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*R. Shepman  
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**DECISION**



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

FILE: B-191899

DATE: AUG 30 1978

MATTER OF: Alton Iron Works, Inc.

**DIGEST:**

Protest against rejection of low bid as nonresponsive and award to second low bidder will not be considered, since material issues involved are before court of competent jurisdiction.

Invitation for bids F04606-78-B-0070, was issued by McClellan Air Force Base for 82 F-105 engine fire seals. On bid opening Alton Iron Works, Inc. (Alton), was low with an alleged unit bid of \$575 for a total of \$47,150 (\$575 times 82). However, Alton had placed a rubber stamp impression on its bid stating: "Bidder proposes maximum acceptable delivery schedule."

The contracting officer found that this stamp provision constituted "\* \* \* attempts to limit your liability to the Government and allows Alton to impose a condition which is prejudicial to other bidders", and rejected the bid pursuant to section 2-404.2(d) of the Armed Services Procurement Regulations. The contract was awarded to L&S Machine Co., Inc., at a per unit price of \$956.65 for a total of \$81,725.30 for the 82 units solicited.

Alton has protested to our Office alleging improprieties in award, specifically, the rejection of its bid as nonresponsive, the acceptance at an unconscionable price of the bid of L&S Machine Company, Inc., and negotiation on a formally advertised procurement. However, on or about June 6, 1978, Alton filed an action in the United States District Court for the Eastern District of New York, Civil Action 78-C1211, seeking damages of \$9,500 "\* \* \* for loss of profits in not receiving the contract \* \* \*." The issues raised in the protest must be considered by the court in the judicial proceeding.

It is the policy of our Office not to decide matters where the material issues involved are before a court of competent jurisdiction unless the court expects, requests or otherwise expresses interest in receiving our decision. See section 20.10 of our Bid Protest Procedures, 4 C.F.R. part 20 (1977); The George Sollitt Construction Company, B-190743, January 9, 1978, 78-1 CPD 17. The court has not requested nor expressed an interest in receiving our views. Therefore, we will take no further action on the protest while the matter is pending in court.

Paul G. Dembling

Paul G. Dembling  
General Counsel