



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Skyline Products

File: B-231775

Date: July 7, 1988

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### DIGEST

1. The General Accounting Office does not review a protest of an agency's affirmative determination of responsibility absent a showing of possible fraud, bad faith or failure to apply definitive criteria contained in the solicitation.
2. The General Accounting Office does not consider whether a bidder qualifies as a manufacturer or regular dealer under the Walsh-Healey Act. By law, such matters are for determination 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.

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### DECISION

Skyline Products protests the award of a contract to Allied Insulation Supply Co. under invitation for bids (IFB) No. DTCG80-88-B-00040, issued by the United States Coast Guard for the manufacture of honeycomb core panels.

We dismiss the protest.

Skyline contends that Allied is not a responsible contractor because it does not have the manufacturing capability to fabricate the specified panels. Our Office, however, will not review a protest of a contracting agency's affirmative determination of a bidder's responsibility unless there is a showing of possible fraud, bad faith, or a failure to apply definitive criteria contained in the solicitation. 4 C.F.R. § 21.3(m)(5) (1988); Nishimatsu Construction Co., Ltd., B-229524, et al., Nov. 6, 1987, 87-2 CPD ¶ 462. Skyline has not made such a showing.

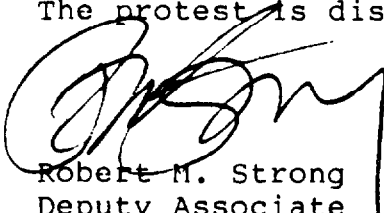
Skyline also asserts that Allied intends to supply a product which is manufactured by a large business even though the procurement was set-aside for small businesses. Skyline

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does not allege, however, that there was anything wrong with the bid, that is, that Allied indicated anything other than that it intends to supply products from a small business. Whether Allied can or intends to do so also involves responsibility. Eclipse Systems, Inc., B-216002, Mar. 4, 1985, 85-1 CPD ¶ 267. Again, the General Accounting Office does not review this issue except in limited circumstances not applicable here.

Finally, Skyline alleges that Allied does not qualify as either a manufacturer or regular dealer under the Walsh-Healey Public Contracts Act, 41 U.S.C. §§ 35-45 (1982), and, therefore, is not eligible for the award. Our Office does not consider whether an offeror so qualifies since such matters are for determination by the contracting agency in the first instance, subject to final review by the Small Business Administration, if a small business is involved, and by the Secretary of Labor. 4 C.F.R. § 21.3(m)(9); General Motors Corp., B-228388, Oct. 23, 1987, 87-2 CPD ¶ 389.

The protest is dismissed.



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