

DOCUMENT RESUME

02371 - [A1452468]

[Protest of Contract Award for a Quantity of Rotary Couplers].
B-188899. May 19, 1977. 2 pp.

Decision re: Kellett Corp.; by Paul G. Dembling, General
Counsel.

Issue Area: Federal Procurement of Goods and Services:
Reasonableness of Prices Under Negotiated Contracts and
Subcontracts (1904).

Contact: Office of the General Counsel.

Budget Function: National Defense: Department of Defense -
Procurement & Contracts (058).

Organization Concerned: Defense Logistics Agency; Herley
Industries, Inc.

Authority: B-187832 (1976).

Protest alleged that successful bidder was untimely on
another current Government contract and that its bid price was
"suspiciously close" to protestor's. Timeliness of delivery on
another contract related to determination of offeror's
responsibility, and such determinations are not questioned by
GAO absent a showing of fraud. The arguments as to bid price
were without evidence of impropriety. The protest was dismissed.
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DECISION



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

FILE: B-188899

DATE: May 19, 1977

MATTER OF: Kellett Corporation

DIGEST:

1. Protest alleging successful offeror has failed to deliver items in timely fashion under current Government contract essentially questions affirmative determination of offeror's responsibility and must be dismissed. Such determinations are not questioned by GAO absent a showing of fraud on part of procuring officials or other circumstances not relevant to this case.
2. Protester's argument that successful offeror's award price is "suspiciously close" to protester's and that the contract award may have been influenced by contractor's "former armed service positions" is dismissed as mere speculation without any evidence to show impropriety.

Kellett Corporation (Kellett) protests an award by the Defense Logistics Agency (DLA) to Herley Industries, Inc. (Herley) the low bidder for a contract resulting from Request for Proposals (RFP) DSA900-77-R-0065. The contract is for the purchase of a quantity of rotary couplers.

Kellett, in part, questions Herley's ability to perform on this contract, stating that Herley has failed to deliver timely to the Government under another current contract for similar items. This amounts to questioning the contracting officer's determination that Herley is a responsible prospective contractor. However, this Office does not review such affirmative determinations of responsibility absent a showing of fraud on the part of procuring officials or where the solicitation contains definitive responsibility criteria which allegedly have not been met. Composition Roofers Union Local 8, B-187832, December 17, 1976, 76-2 CPD 507, and cases cited therein.

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Kellett believes that Herley is controlled by two retired Naval officers and questions whether they have improper influence over Naval programs. In this regard, Kellett suggests that Herley's contract price on this solicitation was "suspiciously close" to its own. However, these arguments of themselves do not constitute a showing of fraud sufficient to cause us to question the contracting officer's affirmative determination as to Herley's responsibility. Kellett has furnished no evidence to show irregular bidding practices for this solicitation or improper influence by Herley over Naval programs. Mere speculation in this respect would not justify our consideration of this matter as a bid protest.

Accordingly, the protest is dismissed.


Paul G. Dembling
General Counsel