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DECISION



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

[Protest of Army Maintenance Service Contract Award]

FILE: B-201208

DATE: December 30, 1980

MATTER OF: Emerald Maintenance, Inc. *DLG00978*

DIGEST:

Protest alleging bidder lacks capability to perform maintenance services based upon alleged violations of prevailing wage rate in prior contract is dismissed since GAO does not review agency's affirmative responsibility determination absent circumstances not present here and enforcement of Service Contract Act requirements is matter for Department of Labor and contracting agency.

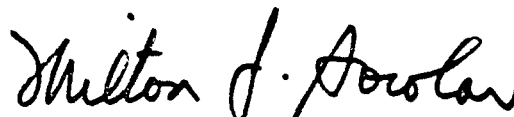
Emerald Maintenance (Emerald) protests the Army's award of a maintenance services contract under solicitation No. DAKF-48-80-B-0067 to the incumbent contractor, Maintenance Inc. Emerald alleges that Maintenance refused to pay its service employees the minimum amounts required by the prevailing wage rate determined by the Department of Labor under the Service Contract Act (SCA) ✓ 41 U.S.C. §§ 351-358 (1976), and incorporated into the prior contract. Emerald further alleges that Maintenance, as a consequence of its low wages, lacks qualified personnel to perform the contract.

In essence, Emerald's protest questions Maintenance's ability to perform the contract, i.e., its responsibility. See Eastern Home Builders and Developers, Inc., ✓ B-182218, November 29, 1974, 74-2 CPD 302. This Office does not review agencies' affirmative responsibility determinations unless the protester shows either that procuring officials may have committed fraud or that the solicitation contained definitive responsibility criteria which were not applied. Central Metal Products, Inc., ✓ 54 Comp. Gen. 66 (1974), 74-2 CPD 64; Data Test Corporation, ✓ 54 Comp. Gen. 449 (1974), 74-2 CPD 365. The protester has not shown either.

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The question relating to alleged SCA violations is not for consideration by this Office. Rather, enforcement authority rests with the contracting agency and the Department of Labor. ✓ 41 U.S.C. § 352(b); Environ-Development Company, ✓ B-195215, July 12, 1979, 79-2 CPD 30; see 29 C.F.R. § 4.191 (1979).

The protest is dismissed.

A handwritten signature in black ink, reading "Milton J. Socolar". The signature is written in a cursive, flowing style.

Milton J. Socolar
General Counsel