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Brent G. Wolmer Am. 7075
Proc. Law II

DECISION



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

FILE: B-187782

DATE: January 11, 1977

MATTER OF: What-Mac Contractors, Inc. - Reconsideration

DIGEST:

Prior decision denying protest, which was based solely on protester's submissions, is affirmed notwithstanding protester's assertion that it was denied opportunity to comment on agency report, since report was not obtained in view of protest allegations which on their face were legally without merit.

By letter dated December 21, 1976, counsel for What-Mac Contractors, Inc. (What-Mac) requests reconsideration of What-Mac Contractors, Inc., B-187782, December 15, 1976, 76-2 CPD _____. What-Mac contends that the decision was "arbitrary, capricious and unreasonable" because it was rendered without affording What-Mac the opportunity provided by section 20.3 of our Bid Protest Procedures (4 C.F.R. § 20.3 (1976)) to review and/or comment on the contracting agency's report which What-Mac assumes was submitted in response to the protest.

There was no such report in this case. Although it is our general practice to request and obtain a report from the contracting agency when a protest is filed, we did not request a report in this case because it appeared from the face of the protester's submissions that the protest was legally without merit. For example, the protester's major allegation was that the wage determination included in the solicitation was defective because the contracting agency did not provide information to the Department of Labor regarding the wages and fringe benefits paid to the incumbent contractor's employees. However, the applicable regulations only require the agency to provide such information when the incumbent contractor's employees are covered by a collective bargaining agreement, and What-Mac orally advised this Office that there was no such collective bargaining agreement. Thus, it could be determined directly from the protester's submissions that the allegation provided no basis for sustaining the protest. Under such circumstances, and in view of the need to resolve bid protests as expeditiously as possible, we determined that no useful purpose would have been served by our requesting a formal

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documented report. However, in light of What-Mac's additional contention that the agency had imposed a contract requirement not set forth in the solicitation, we did informally query the agency on that point and were advised that no such requirement had been imposed. We pointed out that, in any event, this particular issue was a matter of contract administration and was not for resolution under our Bid Protest Procedures. Thus, the correctness of the agency's statement was irrelevant to our decision.

The prior decision is affirmed.

Deputy

R. J. Koss
Comptroller General
of the United States