



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

Decision

Matter of: S. D. Myers, Inc.
File: B-261504
Date: June 5, 1995

DECISION

S.D. Myers, Inc. protests the award of a contract to Trans-Cycle Industries by the Defense Logistics Agency under solicitation No. SP4400-94-R-0022. S.D. Myers challenges Trans-Cycle's ability to perform the contract since it does not have the appropriate Environmental Protection Agency permits.

We dismiss the protest because a protester's challenge to the awardee's ability to perform the contract is generally not reviewed 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. Thus, an agency's affirmative determination of a contractor's responsibility will not be reviewed by our Office absent a showing of possible fraud or bad faith on the part of procurement officials, or that definitive responsibility criteria in the solicitation may have been misapplied. 4 C.F.R. § 21.3(m)(5); King-Fisher Co., B-236687.2, Feb. 12, 1990, 90-1 CPD ¶ 177. Where, as here, there is no showing of possible fraud or bad faith, or that definitive responsibility criteria have been misapplied, we have no basis to review the protest.

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