

DECISION



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

27259

FILE: B-214009

DATE: January 23, 1984

MATTER OF: Hydro-Test Products Inc.

DIGEST:

1. No basis exists to preclude a contract award merely because the low bidder submitted a below-cost bid. A below-cost bid presents a question of the bidder's responsibility and GAO does not review affirmative determinations of responsibility except in limited circumstances.
2. Small business size and size standards are determined by the Small Business Administration, not GAO.

Hydro-Test Products Inc. (Hydro-Test) protests the award of a contract to Avel Corporation (Avel) under invitation for bids No. DAAJ09-84-B-A030 issued by the Department of the Army.

Hydro-Test alleges that Avel has grossly underbid the contract and that Avel, because of its affiliates, may exceed the small business size standard. We dismiss the protest.

The submission of a below-cost bid is not illegal and provides no basis for challenging the award of a government contract to a responsible prospective contractor. Whether the low bidder can perform the contract at the price bid is a matter of responsibility. Our Office does not review protests concerning affirmative determinations of responsibility absent a showing that the contracting officer acted fraudulently or in bad faith or that definitive responsibility criteria in the solicitation have not been met. Sun Temporary Services, B-210577, February 17, 1983, 83-1 CPD 167. Neither exception is alleged here.

In addition, under 15 U.S.C. § 637(b)(6) (1982), the Small Business Administration (SBA) has exclusive authority to determine matters of small business size status for procurement purposes. If a business wishes to challenge the size status of another concern, it must do so in accordance with SBA regulations and not through a bid protest to our Office. Gallegos Research Group, B-209992, April 11, 1983, 83-1 CPD 376.

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Accordingly, we dismiss the protest.

Harry R. Van Cleve
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Acting General Counsel