

21652

DECISION



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

FILE: B-207107

DATE: April 27, 1982

MATTER OF: Energy Conservation Unlimited, Inc.

DIGEST:

1. An allegation that a contractor will not perform in accordance with contract specifications is a matter of contract administration and not for resolution under GAO Bid Protest Procedures.
2. The exclusive remedy for alleged patent infringement by a Government contractor is a suit for damages in the Court of Claims.

Energy Conservation Unlimited, Inc. (ECU) protests against the award of a contract under invitation for bids (IFB) No. N62467-81-B-2929 issued by the Department of the Navy for the conversion of domestic hot water heating systems in family housing. The protester contends that the successful bidder intends to supply heat exchanger units which do not meet certain requirements of the contract specifications.

Whether the awardee performs in accordance with contract requirements is a matter of contract administration, which is the function and responsibility of the contracting activity. Gavlon Industries, Inc., B-199584, August 4, 1980, 30-2 CPD 36. If it is determined that the awardee is not meeting the specifications, the contract may be terminated for default. However, our Office does not review such matters under our Bid Protest Procedures. Mainline Carpet Specialists, Inc., B-192534, May 8, 1979, 79-1 CPD 315.

ECU also asserts that a patent it holds may be infringed as a result of this contract award. The exclusive remedy for an alleged patent infringement resulting from performance of a Government contract

~~227874~~

118228

is a suit for money damages against the Government in the Court of Claims. 28 U.S.C. § 1498 (1976). GAO therefore does not consider allegations of possible patent infringement by a Government contractor. Civet Corporation, B-203162, May 27, 1981, 81-1 CPD 417.

The protest is dismissed.

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