

**DECISION**

28910  
**THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20548**

**FILE:**  
B-215026

**DATE:** July 25, 1984

**MATTER OF:**  
Surgical Instrument Company of America

**DIGEST:**

1. GAO dismisses bid protest as premature since it is based on the possibility of future award.
2. The allegation that a bidder will violate a bid certification involves an affirmative determination of bidder responsibility which GAO will not review except in limited circumstances.

Surgical Instrument Company of America (SICOA) protests the consideration of American Medical Instrument Company (AMICO) for award of a contract under solicitation No. DLA120-84-B-0033. The solicitation, issued by the Defense Logistics Agency (DLA), sought bids to supply Hemostatic Forceps, National Stock Number (NSN) 6515-00-334-4300. We dismiss the protest.

SICOA maintains that AMICO made "misleading certifications" in the bid it submitted. According to SICOA, AMICO certified that the specialty metal products it is offering will be procured from either domestic sources or qualified foreign sources. SICOA alleges that the products AMICO is offering have been, or will be, procured from nonqualified foreign sources.

DLA points out that the solicitation required all bidders to submit samples for evaluation and testing. DLA states that this testing has not been completed and no selection of a contractor has been made. Therefore, DLA contends that the protest is premature.

We have held that a protest which merely anticipates improper agency action is speculative and will not be considered by this Office. Aero Corporation, B-194445, June 5, 1979, 79-1 C.P.D. ¶ 394. Since SICOA's protest is based on the anticipated allegedly improper selection of AMICO, we find the protest to be premature.

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We note that even if DLA subsequently selects AMICO as the awardee, the protest will not be considered on the basis of the facts presented. Acceptance of AMICO's bid would obligate it to perform in accordance with all the terms and conditions stated in the contract. We have held that whether a company can meet the legal obligations it incurs under the terms of a contract is a matter of bidder responsibility. Surgical Instrument Company of America, B-213918, May 22, 1984. This Office will not review an affirmative determination of responsibility unless there is a showing of fraud on the part of the contracting officials or misapplication of definitive responsibility criteria. Sunair Electronics, Inc., B-208385, Aug. 18, 1982, 82-2 C.P.D. ¶ 154. Neither exception has been alleged here.

The protest is dismissed.

*Richard W. Adams*  
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Acting General Counsel