

Robert
PL-11.

DECISION



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

75??

FILE: B-192604

DATE: September 8, 1978

MATTER OF: Kurz-Kasch, Inc.

DIGEST:

1. Allegations of a "Buy-In," which would result in a loss contract, and awardee's inability to perform contract provide no bases upon which award may be challenged.
2. GAO does not review affirmative determinations of responsibility absent circumstances not present here.
3. Burden is on protester to substantiate its case. In carrying out protest decision function, GAO will not conduct investigation to establish whether protester's speculative statements are valid.

By letter to this Office dated August 9, 1978, Kurz-Kasch, Inc. (Kurz), has protested the award of a contract to Reynolds & Taylor, Inc. (Reynolds) under invitation for bids (IFB) DAAA09-78-B-6628 for M16/16A1 Rifle Buttstock Assemblies issued by the U. S. Army Armament Readiness Command (Army). Kurz, the second low bidder, alleges that the Reynolds bid was a "Buy-In" which could only result in a loss contract, and further, that Reynolds was not equipped to produce the product required.

The protester's initial submission raises issues which we have determined to be not reviewable by this Office. We have held that the possibility of a "Buy-In" or the submission of a below cost bid is not a proper basis upon which to challenge the validity of

a contract award. Inter-Con Security Systems, Inc., B-189165, July 15, 1977, 77-1 CPD 434. Proper rejection of a bid as extremely low requires a determination that the bidder is nonresponsible or incapable of performance. See Putronics Industries, Inc., B-185896, March 10, 1976, 76-1 CPD 169. However, this Office does not review protests which question an affirmative determination of responsibility, such as the one made in the instant case, except in circumstances not pertinent here. Central Metal Products, Inc., 54 Comp. Gen. 66 (1974), 74-2 CPD 64.

Further allegations concerning the pendency of a Kurz court action for injunctive relief and damages for unfair competition against its former employees who allegedly provided Reynolds with Kurz trade secrets, and Kurz's speculation that Reynolds may have obtained knowledge of its bid prior to bid opening will not be considered by this Office. Kurz's suggestion that we investigate these matters is denied because the burden is on the protester to present the information and evidence necessary to substantiate its case. Our Office in its protest decision function will not conduct investigations to establish whether a protester's speculative statements are valid. Mil-Air, Inc., B-191424, July 20, 1978, 78-2 CPE 55.

Accordingly, the protest is dismissed.

for *Milton J. Proctor*
Paul G. Dembling
General Counsel