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DECISION



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

FILE: B-190413

DATE: October 31, 1977

MATTER OF: Louisville Billiard Supply Company

DIGEST:

Protest based on contention that low bidder is incapable of rendering required services is dismissed since it concerns challenge to agency's affirmative determination of responsibility which is not matter for review by GAU except in circumstances not present here.

Louisville Billiard Supply Company (Louisville) protests the anticipated award of a contract under solicitation No. GSW-4FWR-70031, issued by the General Services Administration, for the repair and maintenance of pool tables, to the apparent low bidder, Mr. Al Futrell.

Louisville questions Mr. Futrell's responsibility, alleging that he has no existing company, no store location and no employees. It is Louisville's belief that Mr. Futrell is incapable of rendering the required services.

This Office does not review protests of affirmative determinations of responsibility, unless fraud is alleged on the part of the contracting officer or the solicitation contains definitive responsibility criteria which allegedly have not been applied. See Central Metal Products, Inc., 54 Comp. Gen. 66 (1974), 74-2 CPD 64; Data Test Corporation, 54 Comp. Gen. 499 (1974), 74-2 CPD 365, affirmed 54 Comp. Gen. 715 (1975), 75-1 CPD 138. While we do consider protests involving negative determinations of a protester's responsibility in order to provide assurance against the arbitrary rejection of bids, affirmative determinations are based in large measure on subjective judgments which are largely within the discretion of the procuring officials who must suffer any difficulties resulting by reason of a contractor's inability to perform. Here there is no allegation that the responsibility determination was the result of fraud or that definitive criteria have not been applied.

The protest is dismissed.

Paul G. Dembling
Paul G. Dembling
General Counsel