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Roger Ayer PL II

**DECISION**



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

FILE: B-191046

DATE: May 31, 1978

MATTER OF: Batteries Division of Information  
Services Industries

DIGEST:

1. Determination by Small Business Administration and Department of Labor that protester is not regular manufacturer under Walsh-Healey Public Contracts Act and therefore is ineligible for award is final and not subject to review by GAO.
2. Protest allegation of agency misuse of proprietary data will not be considered where it is so lacking in detail as to render impossible contracting agency response and additional supporting facts and exhibits are not furnished despite protester's stated intention to do so.

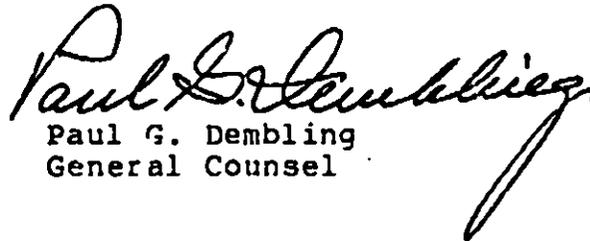
Batteries Division of Information Services Industries (BDISI) protests the award of a contract to any firm other than itself under request for proposals DLA-400-77-R-2038, issued by the Defense Logistics Agency's Defense General Supply Center, Richmond, Virginia (DLA), for lead acid storage batteries. BDISI has generally protested DLA's actions in rejecting BDISI's offer, asserting that "some funny business and serious adverse agency action" took place. The most specific allegation made is that, in the course of DLA's second pre-award survey of BDISI, the contracting officer removed and used some unspecified proprietary information. BDISI promised further details of its allegations, but such details have not been furnished.

DLA reports that, pursuant to the Walsh-Healey Public Contracts Act (Act), 41 U.S.C. §§ 35-40 (1970) and section 501 of Public Law 95-89, 91 Stat. 553, 561-2, approved August 4, 1977, it has been determined by the Small Business Administration and the Department of Labor

that BDISI is not a "manufacturer" within the purview of the Act and that BDISI is therefore ineligible for award under the solicitation. That disposition is final and not subject to review by this Office. Rhimco Industries, Inc., B-189672, August 29, 1977, 77-2 CPD 157; Imperial Products Company, B-191353, April 5, 1978, 78-1 CPD \_\_\_\_.

With regard to the alleged misuse of the propriety data, DLA reports that, in the absence of more specific information, it cannot surmise the basis for BDISI's assertions and is therefore unable to address the issue which BDISI has raised. Since the protester has not furnished the promised supporting "facts and exhibits," we have no basis on which to consider the protest.

Therefore, since BDISI is not eligible for award on this procurement and since it has not adequately supported its assertion regarding misuse of propriety data, we are closing our file without further action. Protest dismissed.

  
Paul G. Dembling  
General Counsel