

**DECISION**

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

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**FILE:** B-214924.2**DATE:** July 11, 1984**MATTER OF:** Pluribus Products Inc.--  
Reconsideration**DIGEST:**

Prior decision is affirmed where request for reconsideration again challenges responsibility determination of low bidder, without demonstrating that prior decision was based on erroneous interpretation of fact or law.

Pluribus Products, Inc. (Pluribus), requests reconsideration of our decision in Pluribus Products, Inc., B-214924, May 23, 1984, 84-1 C.P.D. ¶ 562, which dismissed its protest against the proposed award of a contract to Camtron II (Camtron) under invitation for bids (IFB) No. DLA400-84-B-2705, issued by the Defense General Supply Center, Richmond, Virginia. We affirm our prior decision.

Pluribus originally requested that our Office investigate the possibility that Camtron is a bogus organization because its business address is a post office box and its proposed place of performance allegedly does not exist. Although it advised that the agency had not completed the preaward survey of Camtron, Pluribus also requested that we investigate the possibility of fraud in the plant facility report, collusive bidding, conflicts of interest, whether Camtron is a regular dealer or manufacturer, and whether it can perform the contract at the price it bid.

We dismissed the protest because we do not conduct investigations in connection with our bid protest function for the purpose of establishing the validity of a protester's assertions. We also found the protester's allegations premature since the preaward survey on Camtron had not yet been completed. Moreover, we held that the gist of the protester's allegations touched on the contracting officer's decision to determine Camtron a responsible bidder. We will not review such a determination, which is largely a business judgment, unless there is a showing of possible fraud or bad faith on the part of procuring officials or that the solicitation contains definitive responsibility criteria which have not been applied. The protester did not show that either exception applied to the case.

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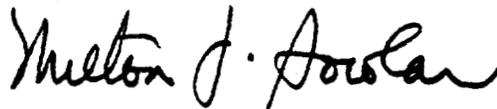
Further, we stated that our Office does not consider questions about whether a bidder is a regular dealer or a manufacturer within the meaning of the Walsh-Healey Act. By law, such matters are for determination by the contracting agency in the first instance, subject to final review by the Small Business Administration (if a small business is involved) and the Secretary of Labor.

In its request for reconsideration, Pluribus contends that we misconstrued its protest because we did not decide a major portion of the protest. Pluribus advises that Camtron changed the place of performance designated in its original bid from Van Vleck, Texas, which it alleges was unacceptable, to Palacios, Texas. Pluribus essentially argues that by allowing Camtron to change the place of performance listed in its bid, the contracting agency has provided Camtron the opportunity to make an allegedly nonresponsive bid responsive.

We assume that Pluribus is alleging that Camtron's bid was nonresponsive because Van Vleck, Texas, is not in a labor surplus area (LSA) and the IFB included a preference for bidders promising to perform the contract in an LSA. The contracting agency has informally advised us that Van Vleck, Texas, is located in an LSA, as designated by the Department of Labor. Based on this information, Pluribus' argument is without legal merit. We have held that a firm which commits itself in the bid in a manner that renders the firm eligible for the LSA preference subsequently may change the place where the requisite proportion of cost will be incurred (meaning the place of performance), as long as the new location is in an LSA. The reason is that except for the promise to incur the requisite proportion of cost in LSA's, information pertaining to a firm's LSA eligibility concerns the firm's responsibility--its ability to meet the material terms of the contract--and need not be established until the time of contract award. See K.P.B. Industrial Products, Inc., B-210445, May 24, 1983, 83-1 C.P.D. ¶ 561. Consequently, there was nothing improper in the contracting agency allowing Camtron to change the place of performance because the original place of performance designated was eligible for an LSA preference.

Since Pluribus again has challenged the contracting officer's responsibility determination, we find that it has failed to demonstrate that our prior decision--holding that its argument touched on the contracting officer's decision

to determine Camtron responsible--was based on an erroneous interpretation of fact or law. 4 C.F.R. § 21.9(a) (1983). Therefore, it is affirmed.



**Acting** Comptroller General  
of the United States