

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

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FILE: B-181454

DATE: July 10, 1974 95264

MATTER OF: Corbin Sales Corporation

DIGEST: Agency's determination that protester is not manufacturer under Walsh-Healey Public Contracts Act, 41 U.S.C. § § 35-45 (1970), may not be disturbed by GAO since responsibility of determining whether bidder is qualified as manufacturer under the Act rests in first instance with agency and such determination is subject to review by Secretary of Labor and not by GAO. Cases cited.

Corbin Sales Corporation (Corbin) protests the determination by the United States Navy Aviation Supply Office, Philadelphia, Pennsylvania, pursuant to invitation for bids (IFB) No. W00383-74-B-0307, that it did not qualify as a manufacturer within the meaning of the Walsh-Healey Public Contracts Act (41 U.S.C. § § 35-45 (1970)). Corbin also protests against the determination by the contracting officer to possibly award the contract under this IFB to another bidder prior to the Department of Labor review of his decision.

The responsibility of determining whether a bidder is qualified as a regular dealer or manufacturer under the act rests in the first instance with the contracting agency and is subject to review by the Secretary of Labor and not by the General Accounting Office. In view thereof, the agency's determination that the protester did not qualify as a manufacturer under the Walsh-Healey Act may not be disturbed by our Office. B-180384, January 21, 1974; B-179518, November 6, 1973. Moreover, while the contracting officer under certain circumstances is authorized by Armed Services Procurement Regulation (ASPR) 12-604(5) to make an award prior to the Labor Department's review of his determination that a firm is not a manufacturer under the terms of the act, the contracting officer's determination in this case was affirmed by the Department of Labor by letter of June 5, 1974, prior to the date set for award. Accordingly, no further action is contemplated by this Office in connection with the matter.

R. F. Kettner
Deputy Comptroller General
of the United States