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**DECISION**



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

FILE: B-206320

DATE: April 27, 1982

MATTER OF: F&H Manufacturing Corp.

**DIGEST:**

1. Protest that the Army violated the Defense Acquisition Regulation by awarding a contract while an appeal of awardee's eligibility under the Walsh-Healey Act was pending is denied. Even if the applicable procedural requirements regarding an award prior to resolution of the protest to the Department of Labor (DOL) of the awardee's Walsh-Healey Act eligibility were not followed, the legality of the award would not be affected. Moreover, since DOL subsequently determined that the awardee was eligible, protester was not prejudiced by the award.
2. Protest that bidder is not legal entity to which award can be made is essentially protest challenging the agency's affirmative determination of responsibility. GAO does not review affirmative determinations of responsibility except under circumstances not applicable here.

F&H Manufacturing Corp. (F&H) protests the award of a contract by the Department of the Army (Army) to The Cleveland General Co., Division of Independent Holding Corp. (Cleveland), under invitation for bids (IFB) DAAE07-81-B-B470. F&H contends that the Army's award to Cleveland while its preaward protest of Cleveland's eligibility for award as a manufacturer or regular dealer under the Walsh-Healey Act was pending violated the applicable Defense Acquisition Regulation (DAR). By letter of April 5, 1982, we were advised that the Department of Labor (DOL) has determined Cleveland qualifies for award as a manufacturer under the Walsh-Healey Act.

We deny this aspect of the protest.

The Army correctly points out that we have held that questions of compliance with the Walsh-Healey Act requirements are not reviewed by this Office and we have no authority to direct a contracting officer to withhold an award pending a determination under the Walsh-Healey Act. Aqua-Trol Corporation, B-191648, July 14, 1978, 78-2 CPD 41; M & S Products Corporation, B-191602, May 15, 1978, 78-1 CPD 372. In light of this precedent, the Army requests that we dismiss the protest.

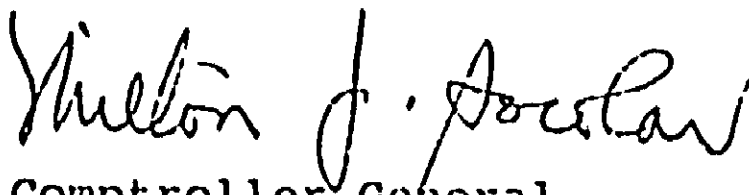
The cited decisions concerned situations in which the protester requested that we, in effect, make a Walsh-Healey Act determination and eliminate a bidder from consideration for the contract award. We have stated that such a decision is by law for determination by the contracting officer subject to the review of the Small Business Administration (SBA) and DOL. M & S Products Corporation, supra. Here, however, F&H is not requesting that we review Cleveland's eligibility under the Walsh-Healey Act, but asks that we review the validity of this award made while Cleveland's eligibility was being considered by DOL. Our Office will consider the validity of an award where there is an allegation that regulatory procedures required the award to be postponed and that the procedures were not followed. McQuiston Associates, B-199013, September 1, 1981, 81-2 CPD 192.

The protester asserts that the Army violated the DAR by awarding the contract pending an appeal of the awardee's eligibility under the Walsh-Healey Act. Even if the applicable procedural requirements regarding an award prior to resolution of F&H's protest to DOL of Cleveland's eligibility under the Walsh-Healey Act were not followed, the legality of the award would not be affected. See, McQuiston Associates, supra. Moreover, since Cleveland was determined eligible for award by DOL, F&H was not prejudiced by the award. See, Plant Facilities and Engineering, Inc., B-201618, April 22, 1981, 81-1 CPD 310.

We note that F&H raised a second protest issue based on information in the Army's report. F&H asserts that the Army's report indicates that "The Cleveland Co." is not a legal entity. Therefore, since it is not a legal bidder to which award can be made or to which contract performance responsibility can be charged, F&H asserts that the award should be rescinded.

In fact, the Army's report states that award was made to the bidder, "The Cleveland General Co. Div. Independent Holding Corporation," and that the Army found the Independent Holding Corporation was registered to do business in Ohio. Furthermore, The Cleveland General Co., a division of Independent Holding Corporation, although not separately registered in Ohio, was determined responsible based on a preaward survey. Specifically, The Cleveland General Co. was investigated and found to have the machinery to produce the supplies solicited. Essentially, F&H is challenging the Army's affirmative determination of responsibility. Our Office does not review affirmative determinations of responsibility absent a showing of fraud on the part of procurement officers or of the agency's failure to apply definitive responsibility criteria. Biospherics, Inc., B-203419, December 13, 1981, 81-2 CPD 518.

We deny the protest in part and dismiss the protest in part.

*for*   
Comptroller General  
of the United States