplicable to this solicitation, the agency points out that while the light panels to be procured under this solicitation are not night vision applicable, they must be fully compatible with advanced cockpit design and air crew night vision sensitivity. The agency explains that deficient panels may produce serious hazards to pilots due to the blinding effect that noncompatible lights have on pilots flying night vision missions.

The protester's position is simply that the qualification testing is highly complex and expensive.¹ The fact that QPL testing has associated costs does not demonstrate that the agency's position lacks a reasonable basis in the face of a record which supports the reasonableness of the agency's critical designation and its concomitant determination that testing of the light panels is necessary. See Silco Eng'g & Mfg. Co., B-250012.6, May 7, 1993, 93-1 CPD ¶ 372.

The protest is denied.

/s/ Ronald Berger
for Robert P. Murphy
General Counsel

¹Supreme Edgelight also argues that the agency failed to provide it with notice concerning how to become an approved source. However, it is clear that the protester was not prejudiced by the agency's failure to provide such notice because the protester explicitly stated during the course of this protest that it has no intention of applying for approved status because it does not believe that it should be required to have its product tested, and because it lacks the resources and wherewithal to do so.