

DECISION



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

FILE: B-219405 **DATE:** July 26, 1985

MATTER OF: The W.H. Smith Hardware Company

DIGEST:

1. GAO will not review a contracting officer's affirmative determination of responsibility absent a showing of possible fraud or bad faith on the part of government officials or that definitive responsibility criteria in the solicitation have not been met.
2. The contracting agency, not GAO, considers the legal status of a firm as a regular dealer or manufacturer under the Walsh-Healey Act subject to review by the Small Business Administration (if a small business is involved), and the Secretary of Labor.

The W.H. Smith Hardware Company protests any award to Samuel Levine Plumbing and Heating Supplies, Inc. under solicitation No. 7PRT-52650/F5/7SB. The solicitation, issued by the General Services Administration (GSA), sought bids to supply rough brass lawn faucets and hose bibbs.

We dismiss the protest.

The protester contends that Levine improperly certified in its bid that the offered faucets and bibbs are domestic end products for purposes of evaluation under the Buy American Act, 41 U.S.C. § 10(a) (1982). According to Smith, an investigation would establish that the offered items are imported, and Levine's bid should not be accorded the preference for domestic products. Smith bases its allegation on a pattern of pricing by Levine and Levine's supplier of faucets. Smith also questions whether Levine is a regular dealer or manufacturer as required by the Walsh-Healey Act, 41 U.S.C. § 35-41.

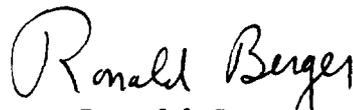
If a bidder does not exclude an end product from the Buy American Act certification in its bid, and does not

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otherwise indicate that it is offering something other than a domestic end product, acceptance of the bid will result in an obligation to furnish a domestic end product. We will not, as a general rule, investigate the bidder's intended method of compliance with its obligation to supply domestic end products, since this is a matter of contract administration and, as such, has no impact on the validity of the award. W.H. Compton Shear Co., B-208626.2, Oct. 3, 1983, 83-2 CPD ¶ 404. Whether Levine has the ability to comply with its certification is a matter of the firm's responsibility. We understand that GSA has performed a preaward survey of Levine specifically to determine Levine's responsibility. We will not review an affirmative determination of responsibility resulting from that inquiry absent a showing of possible fraud or bad faith on the part of government officials or an allegation that definitive responsibility criteria have not been met. Bay Decking Co., Inc., B-216248, Jan. 22, 1985, 85-1 CPD ¶ 77. Neither is present here.

Our Office also does not consider the legal status of a firm as a regular dealer or manufacturer under the Walsh-Healey Act, 41 U.S.C. § 35-45. The contracting agency determines the firm's status, subject to review by the Small Business Administration (if a small business is involved) and the Secretary of Labor. W.H. Compton Shear Co., supra.

We dismiss the protest.


Ronald Berger
Deputy Associate
General Counsel