

**DECISION**

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

**FILE:** B-216272

**DATE:** September 24, 1984

**MATTER OF:** Newgard Industries, Inc.

**DIGEST:**

1. Protest that award should not have been made to low offeror because it allegedly did not meet obligations under prior contracts will not be reviewed by GAO since it involves a challenge to an affirmative determination of responsibility, which GAO does not consider in the absence of a showing of fraud by contracting officials or misapplication of definitive responsibility criteria set forth in the solicitation.
2. Protest that awardee might provide a nonconforming item raises a matter of contract administration which is the responsibility of the procuring agency, not GAO.

Newgard Industries, Inc. (Newgard), protests the proposed awards of two contracts for airplane troop seats to Oro Manufacturing Company (Oro) under request for proposals Nos. F41608-84-R-1486 and F41608-84-R-1570, issued by the Department of the Air Force (Air Force). Newgard protests the Air Force's determination that Oro is a responsible offeror for award under these RFP's. Newgard asserts that Oro has under past procurements for this item repeatedly failed to comply with a specification requirement that the aluminum alloy parts be anodized, that is treated with a protective coating. Newgard states that based on this alleged past performance, Oro will not comply with this specification as required under the protested RFP's and, therefore, Oro should have been found nonresponsible and determined ineligible for award.

We dismiss the protest.

With respect to Newgard's contention that the Air Force's determination that Oro is responsible was improper, our Office does not review protests of affirmative determinations of responsibility unless fraud on the part of procuring officials is alleged, or the solicitation contains definitive responsibility criteria which allegedly have been

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misapplied. Dosimeter Corporation of America, B-209314, Oct. 29, 1982, 82-2 C.P.D. ¶ 391, Propper Manufacturing Company, Inc., B-206193, Feb. 3, 1982, 82-1 C.P.D. ¶ 86.

Furthermore, as to the allegations that the awardee might provide nonconforming items, such matters involve contract compliance and administration, which are the responsibility of the contracting agency, not our Office under our bid protest function. Lion Brothers Company, Inc., B-212960, Dec. 20, 1983, 84-1 C.P.D. ¶ 7.

*Harry R. Van Cleve*  
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