

DECISION

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

FILE:

B-215851

DATE: August 14, 1984**MATTER OF:**

Microcom Corporation

DIGEST:

Protest alleging that proposed awardee under a negotiated procurement for telemetric data transmitting sets failed to perform satisfactorily on a similar contract and, therefore, should not be awarded a contract under the present solicitation is dismissed since the matter involves a question of the offeror's responsibility and GAO does not review affirmative determinations of responsibility except under circumstances not present here.

Microcom Corporation (Microcom) protests any award to United Telecontrol Electronics Corporation (United) under request for proposals No. N00123-84-R-0141 issued by the Naval Regional Contracting Center (Navy), Long Beach, California, for telemetric data transmitting sets.

We dismiss the protest.

Microcom contends that the present requirement developed as a result of United's failure to timely perform on another contract. Microcom argues that it would be a faulty procurement action to make award to United since it has failed to meet its production requirements on the other contract. The Navy, however, informs us that the present procurement is to satisfy different needs than the prior procurement.

Whether United is capable of performing the contract here is a matter of responsibility. Before award, the agency must make an affirmative determination of the awardee's responsibility. Our Office does not review protests concerning affirmative determinations of responsibility unless either fraud on the part of the procuring officials is alleged or the solicitation contains definitive responsibility criteria which allegedly have been misapplied. This is because responsibility determinations are normally based on the subjective business judgment of

the procuring officials and are not readily susceptible to reasoned review. See amendment to GAO Bid Protest Procedures, 48 Fed. Reg. 1931 (1983) (to be codified at 4 C.F.R. § 21.3(g)(4)); Mantz Systems, Inc., B-213796.2, Jan. 24, 1984, 84-1 C.P.D. ¶ 114.

The protest is dismissed.

Harry R. Van Cleve

Harry R. Van Cleve
Acting General Counsel