

DECISION



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

FILE: B-195954

DATE: September 28, 1979

MATTER OF: F&H Manufacturing Corporation

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02912*

DIGEST: *[Protest Alleging That Low Bidder Was Not Responsible]*

1. GAO does not review affirmative determinations of responsibility, absent either allegations of fraud on part of procuring officials or allegations of nonapplication of definitive responsibility criteria contained in solicitation. Neither exception is present here.
2. To be timely, protest based on alleged defects apparent in IFB must be filed prior to bid opening. Protest that option quantity should be considered in evaluating bid is untimely, since IFB stated that option quantity would not be evaluated, and protest was not filed prior to bid opening.
3. Protest will be dismissed on basis of initial submission of protester where that submission clearly shows that protest is not reviewable.

F&H Manufacturing Corporation (F&H) has protested the proposed award of a contract for tow bars to the Cantrill Development Corporation (Cantrill), under IFB-DAA09-79-B-4236, issued by the Army Armament Materiel Readiness Command, Rock Island, Illinois.

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F&H contends that Cantrill, the low bidder, is not responsible and has been shown copies of F&H's allegations concerning responsibility, thus permitting Cantrill to attempt to rebut F&H's contentions. Finally, F&H argues that it would be the low bidder if option quantities were considered in evaluating bids.

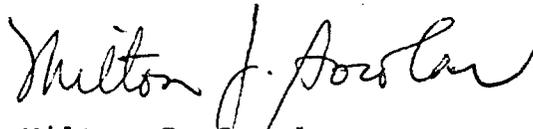
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It is clear, for the reasons that follow, that from the protester's initial submission the protest is not reviewable, and we will decide the matter on the basis of this submission without requesting an agency report. Bates and Associates, Inc., B-192589, August 24, 1978, 78-2 CPD 143; Lewis Corporation, B-194213, April 2, 1979, 79-1 CPD 228.

As F&H recognizes, our Office will not review affirmative determinations of responsibility unless either fraud on the part of the procuring officials is alleged or the solicitation contains definitive responsibility criteria which allegedly have not been applied. Meyers Industries, Inc., B-192128, July 21, 1978, 78-2 CPD 60. Neither exception is present here. Additionally, we see nothing improper in permitting Cantrill to attempt to rebut F&H's contentions.

Concerning evaluation of option quantities, we have been advised that the IFB provided that bids would be evaluated only on the basis of the basic quantity. Protests based on alleged defects apparent from the solicitation, as this is, must be filed before bid opening in order to be timely. 4 C.F.R. § 20.2(b)(1) (1979). Bid opening was March 1, 1979, and the protest was filed here on September 5, 1979; therefore, it is untimely.

The protest is summarily dismissed.



Milton J. Socolar
General Counsel