



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

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B-178739

June 14, 1973

AMS Manufacturing, Inc.
37 Seabro Avenue
Amityville, New York 11701

Attention: Mr. Arthur Ford
Secretary-Treasurer

Gentlemen:

Reference is made to your telefax of May 29, 1973, requesting a ruling by this Office in connection with a protest filed by your firm with the Food and Drug Administration (FDA), Rockville, Maryland. Your firm initiated its protest by a letter to the FDA dated May 15, 1973, a copy of which was furnished this Office, wherein you protested award to Alton Iron Works (Alton) on the basis that Alton was not a manufacturer as required by the Walsh-Healey Public Contract Act (41 U.S.C. 35).

As you may know, the Walsh-Healey Act vests in the Secretary of Labor the authority to make final administrative determinations regarding the interpretations of such terms as "regular dealer" and "manufacturer" as used in the Act. B-17738, August 30, 1972; B-162807, December 27, 1967. However, the responsibility of determining whether or not a bidder is qualified as a regular dealer or manufacturer rests in the first instance with the contracting agency. See B-157352, September 30, 1965. In accordance with the Walsh-Healey Act, these determinations by the contracting agencies are subject to review by the Secretary of Labor and not by the General Accounting Office. See B-161933, October 20, 1967; B-166905, July 24, 1969, and cases cited therein. In view thereof, any determination concerning Alton's status as a manufacturer under the Walsh-Healey Act may not be questioned by our Office.

Concerning your letter of May 29, 1973, you contend that the "all or none" provision on page 5 of Alton's bid can only be

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Interpreted as all or none for items 1 through 9, inclusive, not just for items shown on page 5. You state that Alton cannot be considered the low bidder for item 1 only, since item 1 is the contract quantity whereas items 2 through 9 are the option quantities. Since the "all or none" restriction in Alton's bid was apparent at the time of the public opening and recording of bids (date not furnished), it appears from the information which you have submitted that you knew, or should have known, of the basis for this contention as early as May 15, 1973, the date of your protest letter to FDA. Section 20.2(a) of our Interim Bid Protest Procedures and Standards, 48 CFR 20.2(a) provides that " * * * bid protests shall be filed not later than 5 [working] days after the basis for protest is known or should have been known, whichever is earlier." Your assertion as to the "all or none" aspect of Alton's bid was not filed until our receipt, on June 1, of your letter dated May 29, 1973, and it therefore appears that this submission was untimely.

Accordingly, we are closing our file, on the basis of the present record, without further action.

Sincerely yours,

Paul G. Demblino

For the Comptroller General
of the United States