

509/6

C. Humes
Proc II

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20542**

FILE: 8-191000

DATE: January 18, 1978

MATTER OF: Oregon Wilbert Vault Corporation

DIGEST:

Protest based on contention that successful bidder is not responsible is dismissed since it concerns challenge to agency's affirmative determination of responsibility which is not matter for review by GAO except in circumstances not present here.

Oregon Wilbert Vault Corporation (Oregon) protests an award made to H. & W. Vault Corporation of invitation for bids (IFB) 648-1-78, issued by the Veterans Administration (VA) for the supply and installation of grave boxes at Willamette National Cemetery.

Oregon contends that the successful bidder, a small business concern, is not responsible for purposes of this IFB and that the agency should have referred the matter to the Small Business Administration for consideration.

The issue raised here concerns a challenge to VA's affirmative determination of the successful bidder's responsibility. 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. 56 (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 a negative determination of a protestor's responsibility in order to provide assurance against the arbitrary rejection of bids, an affirmative determination is based in large measure on a subjective judgment which is 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.

B-191000

The protest is dismissed.

Paul G. Deabling
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General Counsel