

DECISION



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

FILE: B-196406

DATE: December 26, 1979

MATTER OF: Black & Decker (U.S.), Inc. D 349.3

DIGEST:

[Protest of GSA Contract Award]

1. Whether small business concern is manufacturer or regular dealer under Walsh-Healey Act and whether it is responsible are 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. 2
2. Where bidder takes no exception to specifications it is bound to meet them. Whether delivered items in fact meet specifications is matter of contract administration for resolution by contracting agency and not for consideration by our Office.
3. Where it is clear from protester's initial submissions that protest is not reviewable we will decide matter on basis of those submissions without requesting agency report or holding conference.

3 Black & Decker (U.S.), Inc. (B&D), has protested the award of a contract for electromagnetic suppressed electric portable drills to California Power Systems, Inc. (CPS), a small business concern, under invitation for bids (IFB) FTAP-BS-10142-A-4-23-79, issued by the General Services Administration (GSA). B&D alleges 17
4 (1) that CPS is not a "manufacturer" or "regular dealer"

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as required by the Walsh-Healey Act, 41 U.S.C. §§ 35-45 (1976), (2) that the Small Business Administration (SBA) erroneously issued CPS a certificate of competency (COC) after GSA found CPS to be non-responsible and not a manufacturer or regular dealer, (3) that the SBA does not have the authority to conclusively determine the Walsh-Healey eligibility of a bidder when that eligibility is challenged by another bidder, and (4) that the tools that CPS will supply under the contract will not meet the required specifications. AGC000002

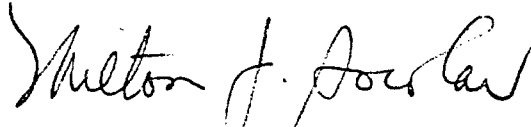
The question of whether a bidder is a manufacturer or regular dealer is for consideration under the Walsh-Healey Act. 41 U.S.C. §§ 35-45 (1976). The responsibility for such determination rests in the first instance with the contracting agency. If the contracting officer determines that an otherwise qualified small business concern is ineligible for award due to the provisions of the Walsh-Healey Act, the contracting officer is required to refer the matter to the SBA for its review under 15 U.S.C. § 637(b)(7)(B) (1976 & Supp. 1 1977), amending the Small Business Act of 1958. This is the procedure whether the contracting officer's finding of ineligibility is self-initiated or the result of a protest by another bidder. Where the 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. See, e.g., Baker Manufacturing Company, Inc., B-190645, March 3, 1978, 78-1 CPD 165; International Trade Operations, B-190645, November 30, 1977, 77-2 CPD 432. Also, the SBA's certification that a small business concern is responsible is final and our Office will not review such determinations. Specialty Tools, Inc., B-193980, April 5, 1979, 79-1 CPD 239.

Concerning B&D's argument that the tools that CPS will supply under the contract will not meet GSA's specifications, CPS's bid took no exception to the specifications and, therefore, CPS is bound to comply with them. Whether the items delivered in fact meet the specifications is a matter of contract administration for resolution by the contracting

agency and not for consideration by our Office.
Borg-Warner Health Products, Inc., B-187552, July 21,
1977, 77-2 CPD 42.

B&D has requested a conference. However, when it is clear from the protester's initial submissions that the protest is not reviewable, as here, we will decide the matter on the basis of those submissions without requesting an agency report or holding a conference. United Security, Inc., B-194868, B-194870, June 21, 1979, 79-1 CPD 446; Bates and Associates, B-192589, August 24, 1978, 78-2 CPD 143.

The protest is dismissed.

A handwritten signature in dark ink, appearing to read "Milton J. Socolar", is written over the typed name.

Milton J. Socolar
General Counsel