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DECISION

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

FILE: B-204994

DATE: October 21, 1981

MATTER OF: Mars Signal Light Company

DIGEST:

Protest that bidder is incapable of meeting solicitation delivery schedule is dismissed, since it concerns challenge to agency's affirmative determination of responsibility which is not matter for review by GAO except in circumstances not present here.

Mars Signal Light Company (Mars) protests the award of a contract for emergency warning lights to Tek-Lite Inc. (Tek-Lite) under solicitation No. DLA400-81-B-5760 issued by the the Defense General Supply Center, Richmond, Virginia. Mars contends that it was found to be nonresponsible on a previous procurement because it did not meet the minimum standards for responsible prospective contractors as described in Defense Acquisition Regulation § 1-903.1(iii) (Defense Acquisition Circular No. 76-15, June 1, 1978) and that the same treatment should be given to Tek-Lite here since Tek-Lite has been delinquent on other contracts. In effect, Mars is alleging that Tek-Lite will not be able to deliver the warning lights in accord with the solicitation delivery schedule.

This Office does not review protests of affirmative determinations of responsibility, which is largely a business judgment, unless there is a showing of possible fraud on the part of the procuring officials or the solicitation contains definitive responsibility criteria which have not been applied. Astrocom Electronics, Incorporated, B-203377.3, June 30, 1981, 81-1 CPD 546. While we do consider protests involving negative determinations of a protester's responsibility in order to provide assurance against the arbitrary rejection of

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bids, affirmative determinations are based in large measure on subjective judgments which are within the discretion of the procuring officials who must suffer any difficulties resulting by reason of a contractor's inability to perform. Here, there is no allegation that the responsibility determination was the result of fraud or that definitive criteria have not been applied. Angler's Company, Ltd., B-190856, January 4, 1978, 78-1 CPD 3.

Accordingly, the protest is dismissed.

Harry R. Van Cleve

Harry R. Van Cleve
Acting General Counsel