

**DECISION**



*Zuckerman T*  
14608-  
**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

*[Protest Alleging Low Bidder Was Nonresponsive]*

FILE: B-199445.2

DATE: August 15, 1980

MATTER OF:

Marine Power & Equipment Company

CNG02269

**DIGEST:**

1. GAO will not review protests against affirmative determinations of responsibility except where fraud by procuring officials is alleged, or where it is argued that definitive responsibility criterion set forth in solicitation was not applied.
2. GAO will not consider objection to contracting agency's consideration of protest filed with agency.

Invitation for bids No. CG-011738-A was issued by the Department of Transportation (DOT) for the procurement of nine 270-foot Coast Guard cutters. Marine Power & Equipment Company (Marine), the apparent second low bidder, protests any award made to any bidder other than itself. *AGC00029*

Marine contends that the Robert Derecktor Shipyard (Derecktor), the apparent low bidder, was nonresponsive because it failed to meet the requirements of section C-33 of the IFB. *DLG05097*

Section C-33 outlines the standards which the agency will use to determine the responsibility of prospective contractors and subcontractors as required by subpart 1-1.12 of the Federal Procurement Regulations (1964 ed.). Thus, Marine's protest goes to the issue of Derecktor's responsibility rather than the responsiveness of the firm's bid. Our Office does not review protests against affirmative determinations of responsibility unless fraud on the part of the procuring officials is alleged or the IFB contains definitive responsibility criteria

*(DLG02798)*

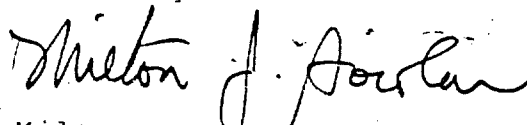
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which allegedly have not been applied. Ira Celber Food Services, Inc., B-196868, February 27, 1980, 80-1 CPD 161; Bowman Enterprises, Inc., B-194015, February 16, 1979, 79-1 CPD 121. Neither exception applies in this case.

Takoma Boatbuilding, the third low bidder, has filed a protest with DOT alleging that Marine's bid is non-responsive. Marine also protests "any consideration" by DOT of the Takoma Boatbuilding protest. In this regard, we point out that Takoma Boatbuilding's protest to DOT is consistent with our view that a protester should seek resolution of its complaint initially with the contracting agency. 4 C.F.R. § 20.2(a) (1980). Consequently, we will not consider this basis for protest.

The protest is dismissed.

  
Milton J. Socolar  
General Counsel