

FE302

Advanced Facilities Engineering

Lesson F7

***Acquiring Supplies Under the
Walsh-Healey Public Contracts Act***



Terminal Learning Objectives

Enabling Learning Objectives

Given a construction scenario, analyze project issues as they relate to construction and acquisition of materials in support of FE missions.

- Recognize the importance and of the Walsh-Healey Public Contracts Act requirements.
- Distinguish between a service and a material acquisition contract
- Analyze a scenario and determine the magnitude of impact the Act might have on FE acquisition of materials.



What Were Newspaper Headlines in 1936?

- FDR reelected (who was the VP?)
- Dust Bowl problem continues in the West
- Federal spending: \$8.23 billion
- Unemployment: 16.9%; poverty prevalent
- Cost of a first-class stamp: \$0.03
- US population: 128,053,180
- NY Yankees d. NY Giants (4-2)
- BBC debuts the first television (3 hours a day)
- US economy weak; labor unions were expanding; labor laws important.
- The Walsh-Healey Contract Act signed into law



Why Enact Walsh-Healey?

- “ ...to provide conditions for the purchase of supplies and making contracts...”
- “...to impose obligations on those favored with Government business
- “...to obviate the possibility that funds go to forces that tend to depress wages, purchasing power and offending fair standards of employment.”



What does Walsh-Healey Cover?

- Qualifications of contractors
- Minimum wages
- Overtime pay
- Safe and sanitary working conditions
- Child or convict labor (prohibited)

As it relates to:

- “...the manufacture or furnishing materials, supplies, articles and equipment exceeding \$15,000...”



Is it Supplies or Services?

- How do I know if I am buying a supply or service?
- Who makes the decision?
- How do I make that decision
- Why is it important?



Supplies vs. Services

Supply:

“ Property except land or interest in land. It includes (but is not limited to) public works, buildings, and facilities; ships, floating equipment, and vessels of every character, type, and description, together with parts and accessories; aircraft and aircraft parts, accessories, and equipment; machine tools; and **the alteration or installation of any of the foregoing.**”

FAR 2.101

...the alteration or installation of any of the foregoing.
This is when the service is incidental to the supply.



Supplies vs. Services

Supply features:

- Is a tangible item
- Can be repaired
- Can be maintained
- Can be overhauled
- Can be thrown away
- Can be transported
- Can be held in-stock
- Can be bought by NSN
- Can be rebuilt
- Can be salvaged
- Can be depreciated
- Can be touched



Supplies vs. Services

Service features:

- We are buying effort/time/knowledge
- Contractor is performing an identifiable task
- Can be personal or non-personal
- May be performed on an **end item** we OWN
- We are buying a solution
- There may not have a tangible **end item** as a deliverable
- Cannot be ordered by part number
- Cannot be duplicated identically



Service and Supply Definitions

- **Services Definition:**
A contract that directly engages the time and effort of a contractor whose primary purpose is to perform an identifiable task rather than to furnish an end item of supply.
(FAR 37.101)
- **Unofficial definitions:**
- **Service (verb)**--Work done to already-owned items (such as repair) or work done to fulfill requirements related to an idea or process. For example, finding innovative ways to protect computer systems from attack would be an owned responsibility; a report may be issued later in order to document the results of the study.
- **Supply (noun)**--Normally tangible item that can be acquired using a stock or item number. The item may also be developed from specifications.



Myths About Walsh-Healey (W-H)

MYTH #1. A major overhaul is a supply.

ORIGIN: Repair, maintenance and overhaul are covered by SCA (Service Contract Act). Major overhaul meets the criteria for remanufacturing (FAR 22.1003-6) which is covered by W-H.

FACT: Regs say that when overhaul becomes remanufacturing it is subject to W-H, not SCA. Repair and maintenance under construction contracts may be subject to Construction Wage rates.



Myths about Walsh-Healey (W-H)

MYTH #2. Walsh-Healey is for supplies only.

ORIGIN: *FAR groups the items covered by the law (“manufacture or furnishing of the materials, supplies, articles or equipment used in the contract”) under the label “supplies”.*

FACT: This is not found in the law. The law does not exclude materials, supplies, articles or equipment that are manufactured or furnished in the performance of a service contract (i.e., remanufacturing.)



Myths about Walsh-Healey (W-H)

MYTH #3. Contracts can have only one labor law

ORIGIN: The SCA states that work covered by Walsh-Healey is not covered by SCA

FACT: The exemption applies to the work covered by Walsh-Healey, not the contract. Both labor laws can be placed on a contract if both types of covered acquisitions are present. The contract should separate the acquisitions by line item or another method.



Exercises

What stipulations must be included (or incorporated by reference) in contracts for materials, supplies, articles and equipment exceeding \$15,000?

(Hint: Look in the FAR and DFARS).

Answer:



Exercises

Scenario 1. You have a requirement for spare parts for a U.S. Air Force weapon system at Tinker Air Force Base, OK. The spare parts were developed under an Air Force contract and are sold exclusively to the U.S. Government and its allies. The estimated value of the acquisition is \$150,000. Which of the following labor laws may apply to this acquisition?

- a. Wage Rate Requirements (Construction) [formerly Davis-Bacon Act]
- b. Contracts for Materials, Supplies, Articles, and Equipment Exceeding \$15,000 [formerly Walsh-Healey Public Contracts Act]
- c. Service Contract Labor Standards [formerly Service Contract Act]
- d. None of the above

Scenario 2. An Air Force Base in Wyoming has a requirement for the overhaul of noncommercial electric motors that are inoperable. The overhaul will require complete teardown and rebuilding of the equipment to an operable status. The Government will transport the equipment to the contractor's plant. The Government will require that the contractor's plant be located within 60 miles of the base. The estimated value of the acquisition is \$200,000.

- a. Which of the following labor laws may apply to this acquisition?
- b. Wage Rate Requirements (Construction) [formerly Davis-Bacon Act]
Contracts for Materials, Supplies, Articles, and Equipment Exceeding \$15,000 [formerly Walsh-Healey Public Contracts Act]
- c. Service Contract Labor Standards [formerly Service Contract Act]
- d. None of the above

We discussed:

- The importance and of the Walsh-Healey Public Contracts Act requirements
- The difference between a service and a material acquisition contract
- Discussed the magnitude of impact the Act might have on FE acquisition of materials

Questions?