

DECISION

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

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FILE: B-213062**DATE:** February 10, 1984**MATTER OF:** Instrumentation, Communication,
Engineering, Inc.**DIGEST:**

GAO will not consider protest where a small business protester's initial objection that its bid improperly was found nonresponsive has been rendered academic by the contracting agency's redetermination of responsiveness, but the protester was subsequently determined to be nonresponsible by the contracting officer because the protester did not qualify as a regular dealer or manufacturer under the Walsh-Healey Act and the Small Business Administration (SBA) has concurred with this finding. By law, this question is reserved for the contracting officer's determination subject to final review by the SBA and the Secretary of Labor.

Instrumentation, Communication, Engineering, Inc. (ICE), protests the award of a contract to Emerson Electric Company (Emerson), under invitation for bids No. DLA001-83-B-0002, issued by the Defense Logistics Agency (DLA), for the purchase and installation of an uninterruptible power system and certain accessories.

In its initial submission, ICE protested that its low bid had been rejected improperly because of an alleged failure to acknowledge certain solicitation amendments which ICE contended that it had, in fact, acknowledged. DLA agreed to temporarily suspend contract performance by the awardee pending consideration of the responsiveness of ICE's bid and the DLA General Counsel subsequently determined that ICE's bid was responsive and should be considered for award. However, the General Counsel also noted that a preaward survey had indicated that ICE did not qualify as a regular dealer or manufacturer under the Walsh-Healey Act, 41 U.S.C. §§ 35-45 (1976), and that ICE would not be able to complete the contract at its bid price. In view of these findings, the General Counsel

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recommended that, if the contracting officer found ICE to be nonresponsible, as seemed likely, the matter should be referred to the Small Business Administration (SBA) for possible issuance of a certificate of competency.

The contracting officer did find ICE nonresponsible for the above reasons and referred the matter to SBA for review. By letter dated December 13, 1983, the SBA concurred with the contracting officer's finding that ICE was ineligible for award under the requirements of the Walsh-Healey Act. Because this matter involved a Walsh-Healey Act issue, the SBA referred the matter to the Secretary of Labor for review and final determination. DLA then ordered commencement of performance of the contract by Emerson.

The protester's original basis of protest is academic in view of the Agency's redetermination that ICE's bid is responsive. To the extent that ICE questions the finding of nonresponsibility because it is not a regular dealer or manufacturer within the meaning of the Walsh-Healey Act, GAO will not exercise review, since, by law, such matters are for determination by the contracting agency in the first instance, subject to final review by the SBA where a small business is involved, and by the Secretary of Labor. Bogue Electric Manufacturing Co., B-210699, February 22, 1983, 83-1 CPD 179; see Defense Acquisition Regulation § 12-604 (1976 ed.).

Accordingly, we dismiss the protest without obtaining comments on the agency report from the parties to the protest. 4 C.F.R. § 21.3(g) (1983), as added by 48 Fed. Reg. 1931 (1981).

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