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DECISION



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

FILE: B-204232 DATE: August 13, 1981
MATTER OF: Gillette Industries, Inc.

DIGEST:

1. Question of bidder's capability to satisfactorily perform services called for by contract is matter of responsibility and for determination by contracting officer.
2. Whether bidder is regular dealer or manufacturer under Walsh-Healey Act is for determination by contracting agency subject to final review by Small Business Administration and Secretary of Labor.
3. GAO will not consider protester's allegation of a criminal nature because jurisdiction in such matters is charged to Department of Justice.
4. Whether components bid comply with specifications is matter of contract administration, which is responsibility of procuring activity, not GAO.

Gillette Industries, Inc. (Gillette), protests the award of solicitation No. DL100-81-B-1102 issued by the Defense Logistics Agency, Defense Personnel Support Center, Philadelphia, Pennsylvania, to Tennier Industries (Tennier), the apparent low bidder.

Gillette contends that Tennier is not a responsible bidder because it lacks production capacity, has insufficient manpower, and does not have financial capability. Gillette also contends that Tennier is ineligible for the award since it is neither a regular dealer nor a manufacturer. Finally, Gillette alleges that Tennier "has, is or will engage in fraudulent bidding and contracting practices * * *" and the components to be used by Tennier will not meet the specifications. For the following reasons, the protest is dismissed.

[Protest Alleging Nonresponsibility of Awardee]

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Whether Tennier can satisfactorily perform the services called for by the contract is a question of its responsibility. A responsibility determination must be made by the contracting officer prior to award. Defense Acquisition Regulation § 2-407.2 (1976 ed.). Although it is not clear whether such a determination has not yet been made here, our Office generally will not review a protest of an affirmative determination of responsibility, which is largely a business judgment, unless there is a showing of possible fraud or bad faith alleged on the part of procuring officials or the solicitation contains definitive responsibility criteria which allegedly have not been applied. Bradford Dyeing Association, Inc., B-202241, March 6, 1981, 81-1 CPD 182; X-Tyal International Corp., B-198802, May 22, 1980, 80-1 CPD 355. Neither exception appears to exist here.

Our Office does not consider questions as to whether a bidder is a regular dealer or manufacturer within the meaning of the Walsh-Healey Act, 41 U.S.C. §§ 35-45 (1976). Such matters are by law for the contracting agency's determination in the first instance, subject to final review by the Small Business Administration (where a small business is involved) and the Secretary of Labor. Bradford Dyeing Association, Inc., supra; Werner-Herbison-Padgett, B-195956, January 23, 1980, 80-1 CPD 66.

Concerning Gillette's final allegation, to the extent that this allegation is of a criminal nature, it is properly for referral to the Department of Justice for whatever action it deems appropriate. Columbus Marble Works, Inc., B-193754, August 21, 1979, 79-2 CPD 138; SIMCO Electronics, B-187152, August 31, 1976, 76-2 CPD 209. To the extent that this allegation concerns whether components bid comply with specifications is a matter of contract administration, which is the responsibility of the procuring activity, not GAO. Marquette Electronics, Inc., B-196497, November 5, 1979, 79-2 CPD 327.

Accordingly, the protest is dismissed. We note, however, that a copy of the protester's letter was sent to the contracting agency and to the Department of Labor for their consideration.

F. H. Barclay, Jr.
for Harry R. Van Cleve
Acting General Counsel