



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Sterling Services Incorporated--Request
for Reconsideration

File: B-239046.2

Date: July 30, 1990

Walter Bull, for the protester.
Christine S. Melody, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

1. Allegation that awardee cannot perform in accordance with the solicitation's manning requirements concerns the contracting agency's affirmative responsibility determination which the General Accounting Office will review only where the protester makes a showing that the contracting officials acted fraudulently or in bad faith or misapplied definitive responsibility criteria.

2. Protest that agency should not have accepted bid because it is too low is dismissed as there is no legal basis on which to object to the submission or acceptance of a below-cost bid. Protester's suggestion that awardee is unable to perform at its bid price concerns the contracting officer's affirmative determination of responsibility, a matter which General Accounting Office generally does not review.

DECISION

Sterling Services Incorporated requests reconsideration of our dismissal of its protest challenging the award of an aircraft services contract to Clark Associates under invitation for bids (IFB) No. F08651-89-B-0084, issued by the Department of the Air Force. Sterling questions whether Clark is capable of performing under the contract.

We affirm the dismissal.

Sterling, in its initial protest, challenged the awardee's ability to perform under the contract. Specifically, Sterling alleged that Clark could not fulfill the Air Force's requirement that the console be manned at all times. We dismissed Sterling's protest because it concerned the contracting officer's affirmative determination of



049129 / 14925

responsibility, a matter we do not review absent a showing that the contracting officer made the determination in bad faith or misapplied definitive responsibility criteria. See Bid Protest Regulations, 4 C.F.R. § 21.3(m)(5) (1990).

Sterling now contends that its original protest actually was a challenge to the misapplication of definitive responsibility criteria contained in the IFB. Other than this bare statement, however, Sterling does not identify the definitive responsibility criteria to which it refers, or how they allegedly were misapplied. Rather, Sterling merely reiterates the contentions in its initial protest that the IFB's manning requirements are ambiguous--although, as with the definitive responsibility criteria allegation, the alleged ambiguity is unspecified--and that the awardee's price is too low to allow it to perform properly under the IFB. Sterling's unexplained and unsupported assertions regarding definitive responsibility criteria and solicitation ambiguities simply are not sufficient to state a basis for protesting the award to Clark. See 4 C.F.R. § 21.3(m); T&A Painting, Inc., B-229655.2, May 4, 1988, 88-1 CPD ¶ 435.

To the extent that Sterling once again raises the issue that Clark's bid is simply too low, there is no legal basis to object to the submission or acceptance of a below-cost bid. MEI Env'tl. Servs.--Reconsideration, B-231401.2, B-231401.3 June 16, 1988, 88-1 CPD ¶ 579. If Sterling is again claiming that Clark will not be able to perform at the price it bid, this constitutes a challenge to the contracting officer's affirmative determination of responsibility, a matter which, as noted above, we will not review under the circumstances here. Keyes Fibre Co., B-225509, Apr. 7, 1989, 87-1 CPD ¶ 383.

The dismissal is affirmed.


 James F. Hinchman
General Counsel