

5533

Peter Iannicelli

PL1

DECISION



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

FILE: B-190645

DATE: March 3, 1978

MATTER OF: Baker Manufacturing Company, Inc.

DIGEST:

Question of whether small business firm is regular dealer under Walsh-Healey Act is for determination by contracting agency subject to review by Small Business Administration. Where, as here, SBA certifies firm eligible for award, such certification is final and will not be reviewed by GAO.

By letter dated February 1, 1978, Baker Manufacturing Company, Inc. (Baker), has protested the award of a contract on December 23, 1977, to International Trade Operations (ITO), a small business concern, pursuant to solicitation No. DACA87-77-B-0120, issued by the United States Army Corps of Engineers, Huntsville, Alabama.

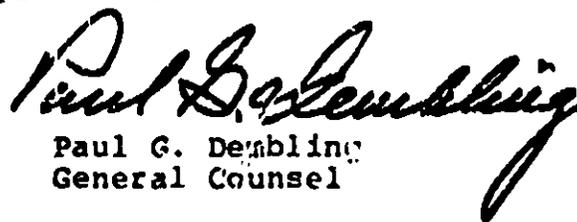
The protester challenges ITO's eligibility for award on the basis that ITO is not a regular dealer under the Walsh-Healey Public Contracts Act. Baker had originally protested to the Department of the Army on this basis on September 28, 1977. The matter of ITO's eligibility for award was forwarded to the Small Business Administration (SBA) for resolution in accordance with section 501 of P.L. 95-39, and on December 22, 1977, the SBA determined ITO to be eligible for award under the subject solicitation.

The question of whether a bidder is a manufacturer or regular dealer is for consideration under the Walsh-Healey Act, 41 U.S.C. §§ 35-45 (1970). The responsibility for such determination rests in the first instance with the contracting agency. If the contracting officer determines that an otherwise qualified small business concern may be ineligible for award due to the regular dealer provision of the Walsh-Healey Act, the contracting officer is required to refer the matter to the SBA for its review under section 501 of P.L. 95-39, 91 Stat. 561, amending section 8(b) of the Small Business Act of 1958. Where the

B-190645

SBA certifies the small business concern to be eligible for award of a specific contract, as here, the certification is final and not subject to review by our Office. International Trade Operations, B-190645, November 30, 1977, 77-2 CPD 432.

Accordingly, the protest is dismissed.


Paul G. Deabling
General Counsel