



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Service & Sales Inc.

File: B-229602

Date: November 25, 1987

DIGEST

1. An offeror's ability to meet its contractual obligations is a matter of the firm's responsibility for the contracting agency to determine before award. The General Accounting Office will not review an affirmative determination in that respect absent a showing of possible bad faith or fraud on the part of the procuring officials or that definitive responsibility criteria may not have been met.

2. Whether an awardee's delivered equipment conforms to contractual requirements is a matter of contract administration which the General Accounting Office does not review under its bid protest function.

DECISION

Service & Sales Inc. (S&S) protests the award of a contract to Inland Machine Co. under request for proposals (RFP) No. DLA700-87-R-1282, issued by the Defense Construction Supply Center (DCSC), Defense Logistics Agency, Columbus, Ohio, for clutches. The solicitation specified only two approved models of clutches, one manufactured by S&S and the other by Garrett Turbine Engine Co. S&S asserts Inland is not obtaining the clutches from Garrett and therefore misrepresented the source of the clutches in its proposal. DCSC denied S&S's initial protest with the contracting agency because it had received documentation from Inland as well as confirmation from Garrett that Inland had placed an order with Garrett for the purchase of the clutches and, therefore, the agency had reason to believe that Inland would provide the government with conforming items.

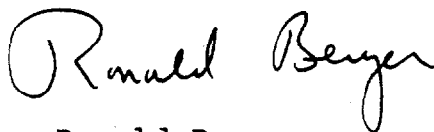
First, we have some doubt as to whether the protest here is timely. When a protest is filed with the contracting agency, the protester is not permitted to delay filing a

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subsequent protest with our Office until it eventually receives a decision from the agency. Rather, the protester may wait only a reasonable time for the agency's response; otherwise, its protest to us will be deemed untimely. See REACT Corp., B-219642, Aug. 22, 1985, 85-2 C.P.D. ¶ 215. Here the protest was filed with us 3 month after the protest was filed with DLA, and it is not clear from the protester's submission that there was any reasonable basis for S&S to continue to await a response from DCSC instead of protesting here.

In any event, S&S does not present an adequate basis for protest. Since Inland's proposal offered to supply one of the models specified in the RFP, the proposal was technically acceptable on its face. Universal Shipping Co., B-223905.2, Apr. 20, 1987, 87-1 C.P.D. ¶ 424. An offeror's ability to meet its contractual obligation is a matter of the firm's responsibility. In awarding Inland the contract, the procuring agency determined that Inland was responsible. Id. Our Office will not review protests of affirmative determinations of responsibility absent a showing of possible bad faith or fraud on the part of procuring officials or that definitive responsibility criteria set out in the solicitation may not have been met. CORE International, Inc., B-225640, Jan. 21, 1987, 87-1 C.P.D. ¶ 78. Neither exception has been alleged in this case. Furthermore, whether the equipment Inland actually delivers complies with the requirements of the contract resulting from the RFP involves a matter of contract administration which this Office does not review under its bid protest function. 4 C.F.R. § 21.3(f)(1) (1987); CORE International, Inc., B-225640, supra. As indicated above, however, the agency states that Garrett has received an order from Inland for the clutches.

The protest is dismissed.



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General Counsel