

DECISION**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20540**

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FILE: R-215484**DATE:** July 2, 1984**MATTER OF:** Aeroqlide Corporation**DIGEST:**

1. No basis exists to preclude a contract award because a bidder may have submitted a below-cost bid.
2. GAO does not review affirmative determinations of responsibility except in limited circumstances not applicable here.
3. GAO does not consider the legal status of a firm as a regular dealer or a manufacturer within the meaning of the Walsh-Healey Act. By law, this matter is to be determined by the contracting agency in the first instance subject to review by the Small Business Administration (if a small business is involved) and the Secretary of Labor.

Aeroqlide Corporation (Aeroqlide) protests the award of a contract for flatracks (steel frames) to Titan, Inc. (Titan), under request for proposals No. N00024-83-R-2191 and invitation for bids No. N00024-84-B-2161, a two-step procurement conducted by the Naval Sea Systems Command, Arlington, Virginia. Aeroqlide contends that Titan submitted a below-cost bid and, thus, questions whether Titan is a responsible bidder. Aeroqlide also contends that Titan is not a manufacturer of the items as required by the Walsh-Healey Act, 41 U.S.C. § 35-45 (1982).

We are aware of no legal principle upon which an award may be precluded or disturbed because a bidder has submitted a below-cost bid. Morse Diving Equipment Company, Inc., B-210025, Jan. 11, 1983, 83-1 C.P.D. ¶ 28; Dixie Bag Corporation, B-210898.2, July 15, 1983, 83-2 C.P.D. ¶ 97. Pather, the question of whether a bidder can adequately perform the contract at its bid price depends on the responsibility of the bidder. Before award, the agency must make an affirmative determination of the awardee's responsibility. Our Office does not review such a determination absent a showing that the contracting officer acted fraudulently or

in bad faith or that definitive responsibility criteria in the solicitation have not been met. Neither exception has been alleged here.

Furthermore, this Office does not consider the legal status of a firm as a regular dealer or a manufacturer within the meaning of the Walsh-Healey Act. By law, this matter is to be determined by the contracting agency in the first instance, subject to review by the Small Business Administration (where a small business is involved) and the Secretary of Labor. Gillette Industries, Inc., B-204232, Aug. 13, 1981, 81-2 C.P.D. ¶ 139; Dixie Bag Corporation, B-210898.2, supra.

Protest is dismissed.

Harry R. Van Cleve

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