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Mr. Eisen

DECISION



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

FILE: B-203162

DATE: May 27, 1981

MATTER OF: Civet Corporation

DIGEST:

1. Protest concerning bidder's ability to meet contractual requirements is matter of responsibility and not for consideration as GAO will not review affirmative determination of responsibility in absence of showing of fraud or allegation that definitive responsibility criteria in solicitation were misapplied.
2. Exclusive remedy for alleged infringement of United States patent by Government contractor is suit against Government for damages in Court of Claims.

Civet Corporation protests the award of a contract to Mycom Corporation under request for proposals (RFP) No. N00140-80-R-0784, issued by the Department of the Navy. Civet alleges that Mycom cannot perform the contract. According to Civet, Mycom lacks the capability to manufacture helical screw compressors for air service as required by the IFB, because ~~Civet~~ lacks a necessary license agreement with SRM of Sweden, a firm which apparently holds the patent. *Mycom*

Whether Mycom has the ability to perform the contract is a matter of the firm's responsibility, which must be determined by the contracting officer prior to award. Our Office does not review protests against affirmative determinations of responsibility unless either fraud on the part of the procuring officials is shown or the solicitation contains definitive responsibility criteria which allegedly have not been applied. *Patent*

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KET, Inc., B-190983, December 21, 1979, 79-2 CPD 429.
Neither is the case here. Civet merely complains that Mycom will not be able to meet solicitation requirements.

Moreover, to the extent a patent of the United States is involved, the exclusive remedy for its alleged infringement by a Government contractor is a suit against the Government for money damages in the Court of Claims. 28 U.S.C. § 1498 (1976). Thus, GAO does not consider allegations of possible patent infringement by a Government contractor. VSI Corporation Aerospace Group, B-199217, July 17, 1980, 80-2 CPD 43.

The protest is dismissed.

Harry R. Van Cleve

Harry R. Van Cleve
Acting General Counsel