

DECISION



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

FILE: B-186899

DATE: July 27, 1976

MATTER OF: Southern Sportswear, Inc.

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DIGEST:

1. Protest which alleges that another bidder is not responsible firm will not be considered.
2. Protest which questions the small business status of another bidder is matter for consideration by Small Business Administration under 15 U.S.C. § 637(b) (6) (1970).

Southern Sportswear, Inc. initially protested the Defense Personnel Support Center, Philadelphia, Pennsylvania, making any award under invitation for bids DSA100-76-B-1058, for trouser liners, to Kingspoint Manufacturing Company (Kingspoint) on the grounds that Kingspoint was not a responsible bidder and that Kingspoint was not a legitimate small business concern. In a formal letter which followed the initial protest the protester dealt solely with the issue of whether Kingspoint was a small business concern within the meaning of the Small Business Administration's regulations.

However, neither basis of the protest concerns a matter for our consideration.

With regard to the contention that Kingspoint is not a responsible bidder, this Office does not review protests against affirmative determinations of responsibility, unless either fraud is alleged on the part of procuring officials or where the solicitation contains definitive responsibility criteria which allegedly have not been applied. See Central Metal Products, Inc., 54 Comp. Gen. 66 (1974), 74-2 CPD 64. Affirmative determinations are based in large measure on subjective judgments which are largely within the discretion of procuring officials who must suffer any difficulties experienced by reason of a contractor's inability to perform. However, we will continue to consider protests against determinations of nonresponsibility to provide assurance against the arbitrary rejection of bids.

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Under 15 U.S.C. § 637(b)(6) (1970), it is the duty of SBA, rather than GAO, to determine whether a concern is small business for purposes of a particular procurement and SBA's determination is conclusive upon the procurement agency involved. Matter of RAS Sanitation, Inc., B-180705, March 28, 1974, 74-1 CPD 151.

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.

Milton Rowland
for Paul G. Dembling
General Counsel