

7069
DECISION



P. J. ...
Proc. 2
**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

FILE: B-192275

DATE: July 21, 1978

MATTER OF: Virginia-Maryland Associates, Inc.

DIGEST:

1. Protest that offeror not be considered eligible supplier based upon alleged prior deficient performance is dismissed, since Government's acceptance of responsive offer effectively binds offeror to perform in accordance with terms of solicitation and whether offeror is able to do so is matter of responsibility, and agency's affirmative determination thereof will not be reviewed by GAO except in limited circumstances.
2. Whether contractor is complying with requirements of contracts is matter of contract administration, and not for GAO consideration

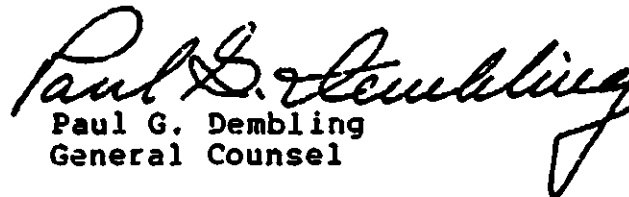
Virginia-Maryland Associates, Inc. (VMA), has protested against any contract award for lamps being made to G.F.C. Manufacturing Company (GFC) under solicitation No. FEHP-P-5039-A-6-21-78, issued by the Federal Supply Service (FSS). VMA has also protested the alleged failure of GFC to comply with specifications and delivery schedules under two previous contracts with FSS for lamps (contracts Nos. FEHP-P1-71684-A-12-16-76 and FEHP-P1-7193-N-4-15-77).

VMA alleges that GFC has supplied and FSS has accepted products which did not conform to the Government's specification (Mil. Spec. MIL-L-28583) and which were delivered late under the two previous contracts. VMA requests that GFC be removed from consideration as an eligible supplier under the current solicitation (FEHP-P-5039-A-6-21-78) based upon its allegedly deficient performance under the two previous contracts for lamps. VMA also asks that our Office require FSS to reject all nonconforming products delivered by GFC under the two prior contracts and to terminate these contracts.

Regarding the current solicitation, any offeror, including GFC, which offers to supply the product as described in the solicitation and which states no exception to the requirements will be bound to perform in accordance with the specifications if awarded the contract. 52 Comp. Gen. 955 (1973). Whether GFC has the ability to perform in accordance with these terms is a matter of responsibility. Any award of a contract to GFC will necessarily involve an affirmative determination of that firm's responsibility. Federal Procurement Regulations § 1-2.407-2 (1964 ed. amend. 139). Our Office does not review protests against affirmative determinations of responsibility unless either fraud on the part of the procuring officials is alleged, or the solicitation contains definitive responsibility criteria which allegedly have not been applied. Cantral 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; Virginia-Maryland Associates, B-191252, March 28, 1978, 78-1 CPD 238. Neither exception is applicable here.

Regarding the protester's allegations concerning the two previous contracts, whether the items supplied conform to the requirements of the contracts is a matter of contract administration and is not for consideration by our Office. Crowe Rope Company, B-137092, August 18, 1976, 76-2 CPD 174; Virginia-Maryland Associates, *supra*.

Accordingly, the protest is dismissed.


Paul G. Dembling
General Counsel