

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

FILE: B-208655.3

DATE: March 2, 1983

MATTER OF: JLS Servco

DIGEST:

1. Protest concerning small business size status of bidder is not for consideration by GAO since exclusive jurisdiction with respect to such matters is statutorily vested in the Small Business Administration.
2. The submission of a below-cost bid is not a valid basis to challenge a contract award.

JLS Servco (JLS) protests the possible award of a contract to Tenavision, Inc. (Tenavision), the low bidder under solicitation No. DAKF03-83-B-0006, a small business set-aside issued by the Department of the Army.

JLS contends that, although Tenavision may have qualified as a small business in previous years, Tenavision now employs too many workers to qualify as a small business. However, our Office does not review size status protests since, under ~~15 U.S.C. § 637(b) (1976)~~, the Small Business Administration is empowered to conclusively determine matters of small business size status for Federal procurements. TGR-342 Construction Co., Inc., B-208923, September 23, 1982, 82-2 CPD 266.

JLS also questions whether Tenavision can supply equipment conforming to the solicitation, since Tenavision's bid was significantly lower than the bids submitted by four "knowledgeable" contractors. Essentially, JLS is complaining about the submission of below-cost bid. However, that is not a valid basis to challenge an award. Rather, the question of whether the bidder can adequately perform the contract at the bid price depends on the responsibility of the bidder. Before award, the agency must make an affirmative determination of the awardee's responsibility. Our Office does not review that determination absent a showing of fraud or bad faith by the contracting officer or of failure to apply definitive responsibility criteria in the solicitation. Teamster Local No. 270, B-208624, September 15, 1982, 82-2 CPD 230. Neither exception has been alleged here.

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We dismiss the protest.

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