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DECISION

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

[Protest Alleging Proposed Award is Ineligible]

FILE: B-202241

DATE: March 6, 1981

MATTER OF: Bradford Dyeing Association, Inc.

DIGEST:

1. 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, and thus will not be considered by GAO.
2. Whether or not bidder is capable of satisfactorily performing services called for by contract is question of bidder's responsibility and is for determination by contracting officer.

Bradford Dyeing Association, Inc. (Bradford) protests the potential award of a contract to Sed-Fab, by the Defense Logistics Agency (DLA), under invitation for bids (IFB) No. DLA 100-81-B-0309. This solicitation sought bids for refinishing 1,705,000 yards of Government furnished fabric with a water repellent finish known as Quarpel. Sed-Fab was the apparent low bidder.

Bradford contends that Sed-Fab is ineligible for the award since it is neither a regular dealer nor a manufacturer as those terms are defined in the Walsh-Healey Act, 41 U.S.C. §§ 35-45 (1976). Bradford also contends that Sed-Fab could not satisfactorily perform the contract since that firm lacks the "specialized technology, training, and expertise that is only developed through years of experience." For the following reasons, the protest is dismissed.

Our Office does not consider issues as to whether a bidder is a regular dealer or manufacturer within the meaning of the Walsh-Healey Act, since such matters are by law for the contracting agency's determination in the first instance, subject to final review by the

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Small Business Administration (where a small business' status is challenged), and the Secretary of Labor. Werner-Herbison-Padgett, B-195956, January 23, 1980, 80-1 CPD 66; Keco Industries, Inc., B-199934, September 22, 1980, 80-2 CPD 219.

Whether Sed-Fab is capable of satisfactorily performing the services called for by the contract is a question of that bidder's responsibility. A responsibility determination must be made by the contracting officer prior to award. Defense Acquisition Regulation § 2-407.3 (1976 ed.). Although it is not clear whether such a determination has 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 or the solicitation contains definitive responsibility criteria which allegedly have not been applied. Environmental Container Systems, Inc., B-201739, February 9, 1981, 81-1 CPD ____; Keco Industries, Inc., supra. Neither exception appears to exist here.

Accordingly, the protest is dismissed.

Norby R. Van Cluse
For Milton J. Socolar
General Counsel