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C. H. ...
Proc II

DECISION



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

FILE: B-192519

DATE: August 30, 1978

MATTER OF: Western Filament, Inc.

DIGEST:

1. Allegations that proposed awardee is unable to meet proposed delivery and performance schedule and will violate ASPR 7-2003.2(b) relate to bidder responsibility, affirmative determinations of which are not reviewed by GAO except in limited circumstances not present here.
2. Question of whether proposed awardee is regular dealer and manufacturer under Walsh-Healey Act is matter for determination by contracting agency subject to review by Small Business Administration (when small business involved) and by Secretary of Labor and is not reviewed by GAO.

Western Filament, Inc. (Western) protests the award of a contract to FWF Industries (FWF) by the Department of the Navy, Navy Ship Parts Control Center, Mechanicsburg, Pennsylvania (Navy), under invitation for bids (IFB) No. NU0104-78-B-0827.

Western alleges that FWF is not a responsible bidder, is not a regular dealer or manufacturer as required by the Walsh-Healey Act, and intends to subcontract to a large business concern in violation of the clause set forth in Armed Services Procurement Regulation (ASPR) 7-2003.2(b) (1976 ed.) for use in small business set-asides.

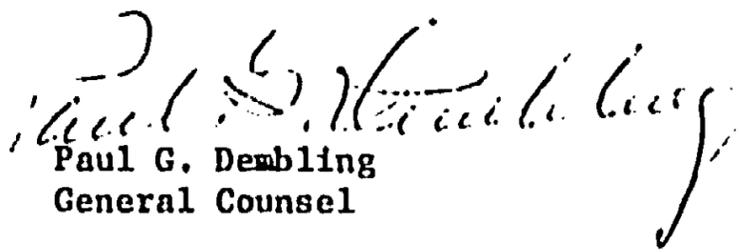
With respect to FWF's responsibility, Western asserts that FWF lacks production capacity to meet the delivery or performance schedule and intends to meet requirements only through violating ASPR 7-2003.2(b). However, an affirmative determination that a proposed awardee can and will perform in accordance with IFB requirements and restrictions is one made by procuring officials and is not reviewed by this Office unless either fraud is alleged on the part of procuring officials or the solicitation contains definitive responsibility criteria which allegedly have not been applied. Central Metal Products, Inc., 54 Comp. Gen. 66 (1974), 74-2 CPD 64. Neither exception is present here.

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Moreover, once the contract is awarded, compliance with the delivery and performance schedule and with the ASPR 7-2003.2 (b) clause are matters of contract administration which are for resolution by the contractor and the procuring agency, not this Office. Gillette Industries, Inc., B-192175, July 7, 1978, 78-2 CPD ____.

This Office also does not determine whether a particular bidder qualifies as a regular dealer or manufacturer. Gillette Industries, Inc., supra, and cases cited therein. The initial determination of eligibility rests with the contracting officer, subject to final review by the Small Business Administration (SBA) (when a small business is involved) and by the Secretary of Labor. Protests challenging another bidder's eligibility should be lodged with the contracting officer, whose decision thereon when a small business firm's eligibility has been challenged is subject to further review by the SBA or the Secretary of Labor. See ASPR 12-604 (as amended by Defense Acquisition Circular #76-15, June 1, 1978).

The protest is dismissed.


Paul G. Dembling
General Counsel