



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

B-210095.2

August 17, 1983

The Honorable Frank Horton
House of Representatives

Dear Mr. Horton:

This is in response to your letter of April 19, 1983, asking that we look into the Department of Labor's determination that the "regular dealer or manufacturer" provisions of the Walsh-Healey Act do not apply to foreign made products shipped directly to the Government without intervening handling of any kind in the United States.

Your inquiry stems from the recent experience of a constituent, Gould Pumps, Inc., rejected as low bidder on a procurement for pumps and motors in favor of lower bids from two domestic trading companies offering products manufactured abroad. Neither trading company is a regular dealer or manufacturer for the pumps and motors it offered. But because delivery was to be made directly from abroad to the Bureau of Reclamation in Yuma, Arizona, the Department of Labor exempted the procurement from otherwise applicable provisions of the Walsh-Healey Act which require that the Government contract only with manufacturers or regular dealers in the materials to be supplied. Although the procurement was ultimately canceled due to lack of funds, the issue involved remains.

You are concerned that the Department's suspension of the Act for the benefit of brokers in foreign made goods is contrary to the public interest in that it benefits foreign workers and firms over their domestic competitors. You point out that the very purpose of the provisions at issue is to eliminate Government dealings with bid brokers (or trading companies) who maintain no regular establishments making it possible to engage easily in the practice of "bid peddling."

We appreciate your concern that an additional source of competition to domestic suppliers is engendered by exempting brokers who provide for foreign products to be delivered directly to the Government. And we appreciate too your point about the undesirability of "bid peddling." We have examined the Act and its legislative history with these thoughts in mind yet, nevertheless, must conclude that we cannot object to the Department of Labor rulings in the matter.

The Act requires firms that enter into contracts for materials, supplies, articles and equipment to make and adhere to certain contractual representations and stipulations, including a representation that the contractor is "the manufacturer of or a regular dealer in" the goods offered. It is important to recognize, though, that other representations and stipulations relating to minimum wages, overtime pay, safe and sanitary working conditions and child labor are also required, to obligate:

"persons having contracts with the Government to conform to certain labor conditions in the performance of the contracts and thus to eliminate the practice under which the Government is compelled to deal with sweatshops." H.R. Rep. No. 2946, 74th Cong., 2nd Sess. 4 (1936).

The House Report on the legislation shows that the regular dealer provision was added to prevent a circumvention of this underlying purpose of the Act:

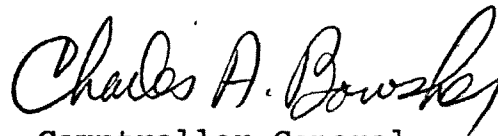
"Evidence received by the committee in an extensive series of public hearings showed that the practices of bid brokerage and bid peddling had developed into a grave abuse. Testimony was offered by various purchasing officers of the Government showing that many persons who were not legitimate dealers nor manufacturers made a practice of bidding for Government contracts by submitting estimates so low that none of the well established concerns in the field could successfully compete against them. These brokers then sublet various portions of the contract to sweat shops and substandard factories thus successfully thwarting all attempts by Federal and State Governments to insist upon fair labor conditions in the performance of public contracts. Moreover, the impact of such competition upon legitimate business tends to impair the wage and hour standards of entire industries." H.R. Rep. No. 2946, supra, p. 4.

The exemption questioned does not offend or violate the primary purposes of eliminating unsatisfactory labor conditions and protecting employees. The employees protected by the Act are those engaged in or connected with the manufacture, fabrication, handling, supervision or shipment of the goods

within the United States. Where goods are manufactured in a foreign country and consigned directly to the Government, the class of employees to be protected by the Act is not involved. Therefore, particularly in light of the deference we must accord interpretations of statutes by those charged with their implementation, we see no basis upon which to question the Department of Labor's position.

A copy of comments submitted by the Department is enclosed for your information. You will note the Department suggests on page two of its letter, and we agree, that installation work at the delivery site might well have made a difference in its ruling on the Gould Pumps procurement.

Sincerely yours,

A handwritten signature in cursive script, reading "Charles A. Bowser". The signature is written in dark ink and is positioned above the printed name and title.

Comptroller General
of the United States

Enclosure