



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

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November 6, 1973

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Incess Electronics Corporation
209 East Main Street
Essexport, New York 11729

Attention: Mr. Sheldon Kahn
President

Gentlemen:

This is in response to your letter of August 16, 1973, protesting against the award of two contracts to any firm other than Incess Electronics Corporation (Incess) under ITA 100115-73-0-0000, issued by the Naval Ordnance Station, Rockville, Maryland, and ITA 100116-73-0-0000, issued by the Naval Air Engineering Center, Philadelphia, Pennsylvania.

The subject solicitations were for the procurement of printed circuit boards to be used in aircraft, various electronic test sets. Furthermore, each of the bids was in an amount in excess of \$1,000.

The Defense Contract Administration Review (DCAR) program is a program designed to provide a review of all contracts for the Department of Defense. The program is designed to ensure that the Department of Defense receives the best value for its money. The program is designed to ensure that the Department of Defense receives the best value for its money. The program is designed to ensure that the Department of Defense receives the best value for its money.

By the records dated June 17 and July 6, 1973, the Chief, Industrial Labor Relations Office, Directorate of Production, DCAR, reported that Incess failed to demonstrate the entire production effort that it did not have the production equipment to manufacture the bid items and it could only perform the inspection, packaging and shipping of the bid items. The report further stated that:

Incess Electronics Corporation is a small business firm...

[Protest Against Award of Contract for Printed Circuit Boards]

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that the bidder perform custom sub-assemblies of electronics is irrelevant to the field in which it would like to establish itself. As a company attempting to establish itself, it is required to meet the requirements of ASIR 12-605.1(ii). Specifically the bidder must be able to show before the award if it is newly entering into such manufacturing activity, that it has made all proper arrangements for space, equipment, and personnel to perform the manufacturing operations required for fulfillment of the contract.

"In subject case, bidder has failed to make necessary arrangements for equipment and personnel."

The Chief of the Industrial Labor Relations Office concluded that, in view of the above, Insson is not qualified as a manufacturer of printed circuit boards as defined by the Walsh-Healey Public Contracts Act and ASPR 12-605.1. Each of the contracting officers concurred in this report and informed Insson of their determinations that it was not a manufacturer under the act and, therefore, not eligible for the award of the contracts in question. Insson was provided with an opportunity to present those determinations. In fact, Insson, DPHB was requested to conduct a review of Insson and for supplemental information available to Insson was referred to DPHB for this purpose. In addition to conducting the reviews, DPHB made a formal on-site visit to Insson on August 1, 1978, with regard to the contract 15-74303. DPHB reported its findings and the recommendations that Insson was not qualified as a manufacturer and the necessary steps to be taken concerning these findings. These concerns were forwarded to the Department of Labor for a final determination of Insson's eligibility to receive contracts under the Walsh-Healey Act. In fact, on 12/20/78, the Department of Labor advised the contracting officer that it is not qualified as a manufacturer under the Walsh-Healey Act. The fact that Insson was not a manufacturer under the Walsh-Healey Act is a disqualifying factor under the Walsh-Healey Act and, therefore, the necessary arrangements for space, equipment and personnel to perform the manufacturing operations required for contract fulfillment.

For reasons set out above, we must conclude that the rejection of your bids is not subject to protest by you. The Walsh-Healey Act provides that, with certain exceptions not here material, every contract or any modification in contract entered into by any Government agency for the procurement of supplies which contain a provision that the contractor is to be subject to the Walsh-Healey Act, shall be subject to protest by the contractor. The protest must be filed with the Department of Labor

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shall have authority to administer the provisions of that act and to make such rules and regulations as may be necessary to that end. The "Walsh-Healey Public Contracts Act Rules and Interpretations No. 3," published by the Department of Labor, states at section 29:

"(a) The responsibility of determining whether or not a bidder is qualified as a manufacturer or as a regular dealer under the Public Contracts Act rests in the first instance with the contracting agency. However, any decision which the contracting officer might make is subject to review by the Department of Labor when so charged with the administration of the Act. The Department of Labor may determine the qualifications of a bidder in the first instance in the absence of any decision by the contracting officer."

Thus, responsibility for applying the criteria of the Walsh-Healey Act is vested in the contracting officer and the Department of Labor. Our office is not authorized to review determinations as to whether particular firms are regular dealers or manufacturers within the purview of the Walsh-Healey Act and we have denied jurisdiction in this area because such determinations rest with the contracting officer subject to final review by the Department of Labor. E-175208, October 26, 1971; E-175209, August 3, 1971; E-175215, April 27, 1971; E-156905, July 26, 1961.

In view of the foregoing, no further action will be taken by our office in connection with your protest.

Sincerely yours,

John G. ...

For the Comptroller General
of the United States