DECISION

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

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FILE: B-212715 **DATE:** January 23, 1984

MATTER OF: Native American Consultants, Inc.

DIGEST:

GAO does not review affirmative determinations of responsibility except under limited circumstances.

Native American Consultants, Inc. protests the award of a contract to another firm to operate an Indian resource center under request for proposals No. 83-069 issued by the Department of Education. We dismiss the protest.

Native American complains that the awardee and its subcontractor are comprised of individuals who previously worked for a firm that defaulted, allegedly because of management and financial difficulties, on a 1980 contract for the same services and that those individuals were responsible for the default. Native American also complains that neither the awardee nor its subcontractor has a business license in the District of Columbia.

The contracting officer counters that the awardee was not the previous contractor cited by Native American and does not employ any of the employees of that previous contractor. Only a proposed subcontractor of the awardee, the contracting officer asserts, employs some individuals formerly employed by the previous contractor. In addition, the contracting officer notes, the awardee's technical proposal was rated superior under the evaluation criteria set forth in the solicitation. The contracting officer states that she examined the awardee's past performance record as part of her investigation of the firm's responsibility and found that the awardee had a satisfactory record with several federal agencies and private businesses. Finally, the contracting officer informally advises this Office that the solicitation did not require the contractor or subcontractors to have a business license.

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We believe that Native American's protest essentially concerns the question of the awardee's responsibility, or capability to meet the current contract obligation in terms of its financial resources, ability to meet the performance schedule, past performance record, and integrity. See Federal Procurement Regulations § 1-1.1203 (1964 ed.). This Office does not review an affirmative determination of responsibility absent a showing of possible fraud or bad faith by procuring officials or the failure to apply definitive responsibility criteria set forth in the solicitation. Morse Typewriter Co., Inc., B-212636.2, September 27, 1983, 83-2 CPD 383. Native American has not alleged that either exception is applicable here. Therefore, we will not consider the protest. See Amendments to the Bid Protest Procedures, 48 Fed. Reg. 1931 (1983) (to be codified at 4 C.F.R. § 21.3(g)(4)).

The protest is dismissed.

Harry R. Van Cleve
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Acting General Counsel