

DECISION



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

FILE: B-216055

DATE: August 22, 1984

MATTER OF: Janke and Company, Inc.

DIGEST:

1. GAO does not consider the legal status of a firm as a regular dealer or a manufacturer within the meaning of the Walsh-Healey Act. By law, this matter is to be determined by the contracting agency in the first instance subject to review by the Small Business Administration (if a small business is involved) and the Secretary of Labor.
2. A firm's ability to perform is a matter of responsibility, and GAO will not review an affirmative determination in that respect except in limited circumstances.

Janke and Company, Inc. protests the proposed award of a contract to DOB Corporation under Department of the Navy solicitation No. N68335-84-R-0874. Janke complains that DOB does not qualify as a regular dealer or manufacturer, and contends that DOA does not have either the financial or technical capability to satisfy all the contract requirements at the prices offered.

This Office does not consider the legal status of a firm as a regular dealer or a manufacturer within the meaning of the Walsh-Healey Act, 41 U.S.C. §§ 35-45 (1982). By law, this matter is to be determined by the contracting agency in the first instance subject to review by the Small Business Administration (if a small business is involved) and the Secretary of Labor. Dixie Bag Corporation, B-210898.2, July 15, 1983, 83-2 CPD ¶ 97.

DOB's ability to perform involves the firm's responsibility, and an affirmative determination in that respect must precede any award. Our Office does not

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review such a determination absent a showing of possible fraud on the part of procuring officials or an allegation that the solicitation contains definitive responsibility criteria that have not been applied. Voyager Emblems, Inc., B-206301, Feb. 10, 1982, 82-1 CPD ¶ 127.

The protest is dismissed.

Harry R. Van Cleve

Harry R. Van Cleve
Acting General Counsel