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**DECISION**



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

FILE: B-206872

DATE: April 7, 1982

MATTER OF: Rockwood Systems Corporation

**DIGEST:**

1. Whether a bidder is a regular dealer or a manufacturer under the Walsh-Healey Act is for determination by contracting agency subject to final review by the Small Business Administration and the Department of Labor and, thus, will not be considered by the GAO.
2. GAO will not review protest challenging offeror's intended compliance with representation in its Buy American certification that domestic source end products will be supplied.
3. Whether item being furnished by awardee complies with contract requirement is a matter of contract administration for the contracting agency, not GAO.
4. Absent a finding of nonresponsibility, a below-cost bid provides no reason to challenge an award.

Rockwood Systems Corporation (Rockwood) protests the proposed award of a contract to Alchemy Inc. (Alchemy), under invitation for bids (IFB) No. DLA700-82-B-0882 by the Defense Construction Supply Center, Columbus, Ohio.

We summarily dismiss the protest.

First, Rockwood contends that Alchemy is neither a regular dealer nor a manufacturer as defined in the Walsh-Healey Act, 41 U.S.C. §§ 35-45 (1976), and, therefore, is ineligible for award of a contract.

Our Office does not consider the issue of whether a bidder is a regular dealer or manufacturer within the meaning of the Walsh-Healey Act, since such matters are

by law for the contracting agency's determination, subject to final review by the Small Business Administration, where the bidder is a small business, and the Department of Labor. Aviation Enterprises, Inc., B-205522, December 1, 1981, 81-2 CPD 439.

Second, Rockwood alleges that based on its analysis of Alchemy's bid price, Alchemy's bid price must be below cost unless it is purchasing supplies from offshore possessions and the raw material for the supplies will be of foreign content. In essence, Rockwood questions whether or not Alchemy intends to comply with the representation in its Buy American certification that domestic source end products will be furnished.

We have stated that if a bidder excludes no end products from the Buy American certificate in its bid and does not indicate that it is offering anything other than domestic source end products, as Alchemy apparently did here, the acceptance of the bid, if otherwise acceptable, will result in an obligation on the part of the bidder to furnish domestic source end products. Compliance with that obligation is a matter of contract administration for the contracting agency and has no effect on the validity of the contract award. Lanier Business Products, Inc., B-196736, March 10, 1981, 81-1 CPD 186.

We also point out that to the extent Rockwood is suggesting Alchemy has submitted a below-cost bid, acceptance of unreasonably low or even below-cost bids by the Government is not illegal and does not provide a basis upon which to challenge an award absent a finding that Alchemy is nonresponsible. Bob McDorman Chevrolet, Inc., and Jack Roach Cadillac, B-200846, B-200847, B-200847.2, B-200848, March 13, 1981, 81-1 CPD 194. A determination that Alchemy is responsible would have to be made prior to award to Alchemy. This determination would also include a review of the bidder's quality control and accounting system which Rockwood has also challenged. Our Office does not review such affirmative determinations of responsibility except in circumstances not applicable here. Beacon Winch Company, B-206513, March 15, 1982, 82-1 CPD \_\_\_\_.

We dismiss the protest.

*F. H. Barclay, Jr.*  
For Harry R. Van Cleve  
Acting General Counsel