

Burkard



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Embassy Air Express

**File:** B-239920.2

**Date:** December 20, 1990

Wayne A. Keup, Esq., and Geoffrey S. Swanson, Esq., Dyer, Ellis, Joseph & Mills, for the protester. Paula J. Barton, Esq., Department of State, for the agency. Richard P. Burkard, Esq., Andrew T. Pogany, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Protest that agency failed to issue orders under an alleged requirements contract concerns a matter of contract administration not appropriate for review by the General Accounting Office.

### DECISION

Embassy Air Express protests the failure of the State Department and other federal agencies to issue government bills of lading (GBL) pursuant to tender of service No. DOS-10, issued by the Department of State. Embassy Air alleges that the acceptance of rates under the tender of service resulted in a requirements contract obligating the agency to publish and distribute the rates to ordering offices and to place orders for certain air transportation services with the protester.

We dismiss the protest.

On March 15, 1990, the Department of State issued the tender of service, requesting air carriers and air freight forwarders to quote rates and routes for transportation of air freight to specified destinations for a period of 6 months, commencing on June 1, 1990. The tender of service provided that rates quoted would be used when, in the agency's discretion, their use appeared to be in the best interest of the government. The tender also stated that acceptance of rates by the government should not be considered as a guarantee of any particular volume of traffic. The agency states that following the receipt of rate quotations, the agency historically published a rate/route schedule detailing the lowest rate quote for each destination that is used by various

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agencies to determine the most advantageous terms for moving freight under GBLs.

Here, however, the agency determined that rather than publish a rate/route schedule, it would keep the rate quotations on file at the Department of State and the General Services Administration. On June 4, Embassy filed a protest with our Office alleging that the tender of service contemplated the award of a requirements type contract necessitating the publication of a rate/route schedule. In response to the protest, the agency published a rate/route schedule, and by letter dated June 22, 1990, the agency advised the protester that it was "awarded those destination points" indicated in the rate/route schedule. On July 6, the protester withdrew its protest.

By letter dated August 31, Embassy Air requested that its protest be reinstated based on its allegations that the Department of State was not ordering services in accordance with the rate/route schedule and had failed to distribute such a schedule to the ordering offices. The protester contends that the DOS-10 and various letters sent by the agency constituted a requirements contracts for specific destinations. Specifically, Embassy Air argues that since the agency advised Embassy Air that it was "awarded" certain destinations, the agency must properly distribute the schedule to the ordering offices and must place orders with Embassy Air for transportation to those destinations.

Even assuming, as the protester contends, that the agency is obligated under a requirements contract to issue GBLs in accordance with the published schedule, the protester's allegations concern the administration of an existing contract and is therefore not a matter appropriate for our review. See 4 C.F.R. § 21.3(m)(1) (1990). Specifically, the record shows no flaw in the "award" of the schedule destinations. Rather, the protester essentially contends that the agency failed in its contractual duty to publish and distribute the schedule and to place orders under that "awarded" schedule. Embassy Air's contention that it is being deprived of business to which it has a contractual right should be brought before the appropriate administrative forum or court of competent jurisdiction.

The protest is dismissed.

*Michael R. Golden*

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