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**DECISION**



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

**FILE:** B-210898.2      **DATE:** July 15, 1983  
**MATTER OF:** Dixie Bag Corporation

**DIGEST:**

1. 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.
2. The capacity of a company to manufacture an item in accordance with the solicitation requirements concerns a matter of responsibility. GAO does not review affirmative determinations of responsibility unless there has been either a showing of fraud on the part of procurement officials or an allegation that the solicitation contains definitive responsibility criteria that have not been applied. A negative determination of a small business' responsibility must be referred to the Small Business Administration under that agency's certificate of competency procedures.

Dixie Bag Corporation (Dixie) protests the bid of Quality Bag Corporation (Quality) on invitation for bids (IFB) No. SYCC-13-83-012, issued by the General Services Administration (GSA). The IFB is a total small business set-aside for GSA's normal supply requirements of plastic bags under the Federal Supply Schedule.

We dismiss the protest.

Dixie contends that Quality's bid on low density plastic bags is not responsive to the IFB's requirements and is in violation of the Walsh-Healey Act, 41 U.S.C. § 35-45 (1976). According to Dixie, Quality has the "capacity" to

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manufacture high density plastic bags only. Consequently, Dixie takes the position that Quality cannot submit a responsive bid for low density plastic bags under the definition of manufacturer or regular dealer as stated in the Walsh-Healey Act.

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 (SBA) (if a small business is involved) and the Secretary of Labor. Gillette Industries, Inc., B-204232, August 13, 1981, 81-2 CPD 139.

Furthermore, Dixie's contention that Quality lacks the ability to provide low density plastic bags as required by the IFB concerns a matter of responsibility. Weaver Shipyard & Drydock, Inc., B-210652, February 9, 1983, 83-1 CPD 146. Thus, Dixie's contention constitutes a protest against GSA's affirmative determination of Quality's responsibility which is necessarily involved in any decision to award to Quality. Ingersoll-Rand, B-204677, November 3, 1981, 81-2 CPD 378. We do not review affirmative determinations of responsibility unless either fraud on the part of procuring officials is alleged or the solicitation contains definitive responsibility criteria which have allegedly not been applied. Voyager Emblems, Inc., B-206301, February 10, 1982, 82-1 CPD 127. Neither exception has been alleged.

Finally, we note that if the contracting officer finds Quality to be nonresponsible, the law requires that the matter be referred to the SBA under that agency's certificate of competency procedures. The SBA has conclusive authority to determine all matters of a small business firm's responsibility if it has been found to be nonresponsible by the contracting officer. Capitol Ambulance Service, Inc., B-200770, September 23, 1981, 81-2 CPD 244.

*Harry R. Van Cleve*  
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