

J. Roberts
Proc II



DECISION

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

8832

FILE: B-193630

DLG 00567

DATE: January 11, 1979

MATTER OF: Onan Corporation

[Allegation that Contract Modification Resulted From Contractor's Lack of Responsibility]

DIGEST:

Contracting agency's modification of existing contract pursuant to the Changes Clause allegedly caused by contractor's lack of responsibility and its attempt to "buy into" the contract provides no basis for GAO to review propriety of award.

Onan Corporation requests that our Office direct the cancellation of contract No. DSA-400-76-C-5318 for diesel engine driven generator sets between the Defense Logistics Agency (DLA) and Boque Electric Manufacturing Company. Onan argues that because of the inability of the contractor, a change order was issued which deleted the Onan engines and related parts required under the contract. The protester states that the Government now intends to procure these materials directly from Onan. It believes that the Government knew or should have known of the need for this change at the time of award and therefore the contract was improperly awarded to Bogue. Onan requests that Bogue's contract be canceled so that all bidders will be given the opportunity to bid on the procurement as changed.

AGC 00378
CNG 01760

We are not persuaded that sufficient reason exists for this Office to review the protest. Onan does not assert that the agency actually made award while intending to make a substantial change in the contract. Rather, Onan argues essentially that the need for the subsequent change stems from the contractor's lack of responsibility and its attempt to "buy into" the contract. In effect, Onan does not agree with DLA's preaward determination of responsibility. This Office, however, no longer

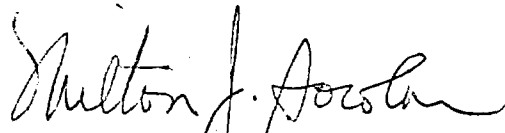
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considers challenges to affirmative responsibility determinations except in circumstances not relevant here, Central Metal Products, 54 Comp. Gen. 66 (1974), 74-2 CPD 64, and the fact that a bid represents a "buy-in" does not provide a legal basis for challenging the validity of an award. See RKFM Products Corporation, B-190313, August 7, 1978, 78-2 CPD 94. The fact that subsequent events may have proven the agency's assessment to be wrong and the protester's initial assessment correct is insufficient reason for us to now review the agency's administration of the contract.

Onan compares this case to our decision at 46 Comp. Gen. 275 (1966) wherein we recommended cancellation of a contract which was improperly awarded to a bidder who was singularly afforded favorable treatment prior to bid opening. We feel that decision is clearly distinguishable from the instant situation because there is neither any evidence that all competitors in the initial award process competed on other than equal terms, nor any proof offered that Bogue received favorable pre-bid opening treatment by DLA.

In view of the fact that the initial protest correspondence raises issues which are not reviewable by this Office, no useful purpose would be served in further development of the case pursuant to our Bid Protest Procedures. We will take no further action in this matter.



Milton J. Socolar
General Counsel