

DOCUMENT RESUME

03883 - [A2773988]

[Protester Alleged that Apparent Low Bidder Cannot Meet First Article Testing Requirement]. B-19C095. September 30, 1977. 1 pp.

Decision re: General Automatic Corp.; by Milton Socolar (for Paul G. Dembling, General Counsel).

Issue Area: Federal Procurement of Goods and Services (1900).

Contact: Office of the General Counsel: Procurement Law I.

Budget Function: National Defense: Department of Defense - Procurement & Contracts (058).

Organization Concerned: Defense Supply Agency: Defense General Supply Center, Richmond, VA.

Authority: B-181031 (1974). 54 Comp. Gen. 56. 54 Comp. Gen. 499. 54 Comp. Gen. 715.

The protester contended that the low bidder cannot meet the first article testing requirement and cannot qualify for first article waiver because the low bidder has not produced the item in the past. The protest was dismissed since it involved an affirmative determination of responsibility which is not reviewed by GAO. (SW)

3948

03883



**DECISION**

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

FILE: B-190095

DATE: September 30, 1977

MATTER OF: General Automatic Corporation

**DIGEST:**

Protest alleging that apparent low bidder cannot meet first article testing requirement is dismissed since it involves affirmative determination of responsibility which is not reviewed by GAO except under circumstances not present here.

General Automatic Corporation (GAC) protests the possible award to the apparent low bidder on solicitation No. DSA400-77-B-3424, issued by the Defense General Supply Center, Richmond, Virginia.

GAC reports that the solicitation requires a First Article Test Report to be delivered within 30 days of award, and contends that the low bidder cannot meet this requirement and cannot qualify for first article waiver because the low bidder has not produced the item in the past.

The question as to whether the apparent low bidder can meet the first article testing requirement involves a determination as to the responsibility of the bidder. Kings Point Machinery, B-181031, August 2, 1974, 74-2 CPD 74. Affirmative determinations of responsibility are not reviewed by this Office except under circumstances which are not present in this case. Central Metal Products, 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 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.

The protest is dismissed.

*for Milton J. Auer*  
Paul G. Dembling  
General Counsel