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**DECISION**



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

**FILE:** B-212212

**DATE:** July 26, 1983

**MATTER OF:** American Dredging Company

**DIGEST:**

1. Protest alleging defects and/or inconsistencies in solicitation specifications is untimely when first filed after bid opening.
2. Protester's allegations, without evidence sufficient to affirmatively support its position (that low bidder bid on basis that it would not be subject to State and Federal environmental standards and that low bidder would ignore standards during performance), are speculative and, therefore, protester has not met burden of proof.
3. GAO does not review an agency's affirmative determination of responsibility except where fraud, bad faith, or misapplication of definitive responsibility criteria is shown.
4. Alleged future violations of State and Federal environmental standards are matters of contract administration which GAO will not review.

American Dredging Company (ADC) protests the award of a contract to the apparent low bidder under invitation for bids (IFB) No. DACW61-83-B-0050 issued by the United States Army Corps of Engineers (Army).

ADC contends that the IFB is defective because it failed to impose required State and Federal standards of environmental protection on the awardee and that to the extent that it did impose such standards, it did so in a confusing way. ADC further contends that the low bidder is not responsible because: (1) the low bidder bid on the basis that no environmental standards would be imposed upon it in the course of its

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performance, and (2) the low bidder intends to perform in violation of both State and Federal standards.

The protest is dismissed in part because it is untimely and in part because it concerns an affirmative determination of responsibility and matters of contract administration.

Our Bid Protest Procedures require that protests based upon alleged improprieties in a solicitation which are apparent prior to bid opening must be filed prior to bid opening. 4 C.F.R. § 21.2(b)(1) (1983). We find that both the absence of State and Federal standards concerning environmental protection and any alleged ambiguities concerning environmental requirements were apparent on the face of the solicitation. Since ADC's protest was filed subsequent to bid opening, it is untimely in this regard.

ADC's allegation that the low bidder is nonresponsible because it bid on the basis that it would not be subject to State and Federal standards and it intended to perform as if it were not subject to those standards will not be considered by our Office for several reasons. ADC has the responsibility of presenting sufficient evidence to affirmatively establish its position. Phelps Protection Systems, Inc., B-181148, November 7, 1974, 74-2 CPD 244. Without such evidence, allegations concerning the basis on which a competitor bid and the competitor's intended manner of performance are speculative and the protester has not met its burden of proof. Mission Economic Development Association, B-182686, August 2, 1976, 76-2 CPD 105. Moreover, because a determination that a bidder is capable of performing a contract is largely subjective and not usually readily susceptible of reasoned review, we will not review affirmative determinations of responsibility absent a showing that the determination was fraudulent, was made in bad faith, or that definitive responsibility criteria in the solicitation were not met. 4 C.F.R. § 21.3(g)(4) (1983), as amended by 48 Fed. Reg. 1931 (1983). Finally, whether the low bidder actually violates State and Federal environmental standards in the course of contract performance is a matter of contract administration which we will not review. 4 C.F.R. § 21.3(g)(1) (1983), as amended by 48 Fed. Reg. 1931 (1983); see Arlington Ridge Civic Association, B-181015, December 23, 1974, 74-2 CPD 367.

Accordingly, the protest is dismissed.

*Harry R. Van Cleve*  
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Acting General Counsel