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**DECISION**



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

FILE: 206880

DATE: April 8, 1982

MATTER OF: Prospect Enterprises, Inc.

**DIGEST:**

1. Protest that low bidders cannot perform contract involves challenge to bidder's responsibility, the affirmative determination of which is not considered by the General Accounting Office except in circumstances not present here.
2. Challenge to small business size status of bidders is not considered by GAO since by law the matter is for determination by the Small Business Administration.

Prospect Enterprises, Inc. (Prospect) protests the award of a contract by the Department of the Navy to either of two bidders under invitation for bids (IFB) No. N62477-81-B-4001. The contract, set aside for small business, requires the repair of roofs of various buildings at Naval Research Laboratory facilities.

Prospect complains that the low bidders, Keystone Painting Co. (Keystone) and Tri-ESS, Inc. (Tri-ESS) are not responsible bidders and that their bids are non-responsive. Prospect alleges that Keystone and Tri-ESS do not have manufacturer approval to use a product required by the specifications and therefore cannot perform the contract. Prospect further alleges that the two bidders lack the necessary experience to perform and that neither bidder meets the IFB requirement relating to average annual receipts.

Although Prospect characterizes the low bids as non-responsive, the first two allegations relate to the bidders' capability to perform the contract and therefore involve bidder responsibility. Whether the bidders are responsible is a matter for decision by the contracting officer. We will not review a protest of an affirmative determination of

responsibility, which is largely a business judgment, unless there is either a showing of possible fraud or bad faith on the part of procuring officials or the solicitation contains definitive responsibility criteria which allegedly have not been applied. X-Tval International Corp., B-198802, May 22, 1980, 80-1 CPD 355. Neither exception appears applicable here.

Prospect's allegation regarding the average annual receipts requirement pertains to the small business size status of Keystone and Tri-ESS. Prospect's point is that neither firm is a small business because their receipts exceed the level specified in the IFB. We do not review size status issues since under 15 U.S.C. §637(b)(6) (1976) the Small Business Administration is empowered to conclusively determine matters of small business size for federal procurement purposes. A&R Window Cleaning & Janitorial Service, Inc., March 28, 1980, 80-1 CPD 231.

The protest is dismissed.

*F. H. Barclay Jr.*

For Harry R. Van Cleve  
Acting General Counsel