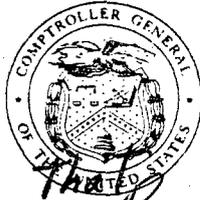


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DECISION

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

[Protest Alleging Proposed Awardee Cannot Perform Contract]

FILE: B-202984

DATE: May 6, 1981

MATTER OF: Toloco Industries, Ltd.

DIGEST:

Protest concerning bidder's ability to meet contractual requirements is not for consideration as GAO will not review affirmative determination of responsibility in absence of showing of fraud or allegation that definitive responsibility criteria in solicitation were misapplied.

Toloco Industries, Ltd. *[*protests the proposed award of a contract*]* to Container Services, Inc. under invitation for bids DAAJ09-81-B-0434, issued by the U.S. Army Troop Support Aviation Materiel Readiness Command for repair kits. Toloco *[*alleges that Container cannot perform the contract.*]* According to Toloco, the specifications require that a pocket which is a component of the repair kit be vulcanized in a steam pressured autoclave after assembly; Toloco *[*states that Container lacks the equipment to perform this operation.*]*

*[*Whether Container has the ability to perform the contract is a matter of the firm's responsibility, which must be determined in the affirmative by the contracting officer prior to award. 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.*]* Z.A.N. Company, B-198985, July 3, 1980, 80-2 CPD 10. *[*Neither is the case here.*]* Toloco merely complains that Container will not be able to meet a specification requirement, and does not contend that the actions of the agency are tantamount to fraud. Consequently, *[*the protest is not for our review.*]*

The protest is dismissed.*]*

Harry R. Van Cleve
Harry R. Van Cleve
Acting General Counsel

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