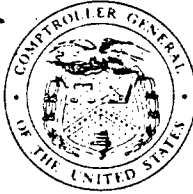


# DECISION



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

61576

FILE: B-187255

DATE: September 30, 1976

MATTER OF: Limpio Industries

97947

## DIGEST:

1. Protests concerning affirmative determinations of responsibility are no longer reviewed by the General Accounting Office except for reasons not applicable in this case.
2. Conclusive authority to decide size status of a concern rests, by law, with Small Business Administration and is not a matter for consideration by our Office.

Limpio Industries (Limpio) protested the anticipated award of a contract to Glaze Custodial Company (Glaze) for custodial services at Fort Bliss, Texas, under invitation for bids No. DATB51-76-B-0204, issued by the Department of the Army (Army). Limpio contends in effect that Glaze and the second low bidder Best Services, Inc. (Best), are not responsible bidders and also that they are not legitimate small business concerns. We have been informally advised by the Army that subsequent to the filing of Limpio's protest, Glaze was permitted to withdraw its bid on the basis of mistake. Limpio's protest is therefore moot insofar as Glaze is concerned and we will consider Limpio's arguments as being confined to Best.

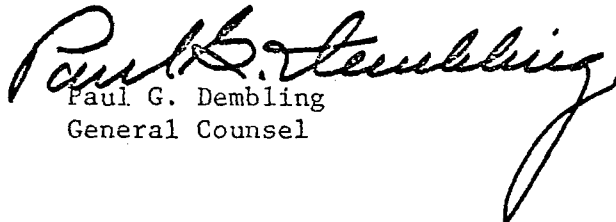
Limpio asserts that the price bid by Best is so low as to call into question whether it could perform the contract. While Limpio asserts that the bid is "nonresponsive" for this reason, we believe the protester is actually questioning the bidder's responsibility, or its ability to perform. See A.C. Electronics, Inc., B-185553, May 3, 1976, 76-1 CPD 295. While it does not appear that the contracting officer has as yet made a determination as to Best's responsibility, it should be noted that this Office no longer reviews protests concerning affirmative determinations of responsibility, absent allegations of fraud on the part of contracting officials or of the failure to apply definitive responsibility criteria. Central Metal Products, Inc.,

B-187225

54 Comp. Gen. 66 (1974) 74-2 CPD 64; Data Test Corporation, 54 Comp. Gen. 499 (1974), 74-2 CPD 365, affirmed 54 Comp. Gen. 715 (1975), 75-1 CPD 138. While we do consider protests involving negative determinations of the protester's responsibility in order to provide assurance against the arbitrary rejection of bids, affirmative determinations are based in large measure on subjective judgments which are largely within the discretion of the procuring officials who must suffer any difficulties resulting by reason of a contractor's inability to perform.

While Limpio also may be objecting to the small business status of Best, the protest is not for consideration by this Office because the Small Business Administration is vested, by law, with conclusive authority to determine a business concern's size status. Dynamic International, Inc., B-185337, January 7, 1976, 76-1 CPD 11.

In view of the fact that the bases for the protest concern matters which are not for consideration by our Office, we are closing our file without further action.

  
Paul G. Dembling  
General Counsel