



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Nishimatsu Construction Co., Ltd.  
File: B-229524, B-229526  
Date: November 6, 1987

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### DIGEST

1. By awarding a contract, an agency has determined a firm to be a responsible prospective contractor, and the General Accounting Office will not review a challenge to that affirmative determination absent a showing of possible fraud or bad faith on the part of the contracting officials, or on allegation of the misapplication of definitive responsibility criteria that were contained in the solicitation.
2. Whether contractor will comply with contract terms during performance is a matter of contract administration which General Accounting Office does not consider as part of its bid protest function.

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### DECISION

Nishimatsu Construction Co., Ltd. protests the award of two contracts to C. Itoh & Co., Inc. under invitation for bids Nos. N62836-86-B-0286 and N62836-86-B-0265 issued by the Naval Facilities Engineering Command for the repair of two underground tanks.

We dismiss the protests.

Nishimatsu charges that C. Itoh does not have the experience to do the work required by the contract, that it performed poorly on a previous contract, and that C. Itoh's bid is so low that it cannot understand the solicitation requirements. The protester also refers to newspaper reports that C. Itoh has been involved with "forbidden" sales to the Soviet Union.

Nishimatsu's allegations challenge the Navy's determination that C. Itoh is a responsible prospective contractor. Our Office will not review an affirmative determination of

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responsibility absent a showing of possible fraud or bad faith or misapplication of definitive responsibility criteria. Trail Blazer Services, B-220724, Feb. 12, 1986, 86-1 C.P.D. ¶ 275; Industrial Maintenance Services, Inc., B-223300, June 24, 1986, 86-1 C.P.D. ¶ 582. Nishimatsu's allegations do not fall within any of these exceptions.

Nishimatsu also claims that C. Itoh will have to subcontract all the work in violation of the solicitation's requirement that the contractor must perform at least 20 percent of the work. Whether C. Itoh subcontracts the repair work in violation of contract requirements is a matter of contract administration which is not within the purview of our bid protest function. Shelf Stable Foods, Inc., B-222919, June 24, 1986, 86-1 C.P.D. ¶ 586.

The protests are dismissed.

  
Ronald Berger  
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General Counsel