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DECISION



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

FILE: B-200523

DLG05558

DATE: November 20, 1980

MATTER OF: Southwestern Bell Telephone Co.

[Protest of Department of Labor Failure to Issue Wage Determination]
DIGEST:

Decision to issue wage determination for contracts subject to Service Contract Act within discretion of Department of Labor where less than five service employees required and absent allegation or showing that failure of Department of Labor to issue determination due to improper action on part of procuring agency, matter is not for consideration by GAO. *AGC00009*

AGC00017

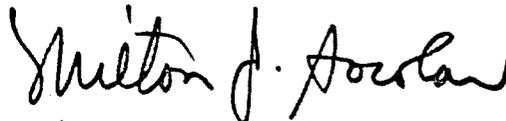
(Southwestern Bell Telephone Company complains that solicitation CDPP-W0004-T-W7 for telephone service for Houston, Beaumont and Galveston, Texas, issued by the General Services Administration (GSA), does not contain a Department of Labor (DOL) Service Contract Act wage determination.) Bell states that the Service Contract Act requirements were incorporated into the solicitation by Amendment 5, along with a notice that DOL "has determined that no wage determination applicable to the specified locality and class of employees is in effect." Bell requests that GAO investigate this situation to assure total compliance with the Act.

Section 10 of the Service Contract Act, 41 U.S.C. § 358 (1976), (requires that a wage determination be made for all contracts under which more than five service employees are to be employed.) We are informally advised that the SF 98 "Notice of Intent to Make a Service Contract" in this case specified (that less than five service employees would be employed under the contract.)

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(Under these circumstances, the decision to issue a wage determination is within the discretion of the Department of Labor.) See 51 Comp. Gen. 72 (1971). (There has been no allegation that the failure of the Department of Labor to issue such a wage determination was due to improper action on the part of GSA,) see 52 Comp. Gen. 162 (1972), and (thus there is no issue which is appropriate for our consideration.)

(The protest is dismissed.)



Milton J. Socolar
General Counsel