

*Receipt
PK-1*

DECISION



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

7848

FILE: B-192928

DATE: September 27, 1978

MATTER OF: Sace Corporation

DIGEST:

Question of whether bidder is manufacturer or regular dealer under Walsh-Healey Act is for determination by contracting agency subject to review by Secretary of Labor. If bidder is small business concern and contracting officer has determined that it is not a manufacturer or regular dealer, matter must be referred to SBA for review under section 501 of P.L. 95-89, 91 Stat. 553, 562. SBA may either certify small business to be eligible or forward matter to Secretary of Labor for final disposition. Thus, GAO will not consider such matters.

Sace Corporation (Sace) protests award to any other firm under request for proposals (RFP) DAAE07-78-R-A-154, issued by the Department of the Army. Sace contends that it submitted the low responsive offer but that the procuring agency has stated that its firm is ineligible for award on the grounds that Sace does not meet the criteria of Armed Services Procurement Regulation (ASPR) section 12 (1975 ed.), part 6, which implements the Walsh-Healey Public Contracts Act, 41 U.S.C. § 835-45 (1970). The contracting officer, by letter dated September 20, 1978, advised Sace that the firm did not qualify as a regular dealer as required by the Walsh-Healey Act. Counsel for Sace requests that no award be made until our Office or the other appropriate agency renders a decision in this matter.

Our Office has consistently held that the question of whether a bidder is a manufacturer or regular dealer is for consideration under the Walsh-Healey Act. The responsibility for such determination rests in the first instance with the contracting agency and is subject to final review by the Secretary of Labor. In

the event that the bidder is a small business concern and the contracting officer has determined it to be ineligible because it is not a manufacturer or regular dealer under the Walsh-Healey Act, section 501 of P.L. 95-29, 91 Stat. 553, 562, amending section 8(b) of the Small Business Act of 1958, requires that the matter be referred to the Small Business Administration for review. The Small Business Administration may either certify the small business concern to be eligible for award or forward the matter to the Secretary of Labor for final disposition. See M&S Products Corporation, B-191614, April 21, 1978, 78-1 CPD 311; Kings Point Manufacturing Company, Inc. B-191452, April 19, 1978, 78-1 CPD 306.

Accordingly, we must decline to consider the protest.


Paul G. Dembling
General Counsel