



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Ensign-Bickford Company

File: B-274904

Date: November 15, 1996

Paul J. Seidman, Esq., and Robert D. Banfield, Esq., Seidman & Associates, for the protester.

Steve Bartholomew for Shock Tube Systems, an intervenor.

Craig E. Hodge, Esq., and Denise C. Scott, Esq., Department of the Army, for the agency.

C. Douglas McArthur, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

In view of elimination of Walsh-Healey Act requirement for supply contractors to certify their status as regular dealer in or manufacturer of the supplies offered, challenge to offeror's certification of its status as a manufacturer fails to state a valid basis of protest.

DECISION

Ensign-Bickford Company protests the award of a contract to Shock Tube Systems (STS) under request for proposals (RFP) No. DAAE30-96-R-0090, issued by the Department of the Army for the M14 blasting cap.

We dismiss the protest.

Ensign-Bickford contends that the agency did not investigate whether STS was a manufacturer of the blasting caps under the Walsh-Healey Act, 41 U.S.C. §§ 35-45 (1994), as STS certified in its proposal. The Walsh-Healey Act, which applies to supply contracts, essentially imposed two requirements, the first that firms certify their status as regular dealers or manufacturers, and the second that firms adhere to minimum wage and maximum hour standards, child labor laws, and safety regulations. 41 U.S.C. § 35.¹ Over the years, however, the contractual obligations imposed by Walsh-Healey were superseded by other statutes, and there remained only the certification provision. The purpose of the Act then was described as an

¹The remaining sections of the Act, 41 U.S.C. §§ 36-45, are essentially administrative and remedial provisions that impose no separate obligations on contractors.

attempt "to restrict the bounty of government contracts to established manufacturers and dealers because they are most likely to effect Walsh-Healey goals of maintaining high labor standards in connection with wages and conditions" Ulstein Maritime, Ltd. v. U.S., 646 F. Supp. 720, 737 (D.R.I. 1986), aff'd, 833 F.2d 1052 (1st Cir. 1987).

Section 7201 of the Federal Acquisition Streamlining Act of 1994 (FASA), Pub. L. No. 103-355, 108 Stat. 3243, 3378 (1994), eliminated the certification requirement. As required by Federal Acquisition Regulation (FAR) § 22.602, the agency here included FAR § 52.222-19, implementing the certification requirement, and FAR § 52.222-20, which requires compliance with the Act during performance. While the FAR has not yet been amended to eliminate the certification requirement, FAR § 52.222-19 implements the certification requirement repealed by FASA. The issue of whether STS is a manufacturer therefore has no practical relevance to contract performance.

Given the elimination of the statutory requirement for the certification, we conclude that the protester's challenge to the awardee's certification of its status fails to state a valid basis of protest.

The protest is dismissed.

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