



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Mark Turulski
File: B-245592
Date: January 14, 1992

Mark Turulski for the protester.
Robert C. MacKichan, Jr., Esq., and Nora A. Huey, Esq.,
General Services Administration, for the agency.
Katherine I. Riback, Esq., and John Brosnan, Esq., Office of
the General Counsel, GAO, participated in preparation of the
decision.

DIGEST

1. The contracting agency reasonably determined that the protester was subject to the Walsh-Healey Act and therefore must qualify as a manufacturer or regular dealer to be eligible for award, where there is no evidence that the protester offered as an agent of a foreign manufacturer or that foreign-made goods will be shipped directly to the government.
2. The General Accounting Office will not consider whether an offeror qualifies as a "regular dealer" under the Walsh-Healey Public Contracts Act.

DECISION

Mark Turulski protests the rejection of its proposal under request for proposals (RFP) No. FCGE-91-0097-B, issued by the General Services Administration (GSA) for calculating machines. GSA proposes to reject Mr. Turulski's offer because, in its view, he is not a regular dealer or manufacturer under the Walsh-Healey Public Contracts Act, 41 U.S.C. § 35 et seq. (1988). The protester argues that the Walsh-Healey Act is not applicable to this procurement because he is an agent for a foreign manufacturer and therefore he does not need to qualify as a regular dealer.

We deny the protest in part and dismiss it in part.

The Walsh-Healey Act is intended to impose certain employment standards on government contractors by providing that contracts made or entered into by the government for the manufacture or furnishing of materials, supplies, articles and equipment will include minimum wage requirements, child and convict labor restrictions, and work safety provisions.

41 U.S.C. § 35. The Walsh-Healey Act is administered by the Secretary of Labor, and implemented with regulations published at 41 C.F.R. chapter 50 (1989). See WestByrd, Inc., 69 Comp. Gen. 238 (1990), 90-1 CPD ¶ 159. Under 41 C.F.R. § 50-201.603(b), government contracts for materials, supplies, articles, or equipment no part of which will be manufactured or furnished within the geographic limits of the United States, the District of Columbia, the Virgin Islands, or Puerto Rico, are not subject to the Walsh-Healey Act. Additionally, 41 C.F.R. § 50-206.55 provides that brokers from whom foreign-made goods consigned directly to the government are purchased need not qualify as regular dealers under the Walsh-Healey Act, since the contract itself is not subject to the Act.

Here, the agency concluded that Mr. Turulski could not qualify as a broker for foreign-made goods exempt from the Walsh-Healey Act, because Mr. Turulski did not describe in his offer that he was acting as an agent nor did he contract in the name of the principal, and because the calculators that he is to supply are foreign-made goods which will not be consigned directly to the government. The agency concludes that the calculators will be sent to Mr. Turulski because his offer included a letter from his foreign supplier which indicates that the calculators will be sent directly to Mr. Turulski.

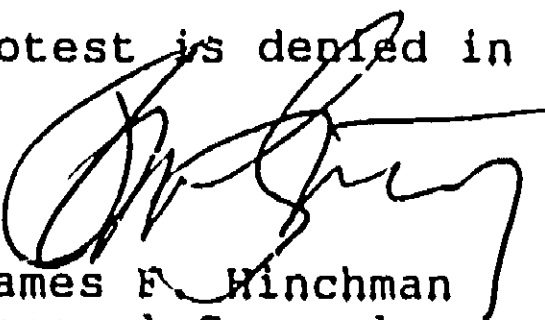

The agency in its protest report clearly stated its view that Mr. Turulski did not offer as an agent and that the foreign-made goods would be purchased by the protester and resold to the government rather than consigned directly to the government and that therefore the Walsh-Healey Act was applicable. In his comments to the agency report Mr. Turulski did not specifically respond to, or attempt to rebut GSA's position concerning agency or the agency's conclusion that the calculators will not be consigned directly to the government.

Based upon the record before us, we have no grounds upon which to disagree with the agency's views on Mr. Turulski's agency relationship or the delivery of his calculators and its conclusion that he was subject to the Walsh-Healey Act for this procurement.

As far as the agency's conclusion that the protester was not a manufacturer or regular dealer under the Walsh-Healey Act is concerned, we will not review the agency's determination of an offeror's legal status as a regular dealer or manufacturer within the meaning of the Act. By law, this determination is to be made by the contracting agency, in the first instance, subject to review by the Small Business Administration where a small business is involved, and the

Secretary of Labor, The Pratt & Whitney Co., Inc.; Onsrud Mach. Corp., B-232190; B-232190.2, Dec. 13, 1988, 88-2 CPD ¶ 588.

The protest is denied in part and dismissed in part.


 James F. Hinchman
General Counsel