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D. Harpeth
Proc I

DECISION



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

FILE: B-189912

DATE: January 20, 1978

MATTER OF: Bethpage Industries, Inc.

DIGEST:

1. Question involving failure of SBA to issue certificate of competency is not for consideration by GAO, since conclusive authority over such matter is vested by statute in SBA.
2. Where SBA declines to certify bidder as manufacturer under Walsh-Healey Act it is not for consideration by GAO as jurisdiction over matter rests with contracting officer and SBA subject to final review by Department of Labor.

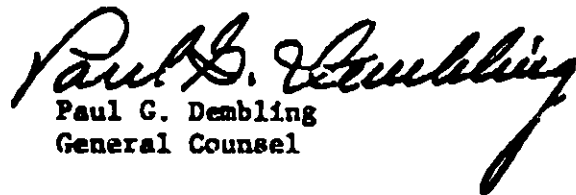
Bethpage Industries, Inc. (Bethpage), protests award to any bidder other than itself under invitation for bids No. DSA-100-77-B-0936, issued by the Defense Logistics Agency. Bethpage contends that it is a responsible bidder, that it also qualifies as a manufacturer under the Walsh-Healey Act, and, consequently, that no possible basis exists for denying it the award.

As regards the contention that Bethpage is a responsible bidder, because Bethpage is a small business this issue was referred to the Small Business Administration (SBA), after the contracting officer had determined Bethpage to be nonresponsible, for the possible issuance of a certificate of competency (COC). The SBA declined to issue a COC on the basis that Bethpage did not qualify as a manufacturer under the Walsh-Healey Act. Section 501 of P.L. 95-89, 91 Stat. 561, amending section 8(b) of the Small Business Act of 1958, permits the SBA to rule on this issue and to forward, as was done here, its finding of nonqualification to the Secretary of Labor for the final determination. Under 15 U.S.C. §§ 637(b)(6) and (7) (1970), a decision of the SBA regarding the competency of a small business to perform a Government contract is conclusive. Thus, whether the SBA issues or declines to issue a COC is not a matter that is subject to review by our Office. Case, Inc.; Bethune Quilting Company, B-185422, January 29, 1976, 76-1 CPD 63.

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With reference to the Walsh-Healey issue, where the SEA declines to certify the bidder, the contracting officer's determination is subject to final review by the Department of Labor. Section 501 of P.L. 95-89, 91 Stat. 561, supra.

Accordingly, the issues presented in this case are not properly for consideration by our Office.


Paul G. Dembling
General Counsel