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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20540

FILE: B-191452

DATE: April 19, 1978

MATTER OF: Kings Point Manufacturing Company, Inc.

DIGEST:

1. Question of whether bidder is manufacturer or regular dealer under Walsh-Healey Act is for determination by contracting agency subject to review by Secretary of Labor. If bidder is small business concern and contracting officer has determined that it is not a manufacturer or regular dealer, matter must be referred to SBA for review under section 501 of P.L. 95-89, 91 Stat. 553, 562. SBA may either certify small business to be eligible or forward matter to Secretary of Labor for final disposition. Thus, GAO will not consider such matters.
2. Protest against affirmative determination of responsibility will not be reviewed unless fraud on part of procuring officials has been alleged or solicitation contains definitive responsibility criteria which allegedly have not been applied, and neither exception is applicable here.
3. Protest against urgency determination and award of contract is untimely and not for consideration since protest was filed more than 10 days after protester knew of determination and award.

Kings Point Manufacturing Company, Inc. (Kings Point), has protested the proposed award of a contract for electrical harness assemblies to Allied Technology Associates, Inc. (ATA), under invitation for bids (IFB) DAAB07-77-B-0315 (B-0315), issued by the Headquarters United States Army Electronics Command, Fort Monmouth, New Jersey (Army). Kings Point has also protested the Army's award of contract No. DAAB07-77-C-0147 (C-0147) to ATA for the same items.

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Regarding B-0315, Kings Point contends that the Army did not comply with the requirements of the Walsh-Healey Act, 41 U.S.C. §§ 35-45 (1970), and that the Army did not properly determine ATA's responsibility. Regarding C-0147, Kings Point again argues that ATA was not responsible, and additionally alleges that the Army made an improper determination of urgency in awarding the contract during the pendency of a protest filed with the Department of Labor under the Walsh-Healey Act.

The question of whether a bidder is a manufacturer or regular dealer is for consideration under the Walsh-Healey Act. The responsibility for such determination rests in the first instance with the contracting agency and is subject to final review by the Secretary of Labor. In the event that the bidder is a small business concern and the contracting officer has determined it to be ineligible because it is not a manufacturer or regular dealer under the Walsh-Healey Act, section 501 of P.L. 95-89, 91 Stat. 553, 562, amending section 8(b) of the Small Business Act of 1958, requires that the matter be referred to the Small Business Administration for review. SBA may either certify the small business concern to be eligible or forward the matter to the Secretary of Labor for final disposition. Thus, our Office does not review determinations of whether a particular firm is a regular dealer or manufacturer within the purview of the Walsh-Healey Act and related implementing regulations. International Trade Operations, B-190645, November 30, 1977, 77-2 CPD 432; Acme Plastics, Inc., B-189018, June 8, 1977, 77-1 CPD 415; CNC Company, B-188176, B-183441, March 29, 1977, 77-1 CPD 221.

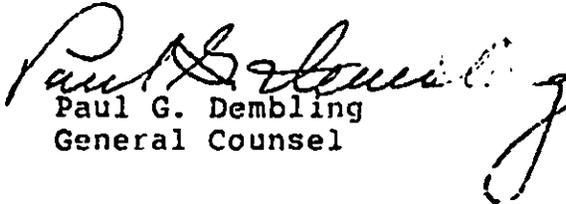
Any award of a contract to ATA necessarily involves an affirmative determination of responsibility under Armed Services Procurement Regulation (ASPR) § 1-904.1 (1976 ed.), and our Office does not review protests against affirmative determinations of responsibility unless either fraud on the part of the procuring officials is alleged, or the solicitation contains definitive responsibility criteria which allegedly have not been applied. Yardney Electric Corporation, 54 Comp. Gen. 509 (1974), 74-2 CPD 376; Central Metals Products, Inc., 54 Comp. Gen. 66 (1974), 74-2 CPD 64. While Kings Point

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has alleged that definitive responsibility criteria have been misapplied, it has not specified any such criteria contained in the solicitation, but has only referred to the general responsibility standards set forth in ASPR. Also, fraud has not been alleged. Therefore, we will not review the affirmative determinations made in this case.

We have been advised that Kings Point was notified of the urgency determination and award of C-0147 on September 30, 1977. Section 20.2(b)(2) of our Bid Protest Procedures, 4 C.F.R. § 20.2(b)(2) (1977), requires that bid protests be filed not later than 10 working days after the basis for protest is known. Since Kings Point did not protest the urgency determination and award of C-0147 until March 13, 1978, this portion of its protest is untimely and will not be considered.

Accordingly, the protest is dismissed.


Paul G. Dembling
General Counsel