

Jannicelli,  
118441

**DECISION**



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

FILE: B-207381

DATE: May 19, 1982

MATTER OF: Blast-It-All, Inc.

**DIGEST:**

1. Whether awardee will comply with representations and stipulations of Walsh-Healey Public Contracts Act which were incorporated into solicitation is not for consideration by GAO. Whether awardee is a manufacturer or regular dealer under the act is for determination by contracting agency subject to review by Secretary of Labor. Awardee's compliance with remaining representations/stipulations under the act is a matter of contract administration which is primarily the responsibility of the contracting agency. Moreover, the responsibility for administration and enforcement of the Walsh-Healey Public Contracts Act rests with the Department of Labor, not GAO.
2. Whether awardee has ability to perform contract and whether agency preaward survey was properly conducted are matters concerning agency's affirmative determination of responsibility and are not for consideration. GAO no longer reviews agency's affirmative determination of responsibility, except in circumstances which are not applicable in this case.

Blast-It-All, Inc., protests against award of a contract by the Department of the Air Force to Zero Manufacturing Company (Zero) pursuant to solicitation No. F41608-82-R-0058. Blast-It-All alleges that Zero will not perform the contract in compliance with the representations and stipulations of the Walsh-Healey Public Contracts Act (41 U.S.C. §§ 35-45 (1976)), that Zero may not be able to perform the contract properly, and the preaward survey was conducted improperly.

The protest is not for consideration on its merits.

Regarding Blast-It-All's allegation that Zero will not meet the representations and stipulations of the Walsh-Healey Public Contracts Act, the protester has not stated which provisions of the act it believes will be violated. However, the first representation in the act (41 U.S.C. § 35(a)) concerns whether the bidder is a manufacturer of or regular dealer in the materials, supplies, articles, or equipment required under the contract. The responsibility for such determination rests in the first instance with the contracting agency and is subject to final review by the Secretary of Labor. M & S Products Corporation, B-191614, April 21, 1978, 78-1 CPD 311. The remaining representations and stipulations under the act concern labor practices to be followed by the contractor (41 U.S.C. § 35(b)-(e)). The contractor is obligated to comply with the unconditional commitment in its proposal. Whether Zero complies with its commitments is a matter of contract administration, which is primarily the responsibility of the Department of the Air Force. See American Indian Law Center, Inc., B-204257, B-204257.2, November 4, 1981, 81-2 CPD 385. Moreover, the responsibility for the administration and enforcement of the act rests with the Department of Labor, not our Office. See SIMCO Electronics, B-187152, August 31, 1976, 76-2 CPD 209.

Regarding whether Zero has the ability to perform the contract and whether the preaward survey was conducted properly, these matters concern the Air Force's affirmative determination of Zero's responsibility. Our Office does not review an agency's affirmative determination of responsibility of a prospective contractor except where fraud is alleged on the part of contracting officials or where the solicitation contains definitive criteria of responsibility which allegedly have not been applied. SIMCO Electronics, supra. Neither exception is applicable here.

Accordingly, the protest is dismissed.

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