

01412

Bart Japikse  
Proc. II

**DECISION**



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

**FILE: B-187959**

**DATE: December 27, 1976**

**MATTER OF: Johann Gieseler K. G. Spedition**

**DIGEST:**

Protest filed by third low offeror anticipating that agency will make negative determination concerning protester's responsibility is dismissed as academic because agency proposes to make award to lower priced offeror and question of protester's responsibility will not be reached.

Johann Gieseler K. G. Spedition (Gieseler) protests any finding of nonresponsibility regarding the Department of the Army's procurement of local drayage requirements under RFP LAJA 37-77-R-0042, issued by the Army Procurement Agency, Europe, Frankfurt/M., Germany. The gravamen of Gieseler's complaint is that it anticipates being found to be nonresponsible, since its current contract with the Army has been terminated for fraud, and since the Army has instituted debarment proceedings. Gieseler denies that it has committed any fraud, and has appealed the termination to the Board of Contract Appeals.

The Army has indicated to this Office that award to Gieseler would not be appropriate, in any event, because Gieseler submitted the third low offer, and the Army proposes to make award to a lower priced offeror. It appears that no determination of nonresponsibility has been made regarding Gieseler in connection with this procurement, and we are informed that the Army does not intend to do so. In that regard, the Army's intended award will preclude consideration of award to Gieseler and render academic the issue of the protester's responsibility for this procurement. Armed Services Procurement Regulation §§ 1-902, 1-905.1(d)(1975 ed.).

Accordingly, Gieseler's protest is dismissed.

*Milton Fowler*  
for Paul G. Dembling  
General Counsel