

DECISION



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THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20540

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FILE: B-181724

DATE: July 26, 1974

MATTER OF: Central Metal Products, Incorporated ^{P. 195}
Solicitation No. M2-40-74

DIGEST: GAO has discontinued practice of reviewing bid protests of contracting officer's affirmative responsibility determination except for actions by procuring officials which are tantamount to fraud.

2 Central Metal Products protests the selection of Wyott Corporation for award under a solicitation issued by the Veterans Administration, Illinois, on the basis that Wyott allegedly has no experience in the manufacture of the type of cabinets being purchased by the Veterans Administration and is therefore unqualified to receive the award. ^{P. 3739}
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In essence the [protester questions the responsibility of the low bidder] and its eligibility for contract award.

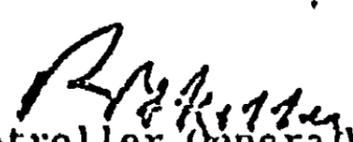
This Office has discontinued its prior practice of reviewing bid protests involving a contracting officer's affirmative determination of responsibility of a prospective contractor. B-177512, June 7, 1974. The standards for responsible prospective contractors and the requirements and procedures for responsibility determinations essentially involve a matter of business judgment. See Federal Procurement Regulations 1-1.1200 et seq. and Armed Services Procurement Regulation 1-900 et seq. The courts have held that a party alleging arbitrary action by an agency must meet a high standard of proof by showing that such arbitrary action as alleged did in fact exist. Keco Industries v. United States, 428 F. 2d 1233, 1240 (Ct. Cl. 1970). Moreover, the court has observed that criteria for determining bidder responsibility "are not readily susceptible to reasoned judicial review." Keco Industries v. United States, 492 F. 2d 1200, 1205 (Ct. Cl. 1974). As a practical matter a bidder protesting the affirmative responsibility of a competitor is not in a position to meet this high standard of proof as contrasted to the degree of first hand knowledge and access to the low bidder's plant and records which the Government has. We believe it is

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clear that no significant purpose would be served by our continued review of such matters.

For these reasons we do not believe affirmative responsibility determinations should be questioned by this Office except for actions by procuring officials which are tantamount to fraud. No fraud having been alleged or demonstrated, we must decline to further consider the matter.


Deputy Comptroller General
of the United States