

*Ayer*

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**DECISION**



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

FILE: B-204823

DATE: October 5, 1981

MATTER OF: Mars Signal Light Company

**DIGEST:**

Allegation that offeror should not have been awarded a contract because of alleged violation of a Federal regulatory agency order and past unsatisfactory performance involves responsibility and GAO will not review affirmative responsibility determination absent a showing of fraud or presence of unapplied definitive responsibility criteria.

Mars Signal Light Company protests the award of a contract to Federal Signal Corporation (FSC) by the Defense Logistics Agency under request for proposals No. DLA400-81-R-1930.

As one basis of protest, Mars contends that since FSC has violated the terms of a Federal Trade Commission cease and desist order, it should not have received an award. Mars alleges that the Federal Trade Commission is now considering the question of FSC's violation of the order. Also, Mars contends that FSC should not have been awarded the contract because of prior unsatisfactory performance.

The questions raised by Mars relate to the bidder's ability to perform the contract, that is, a matter of responsibility. Defense Acquisition Regulation § 2-407.2 (1976 ed.) requires an affirmative determination of a bidder's responsibility prior to award. We generally do not review such determinations, which are largely matters of business judgment, in the absence of a showing of possible fraud on the part of the agency or where the solicitation contains definitive responsibility criteria which have not been applied. Astrocom Electronics, Incorporated, B-203377.3, June 30, 1981, 81-1 CPD 546. Neither exception to the general rule is alleged here.

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The protest is dismissed.

*Harry R. Van Cleve*  
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Acting General Counsel