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DECISION



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

FILE: B-210837

DATE: March 7, 1983

MATTER OF: NASCO Products Company

DIGEST:

GAO does not consider whether bidder is manufacturer or regular dealer under Walsh-Healey Act since by law that is for determination by contracting agency subject to review by the Secretary of Labor and by the Small Business Administration when a small business is involved.

NASCO Products Company (NASCO) protests the award made to Kessel Kitchen Equipment Co., Inc., by the Defense Logistics Agency (DLA) under Invitation for Bids No. DLA400-82-B-4643. NASCO asserts that it was the low bidder for certain items under this solicitation, but that DLA rejected its bid because it believed NASCO did not qualify as a regular dealer under the Walsh-Healey Act, 41 U.S.C. § 35-45 (1976). We dismiss the protest.

The question of whether a bidder is a manufacturer or regular dealer under the Walsh-Healey Act must be determined in the first instance by the contracting agency, subject to final review by the Secretary of Labor. In the event that the bidder is a small business concern, as NASCO claims to be, and the contracting officer determines it not to be a manufacturer or regular dealer under the Walsh-Healey Act, the matter must be referred to the Small Business Administration (SBA) for review, which may either certify the small business concern to be eligible for award or forward the matter to the Secretary of Labor for final disposition. 15 U.S.C. § 637 (b)(7)(B) (Supp. IV 1980). We understand DLA has referred the matter to SBA. Therefore, we cannot consider the matter. Space Corporation, B-192928, September 27, 1978, 78-2 CPD 240; Sunair Electronics, Inc., B-208385, August 18, 1982, 82-2 CPD 154.

The protest is dismissed.

Harry R. Van Cleve
Harry R. Van Cleve
Acting General Counsel

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