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**DECISION**



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

FILE: B-200422

DATE: October 8, 1980

MATTER OF: Alco Tool and Manufacturing, Inc. DLG03271

**DIGEST:**

1. GAO does not review protests of affirmative determinations of responsibility except where fraud by procuring officials is alleged, or where it is argued that definitive responsibility criterion set forth in solicitation was not applied.
2. There is no legal basis to preclude or disturb contract award merely because bidder submits below-cost bid.
3. GAO does not consider whether bidder is manufacturer or regular dealer under Walsh-Healey Act since by law that is for determination by contracting agency, subject to review by Small Business Administration when small business is involved and by Secretary of Labor.

Alco Tool and Manufacturing Co. (Alco) protests any award of a contract to Age, Inc. under solicitation No. F41800-80-B-0027 issued by the Department of the Air Force. DLB5321

Alco contends that Age does not have the financial resources, facilities, or equipment necessary to perform the contract, and that Age does not have any prior experience against which to measure its integrity or ability to perform. Alco further contends that Age cannot perform at its bid price and that it does not qualify as a manufacturer or regular dealer under the Walsh-Healey Act, 41 U.S.C. § 35 et seq. (1976).

[ALLEGATIONS INVOLVING BIDDER RESPONSIBILITY]

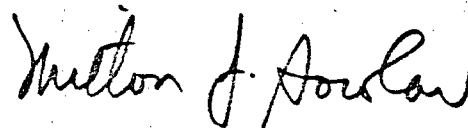
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Most of these allegations relate to Age's responsibility as a prospective contractor. This Office does not review protests of affirmative determinations of responsibility unless fraud on the part of the procuring officials is alleged or the solicitation contains definitive responsibility criteria which allegedly have not been applied. Bowman Enterprises, Inc., B-194015, February 16, 1979, 79-1 CPD 121. Neither exception is alleged here.

Moreover, we have repeatedly held that a submission of a below-cost bid does not constitute a legal basis for precluding or disturbing a contract award. Columbia Loose-Leaf Corporation, B-193659, January 23, 1979, 79-1 CPD 45; Swedlow, Inc., B-191629, May 8, 1978, 78-1 CPD 345. It is up to the contracting agency to determine, in connection with its consideration of the bidder's responsibility, if the bidder will be able to perform at the price bid.

Finally, we do not consider the status of a bidder as a manufacturer or a regular dealer under the Walsh-Healey Act because such a matter is by law for the contracting agency's determination in the first instance, subject to review by the Small Business Administration when a small business is involved and by the Secretary of Labor. Western Filament, Inc., B-192519, August 30, 1978, 78-2 CPD 157.

The protest is dismissed.



Milton J. Socolar  
General Counsel