



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: U.S.I.A. Underwater Equipment Sales Corporation
File: B-258791.3
Date: May 12, 1995

DECISION

U.S.I.A. Underwater Equipment Sales Corporation protests the award of a contract by the Department of Transportation, United States Coast Guard, under request for proposals No. DTCG23-94-R-HAV017. U.S.I.A. contends that the contractor failed to meet first article test requirements under the contract and that the Coast Guard has failed to adhere to a Global Settlement Agreement.

We dismiss the protest.

Our Office considers bid protest challenges to the award or proposed award of contracts. 31 U.S.C. § 3552 (1988). Therefore, we generally do not exercise jurisdiction to review matters of contract administration, which are within the discretion of the contracting agency and for review by a cognizant board of contract appeals or the Court of Federal Claims. See 4 C.F.R. § 21.3(m)(1); Specialty Plastics Prods., Inc., B-237545, Feb. 26, 1990, 90-1 CPD ¶ 228. Therefore, any agreement made between the agency and a private party are not for review by our Office.

To the extent that the protester argues that the award should not have been made because the contractor could not meet the first article test requirement, this argument is also not reviewable by our Office. A determination that a bidder or offeror is capable of performing a contract is based, in large measure, on subjective judgments which generally are not susceptible to reasoned review. Whether the awardee had the ability and intention of complying with the requirements is simply a matter for the contracting officer, in the exercise of discretionary business judgment, to consider in making the responsibility determination. An agency's affirmative determination of a contractor's responsibility will therefore not be reviewed by our Office. 4 C.F.R. § 21.3(m)(5). An agency must simply bear the burden of deficient contract performance, to decide the extent to which it must do in order to determine if an offeror is capable of performing the contract.

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