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DECISION



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

FILE: B-206193

DATE: February 3, 1982

MATTER OF: Proper Manufacturing Company, Inc.

DIGEST:

Protest that award should not be made to low bidder because it did not meet obligations under prior contracts is not reviewed by GAO since it involves a challenge to an affirmative determination of responsibility, which GAO does not consider in the absence of a showing of fraud by contracting officials or misapplication of definitive responsibility criteria set forth in the solicitation.

Proper Manufacturing Company, Inc. (Proper), protests the intended award of a contract to Aesculap, Inc. (Aesculap), the low bidder, under solicitation No. 120-82-B-0855, issued by the Defense Logistics Agency, for certain otoscope and ophthalmoscope sets. Proper contends that Aesculap should not be awarded the contract because Aesculap has failed to perform its contractual obligations under prior Government contracts for the same items.

Proper characterizes its protest as one relating both to Aesculap's responsibility and to its bid responsiveness. However, both assertions are based on Proper's alleged failure to meet previous contract obligations. The determination of a bidder's ability to perform involves responsibility, while responsiveness concerns the promise of a bidder to perform in accordance with the solicitation. Thus, a bid is "responsive" if, as submitted, it is an offer to perform the exact thing called for in the solicitation, without exception. Bowman Enterprises, Inc., B-194015, February 16, 1979, 79-1 CPD 121. Since there is no suggestion that Aesculap took any exception to solicitation requirements, we have no basis for viewing its bid as nonresponsive. Rather, both protest bases relate to Aesculap's responsibility

as a prospective contractor, Vanguard Industrial Corporation, B-203899, July 14, 1981, 81-2 CPD 30.

Our Office does not review protests of affirmative determinations of responsibility unless fraud on the part of procuring officials is alleged, or the solicitation contains definitive responsibility criteria which allegedly have been misapplied. Central Metal Products, Inc., 54 Comp. Gen. 66 (1974), 74-2 CPD 64. Neither exception is applicable here.

We dismiss the protest.

Harry R. Van Cleve
Harry R. Van Cleve
Acting General Counsel