

**DECISION**

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

**FILE:** B-209982**DATE:** January 13, 1983**MATTER OF:** NGC Investment and Development Corp.**DIGEST:**

1. A responsive bidder's ability to meet the solicitation's requirements is a matter of responsibility and GAO will not review an agency's affirmative determination of responsibility except when fraud or misapplication of definitive responsibility criteria is alleged.
2. Whether a bidder will perform according to contract specification if awarded the contract is a matter of contract administration, and not for consideration by GAO.
3. Protest concerning the small business size status of a bidder is by statute a matter for decision by the Small Business Administration and not for consideration by GAO.

NGC Investment and Development Corp. protests the award of a contract by the Naval Facilities Engineering Command under solicitation No. N62474-82-B-0237 to either of the two lower bidders. The solicitation, a small business set-aside, is for the installation of windows at the Naval Air Station, Whidbey Island, Washington. NGC protests any award to Universal Contracting, the low bidder, on the grounds that Universal allegedly failed to consider all necessary millwork in calculating its bid, and intends to use materials which do not meet the specifications. NGC also protests any award to Alumaglass Corporation on the ground that Alumaglass is not a small business concern. We dismiss the protest.

Concerning whether Universal considered all required millwork in drafting its bid, NGC does not suggest that Universal took any exception in the bid to the solicitation's requirements. The bid therefore was responsive as submitted, that is, it represented an unqualified offer to

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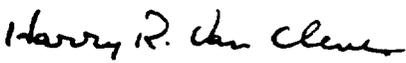
meet the agency's needs as described in the solicitation at the bid price. See Patterson Pump Company, B-204694, March 24, 1982, 82-1 CPD 279. Whether the firm can meet its legal obligation to do so if the bid is accepted is a matter of responsibility, and we will not review an agency's affirmative determination of responsibility unless the protester alleges fraud on the part of contracting officials or misapplication of definitive responsibility criteria. Ingersoll-Rand Company, B-205256, November 16, 1981, 81-2 CPD 406. NGC has made neither allegation and, therefore, we will not review the matter.

NGC also contends that an award to Universal would be improper because the window which Universal intends to use in performing the contract does not meet the specifications. Whether a contractor performs the contract in accordance with the specifications is a matter of contract administration, which we do not review under our bid protest procedures. Americar Rental and Leasing System, B-199406, July 16, 1980, 80-2 CPD 35. Should Universal be awarded the contract, the question of whether or not it fulfills its contract obligations by furnishing a window which complies with the specifications would be a matter for the Navy to consider in the administration of the contract and would not affect the validity of the award. Impact Instrumentation, Inc., B-198704, July 28, 1980, 80-2 CPD 75.

Finally, NGC contends that Alumaglass is not a small business concern and, therefore, is not eligible for award. In support of this contention, NGC alleges that Alumaglass has plants in California and Georgia and is substantially owned by another California company.

Under 15 U.S.C. § 637(b)(6) (1976), the Small Business Administration has exclusive authority to determine matters of small business size status for Federal procurement purposes. ATE Associates, Inc., B-208622, September 15, 1982, 82-2 CPD 229. Therefore, our Office will not consider NGC's protest concerning the small business size status of Alumaglass.

The protest is dismissed.

  
Harry R. Van Cleve  
Acting General Counsel