

# DECISION



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

Healy  
30507

FILE: B-218010.2

DATE: February 25, 1985

MATTER OF: Pacific Sky Supply, Inc.

## DIGEST:

1. Protest alleging that Small Business Administration (SBA) determination of offeror's status as regular dealer or manufacturer under Walsh-Healey Act is dispositive of offeror's status as an approved source is denied, since there is no support in Walsh-Healey Act for protester's contention that the SBA determination controls the agency's approved source determination, and, in fact, the two determinations involve different considerations.
2. Protest challenging offeror's removal from agency's approved source list is dismissed as premature where preliminary issue--offeror's status under Walsh-Healey Act--has not yet been resolved.

Pacific Sky Supply, Inc. protests the Air Force's refusal to consider it an approved source for joint assemblies under solicitation No. F41608-84-R-9559, issued by the San Antonio Air Logistics Center, San Antonio, Texas. We deny the protest in part and dismiss it in part.

In a prior protest concerning the same procurement, Pacific maintained that the contracting agency had incorrectly determined that it did not qualify as a regular dealer or manufacturer under the Walsh-Healey Act, 41 U.S.C. §§ 35-45 (1982). We dismissed that protest on the ground that our review of agency determinations under the Walsh-Healey Act is limited to whether the agency has complied with procedural requirements, and Pacific had not contended that the agency had failed to refer its determination to the Small Business Administration (SBA) as required. Pacific Sky Supply, Inc., B-217226, B-218010, Jan. 28, 1985, 85-1 CPD ¶ \_\_\_\_.

Subsequently, the agency reversed its initial determination and found that Pacific did qualify as a regular dealer under the Walsh-Healey Act. At the same time, however, the agency concluded that Pacific did not qualify as a manufacturer under the Act; this determination has been referred to the SBA for review as required by the Act.

Aside from Walsh-Healey Act considerations, the agency requires offerors to qualify as approved sources of the item being procured to be eligible for award. An offeror qualifies as an approved source if it is either an actual manufacturer of the item and is listed by the agency as an approved source, or a dealer which obtains the item from an actual manufacturer which is listed as an approved source. Here, the agency found that Pacific was not an actual manufacturer of the item and thus could not qualify as an approved source on that ground. The agency notified Pacific that it still could qualify as an approved source on the basis of its dealer status, if it could demonstrate that it obtained the item from the actual manufacturer on the approved source list.

Although the agency has referred its negative determination of Pacific's status as a manufacturer under the Walsh-Healey Act to the SBA for review as required by the Act, the agency has said that it does not consider SBA's decision under the Act to have a bearing on the agency's own determination of Pacific's status as an approved source. Pacific contends that it is improper for the agency to refuse to treat SBA's determination of Pacific's Walsh-Healey status as dispositive of Pacific's eligibility as an approved source.

In Government contracts for supplies exceeding \$10,000, the Walsh-Healey Act, 41 U.S.C. § 35(a), requires that a firm be a regular dealer or manufacturer of the supplies being procured in order to be eligible for award. Determining an offeror's status under the Act is committed to 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. See Bogue Electric Manufacturing, Co., B-210699, Feb. 22, 1983, 83-1 CPD ¶ 179. While the reviewing agency's determination is binding on

the contracting agency with respect to an offeror's status under the Walsh-Healey Act, a favorable Walsh-Healey Act determination does not require the contracting agency to determine that the offeror is also eligible for award under an approved source requirement. To the contrary, the two determinations do not involve the same considerations, since the focus of the Walsh-Healey Act determination is on the offeror's status as a manufacturer or regular dealer, while an approved source requirement generally is directed to assuring the quality of the specific item being procured. A typical approved source requirement, for example, limits the procurement to products obtained from a manufacturer or distributor which are examined and tested for compliance with specified requirements.

Further, to the extent that Pacific contends that the agency's approved source determination should be referred to SBA as part of a certificate of competency review of Pacific's responsibility, the protest is premature. As discussed above, an offeror's qualification under the Walsh-Healey Act is a prerequisite to eligibility for award; thus, only if Pacific is first found to qualify as a manufacturer under the Walsh-Healey Act will the issue of its status as an approved source become relevant. Since the agency's Walsh-Healey Act determination has just recently been referred to SBA and has not yet been resolved, any issues relating to Pacific's status as an approved source are not yet ripe for consideration.

Pacific also states that, regardless of its status as a manufacturer, the agency has decided that Pacific qualifies as a regular dealer under the Walsh-Healey Act. Pacific contends that it therefore has satisfied all the requirements of the procurement and is entitled to award. We disagree. As discussed above, in addition to the Walsh-Healey Act requirements, the agency itself has imposed an approved source requirement on bidders under this solicitation. Since the agency has not yet determined whether Pacific qualifies as an approved source based on its status as a regular dealer (i.e., whether the source of the part which Pacific proposes to supply is an approved source), Pacific has not yet satisfied all the requirements for eligibility for award.

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The protest is denied in part and dismissed in part.

*for Seymour E. Fox*  
Comptroller General  
of the United States