

DECISION

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

FILE: B-217226; B-218010 **DATE:** January 28, 1985
MATTER OF: Pacific Sky Supply, Inc.

DIGEST:

Protest alleging that agency incorrectly found protester ineligible for award under Walsh-Healey Act is dismissed, since GAO role in protests concerning status determinations under Walsh-Healey Act is limited to considering whether contracting agency complied with procedural requirements and protester does not contend that agency failed to comply with procedures for referral of status determinations to Small Business Administration.

Pacific Sky Supply, Inc. protests its exclusion from eligibility for award under solicitation No. F41608-84-R-9559 for joint assemblies, issued by the San Antonio Logistics Center, San Antonio, Texas. We dismiss the protest.

The contracting officer initially determined that Pacific was ineligible for award because it is not a regular dealer within the meaning of the Walsh-Healey Act, 41 U.S.C. §§ 35-45 (1982). Subsequently, the contracting agency notified Pacific that it also had been found not to qualify under the Walsh-Healey Act as a manufacturer of the joint assemblies, and therefore would be removed from the approved source list for the items. Pacific contends that the agency's determinations are erroneous, and that, in any event, the final determination of Pacific's status under the Walsh-Healey Act is to be made by the Small Business Administration (SBA), not the contracting agency. Pacific further insists that if it does not qualify as a manufacturer, the prospective awardee, General Motors, Allison Division, also does not qualify.

031087


B-217226; B-218010

Our Office does not consider whether an offeror is a regular dealer or manufacturer within the meaning of the Walsh-Healey Act. By law, such matters are for determination by the contracting agency in the first instance, subject to final review by the SBA, where, as in this case, a small business is involved, and by the Secretary of Labor. Bogue Electric Manufacturing, Inc., B-210699, Feb. 22, 1983, 83-1 CPD ¶ 179. Our role in protests concerning the status of an offeror as a regular dealer or manufacturer is limited to considering whether the contracting officer has complied with procedural requirements. Kendall G. Peterson, B-208757.2, June 8, 1983, 83-1 CPD ¶ 624.

Here, as the protester itself states, the contracting agency has agreed to forward for SBA review its initial determination that Pacific does not qualify as a regular dealer. With regard to the agency's subsequent determination that Pacific does not qualify as a manufacturer, Pacific does not contend that the agency has refused to submit its determination for SBA review as required. Thus, there is no indication that the agency has failed to comply with the procedures for eligibility determinations under the Walsh-Healey Act. To the extent the protest is based on Pacific's speculation that the contracting agency may not forward its determinations to SBA as required, the protest is premature.

Finally, our Office will not consider Pacific's contention that the prospective awardee does not qualify as a regular dealer or manufacturer. As with determination of the protester's own status under the Walsh-Healey Act, a challenge to another offeror's status by law is to be resolved by the contracting agency, with review by the SBA, if a small business is involved, and by the Secretary of Labor. J.F. Barton Contracting Co., B-210663, Feb. 22, 1983, 83-1 CPD ¶ 177.

The protest is dismissed


for the Comptroller General
of the United States