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DECISION



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

[Protest Alleging Awardee is Ineligible]

FILE: B-197341

DATE: March 31, 1980

MATTER OF: F&H Manufacturing Corp.

DIGEST:

Through oversight agency failed to process preaward protest to contracting officer that low bidder was not manufacturer or regular dealer under Walsh-Healey Act. However, protest that award should be canceled pending final determination of eligibility is denied, because contracting officer suspended contract performance immediately upon learning of oversight, forwarded matter to Department of Labor for final resolution, and can easily take corrective action should Department of Labor ultimately determine that awardee is ineligible.

F&H Manufacturing Corp. (F&H) protests the award of a contract for reel-type spools, to Federal Standard Corp. (Federal) under invitation for bids (IFB) DLA400-79-B-3777 issued by the Defense Logistics Agency (DLA).

Bids were opened on October 25, 1979. F&H and Federal were the only bidders. Federal submitted the low bid. On November 5, 1979, F&H protested to the contracting officer that Federal was ineligible for award because the firm was not a manufacturer or regular dealer as required by the Walsh-Healey Act, 41 U.S.C. §§ 35-45 (1976). Through oversight, however, F&H's protest was not processed. Instead, the contracting officer, believing that all preaward actions had been completed, awarded a contract to Federal on December 3, 1979.

F&H asserts that the contracting officer violated Defense Acquisition Regulation (DAR) § 12-604(a)(3) (1976 ed.), which provides that a protester can submit evidence to the contracting officer concerning the protested firm's eligibility under the Walsh-Healey

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Act, and DAR § 12-604(a)(5) (1976 ed.), which provides that the contract award will be held in abeyance pending a final determination of eligibility by either the Department of Labor (DOL) or the Small Business Administration. Consequently, F&H believes that the award to Federal should be canceled pending the final determination of Federal's eligibility under the Walsh-Healey Act.

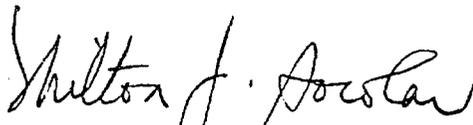
The record shows that after discovering on December 14, 1979, that F&H's protest had not been processed, the contracting officer took certain steps to remedy the oversight. A contract modification was entered into with Federal which suspended performance at no cost to the Government until F&H's protest is resolved. By letter dated December 12, 1979, the contracting officer forwarded the protest and related documents to DOL asking for a final determination of Federal's eligibility for award. The contracting officer notified F&H of his actions by letter dated December 13, 1979.

It is not necessary for DLA to end Federal's contract now. See The Forestry Account, B-193089, January 30, 1979, 79-1 CPD 68. Suspension of performance allows the merits of F&H's Walsh-Healey Act protest to be as effectively considered by DOL as it would be if the award had been held in abeyance pending final resolution of the protest. Since there has been no performance under the contract by Federal, it is clear that DLA will be able to take appropriate corrective action if DOL ultimately determines that Federal is ineligible. We note that at present no decision has been made by DOL and that DLA is in the process of responding to a DOL request for further documentation.

With regard to F&H's contention that the contracting officer failed to provide it with the opportunity to submit evidence on Federal's eligibility, the record reveals that on November 21, 1979, F&H made a Freedom of Information Act request for copies of the bid submitted by Federal, DLA's preaward survey, and other Government documents relating to the evaluation of Federal as a dealer or manufacturer under the Walsh-Healey Act. By letter dated December 17, 1979,

DLA furnished F&H with a copy of Federal's bid and copy of the preaward survey with certain privileged and confidential information deleted. By letter of January 3, 1980, F&H submitted its comments concerning Federal's qualification as a manufacturer. The contracting officer forwarded this letter to DOL on January 21, 1980. Consequently, while F&H did not have the opportunity initially to submit evidence, subsequently it has been given an opportunity to do so in connection with DOL's final determination of the matter.

The protest is denied.



For the Comptroller General
of the United States