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DECISION



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

FILE: B-216341

DATE: September 13, 1984

MATTER OF: Newgard Industries, Inc.

DIGEST:

Assertion that offeror should not have been considered for award because of prior deliberate deviations from specifications is a challenge to a determination that the offeror was a responsible prospective contractor; GAO does not review challenges of affirmative responsibility determinations except in circumstances not apparent here.

Newgard Industries, Inc. protests the award of a contract by the Air Force to another firm under request for proposals No. F04606-84-R-0306. Newgard asserts that the awardee has previously deliberately furnished the government with equipment that did not meet specification provisions and therefore should have been considered ineligible for this procurement.

Whether the awardee intends to supply items meeting the specifications is a matter which was to be considered in connection with a determination of whether that company was a responsible prospective contractor. The award indicates that the contracting officer found the company to be responsible. This Office does not review challenges to such affirmative determinations of responsibility unless there is a showing of possible fraud or bad faith on the part of contracting officials or of a possible failure to properly apply a specific, definitive criterion of responsibility included in the solicitation. Kelly & Associates, B-215641, July 20, 1984, 84-2 CPD ¶ 75. Neither exception appears to be applicable here.

The protest is dismissed.

Harry R. Van Cleve
Harry R. Van Cleve
Acting General Counsel

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