

DECISION

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

SAPMAN
26-1
31969

FILE: B-219791 **DATE:** August 19, 1985
MATTER OF: J.D. Bertolini Industries, Ltd.

DIGEST:

1. A bid is responsive if the bidder has unconditionally offered to provide exactly what is called for in the solicitation and is not rendered nonresponsive by a below-cost bid, which concerns the responsibility of the bidder.
2. Whether or not a contractor delivers the goods or services in accordance with the specifications concerns contract compliance and administration which are the responsibility of the contracting agency, not our Office.

J.D. Bertolini Industries, Ltd. (Bertolini), protests award of a contract to either of the two lower bidders, Flexivan, Inc. (Flexivan), or Thrall Corporation (Thrall), under invitation for bids (IFB) No. N62472-85-B-3115, issued by the Naval Facilities Engineering Command for new and unused containers.

We dismiss the protest without obtaining a report from the contracting agency, or holding a conference on the matter as requested by the protester, since it is clear from the information provided by Bertolini that the protest is not for consideration by our Office. See Bid Protest Regulations 4 C.F.R. § 21.3(f) (1985).

Bertolini contends that the bids of Flexivan and Thrall are nonresponsive because they are too low to perform as required. Bertolini believes the bids either must be in error, or must evidence the bidders' intent to furnish other than "new and unused" containers as specified in the IFB. Bertolini believes that both lower bidders intend to furnish containers that have been used.

A bid is responsive if the bidder unconditionally has offered to provide exactly what is called for in a solicitation. Provost's Small Engine Service, Inc., B-215704, Feb. 4, 1985, 85-1 C.P.D. ¶ 130. Bertolini does not contend that Flexivan or Thrall took exception to any IFB

032856/127663

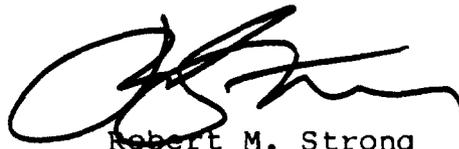
requirements in their bids, and the fact that Bertolini believes their bid prices were too low to perform does not render the bids nonresponsive.

A below cost bid relates to the responsibility of the bidder, not the responsiveness of the bid. See Chambers Consultants and Planners, B-217503, Feb. 5, 1985, 85-1 C.P.D. ¶ 143. The contracting officer must make an affirmative determination of the bidder's responsibility prior to awarding a contract, and consideration of the bidder's ability to perform satisfactorily at its offered price is part of this determination. Our Office will review such a determination only in limited circumstances, which the protester has not alleged are present here. 4 C.F.R. § 21.3(f)(5).

As for the alleged possible errors in the bids, it is solely the responsibility of the contracting parties--the government and the low bidder--to assert rights and bring forth all necessary evidence to resolve mistake in bid questions. Riverport Industries, Inc., B-218122, 63 Comp. Gen. ___ (1985), 85-1 C.P.D. ¶ 201. A protester thus has no standing to claim an error in another firm's bid.

Finally, whether or not Flexivan or Thrall, whichever receives the contract, in fact delivers new and unused containers concerns matters of contract compliance and administration, which are the responsibility of the contracting agency, not our Office. 4 C.F.R. § 21.3(f)(1); Sess Construction Co., B-216924, B-217057, 64 Comp. Gen. ___ (1985), 85-1 C.P.D. ¶ 319.

The protest is dismissed.


Robert M. Strong
Deputy Associate
General Counsel