

**DECISION**



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

FILE: B-186593

DATE: June 4, 1976

MATTER OF: The Everett Conklin Companies

DIGEST:

Protest that contractor is nonresponsible because of lack of financial resources and experience will not be considered since practice of reviewing protests against contracting officer's affirmative responsibility determination has been discontinued, except for actions by procurement officials which are tantamount to fraud or involve misapplication of definitive responsibility criteria contained in solicitation.

The Everett Conklin Companies protest award of a contract to Sunset Hills Foliage, Inc. (Sunset) under solicitation No. IFB3000-6-0057. The basis for the protest is the allegation that Sunset may not have the financial resources or experience to perform the contract. These are issues involving the responsibility of the bidder.

This Office does not review protests against affirmative determinations of responsibility, unless either fraud is alleged on the part of procuring officials or where the solicitation contains definitive responsibility criteria which allegedly have not been applied. See Central Metal Products, Inc., 54 Comp. Gen. 66 (1974). Affirmative determinations are based in large measure on subjective judgments which are largely within the discretion of procuring officials who must suffer any difficulties experienced by reason of a contractor's inability to perform. However, we will continue to consider protests against determinations of nonresponsibility to provide assurance against the arbitrary rejection of bids.

Since the protest does not contain allegations of fraud or the misapplication of definitive responsibility criteria, we must decline to consider the matter on the merits. Aerial Machine & Tool Corporation, B-186284, June 26, 1976, 76-2 CPD \_\_\_\_.

*for Shelton Jordan*  
Paul G. Dembling  
General Counsel