

DECISION

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

FILE: B-216452

DATE: October 9, 1984

MATTER OF: Semco Inc.

DIGEST:

1. GAO does not consider complaint that a firm is not a manufacturer under the Walsh-Healey Public Contracts 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.
2. Allegation that firm does not have adequate facilities to perform contract concerns affirmative responsibility determination which will not be reviewed absent circumstances not present here.

Semco Inc. (Semco) protests award of a contract to Ridge, Inc. (Ridge), under invitation for bids (IFB) DAAH01-84-B-A111 issued by the United States Army Missile Command, Redstone Arsenal, Alabama. Semco contends that Ridge is not a manufacturer under the guidelines of the Walsh-Healey Act and that Ridge lacks the required manufacturing capability.

We dismiss the protest.

We do not consider complaints that a firm is not a manufacturer under the Walsh-Healey Public Contracts Act, 41 U.S.C. §§ 35-45 (1982). 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. Alabama Metal Products, Inc., B-215176, May 23, 1984, 84-1 C.P.D. ¶ 569.

Semco's allegation concerning Ridge's lack of manufacturing capability relates to Ridge's responsibility as a contractor. Prior to making an award, a contracting agency is required to affirmatively determine that the prospective awardee has the capability to manufacture the

required goods. We do not review affirmative determinations of responsibility unless the solicitation contains definitive responsibility criteria which allegedly have not been applied or the protester makes a showing of fraud on the part of contract officials. Courier-Citizen Company, B-192899, May 9, 1979, 79-1 C.P.D. ¶ 323; Illitron, B-192309, Aug. 7, 1978, 78-2 C.P.D. ¶ 100. Neither exception is alleged here.

Harry R. Van Cleve

Harry R. Van Cleve
General Counsel