4PC 120 P.D.

U.S. DEPARTMENT OF LABOR
EMPLOYMENT STANDARDS ADMINISTRATION
WASHINGTON, D.C. 20210

WH 26

MAY 17 1974

This is in reply to your letter of March 22, 1974, and enclosed report requesting our final determination as to whether [redacted] is eligible for contract award as a regular dealer within the meaning of the Walsh-Healey Public Contracts Act and the regulations issued thereunder.

Since, as appears to be the case here, the supplies called for under subject procurement would be manufactured in Canada and shipped from Canada directly to a designated U.S. Government agency within the United States, it is the position of the Department of Labor that section 50-201.603(b) of Regulations, 41 CFR 50-201 would apply. Under such circumstances, [redacted] Counsel is correct in his assertion that the firm need not qualify as a regular dealer or manufacturer for the contract in question. (Section 28(b) of Rulings and Interpretations No. 3.)

This position is predicated upon the language and scheme of the Walsh-Healey Act, neither of which suggests that Congress was concerned with employment in the performance of Government contracts occurring in places outside the sovereignty of the United States. Very shortly after the enactment of the Act in 1936, the Secretary of Labor issued administrative regulations which included 603(b) exempting contracts to be performed outside the geographic limits of the United States, Alaska, Hawaii, and the District of Columbia. Such was the position of the Department as expressed in Rulings and Interpretations No. 3 issued on October 1, 1945, until November 1, 1950, when the Secretary of Labor revoked the exemption previously applicable to contracts performed in Puerto Rico and the Virgin Islands. In its form as amended at that date, the geographic exemption provision has been retained without further change.

The Walsh-Healey Act has never included any provision expressly limiting its geographic application. In this respect, it is like the Eight-Hour Laws and successor Contract Work Hours and Safety Standards Act. In considering the Eight-Hour Laws, the Attorney General (34 Op. Atty. Gen. 257) and the Supreme Court, in Foley Brothers v. Filardo, 336 U.S. 281 (1949), when faced with the question of whether that Act was intended to have application to contract work performed at places over which the United States had no sovereignty or legislative control, made it very clear that explicit statutory language indicating a legislative intent to make the prescribed labor standards applicable in such areas outside the United States would be necessary to make their provisions effective there. The Supreme Court additionally pointed out that it was not enough to impute an extraterritorial application of the law from the fact that the requirements of the statutes were in terms stated to apply to "every" contract of the described character without any express exception of work to be performed in foreign territory. (Accord: Vermilya-Brown v. Connell, 335 U.S. 377, arising under the Fair Labor Standards Act.)

The policy expressed in section 28(b) of Rulings and Interpretations No. 3 continues to be the policy of this Department. Since the contract in question is not subject to the Act, all stipulations required by the Act are also necessarily inapplicable to the award and performance of the contract, including, of course, the stipulation in section 50-201.1(a) that the contractor is a manufacturer or regular dealer in the materials to be used in the performance of the contract.

However, after carefully reviewing the evidence contained in your report, including the information submitted by the firm (and counsel) on its behalf, we find no reason to question the initial determination of your agency that [redacted] would not be eligible for contract award as a regular dealer within the meaning of the Walsh-Healey Public Contracts Act if that Act were otherwise applicable, in that there is no evidence that the firm would meet the criteria contained in ASPR 12-603.2(a)(i) thru (v).

In this regard, this Department is most concerned that the firm has apparently been awarded a large number of U.S. Navy supply contracts. (See list of contracts attached to your Enclosure 2.) If any of these contracts were in excess of $10,000 and performed within the United States, as defined, and thus subject to the Public Contracts Act, the firm was apparently not eligible to

receive such contracts. We are, therefore, referring a copy of this letter to Mr. Richard Hedges, Labor Relations Advisor, MAT 02 L, Headquarters, Naval Material Command, Department of the Navy, Washington, D. C. 20360, with a request that Navy contracting officers be reminded of their responsibilities under the Public Contracts Act, pursuant to ASPR 12-604(a)(1) and Department of Labor Circular Letter 8-61, copy enclosed.

Sincerely,

/s/ Frederick J. Glasgow
Special Assistant to the Administrator

Warren D. Landis
Acting Administrator
Wage and Hour Division

Enclosure