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DECISION



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

FILE: B-201092

DATE: August 21, 1981

MATTER OF: Thaddeus Carhart

DIGEST:

Whether agency should have offered Basic Ordering Agreement (BOA) for fiscal year 1981 to potential contractor will not be decided since contractor has questioned legality of agency's contract procedures before ASBCA.

Thaddeus Carhart (Carhart) protests the Department of State, Language Services Division's (State), refusal to offer him a fiscal year 1981 Basic Ordering Agreement (BOA) for escort-interpreter services under the International Visitor Program. Carhart is ineligible for any escort-interpreter contract without a BOA.

It is Carhart's position that State's refusal is improperly based solely on his exercise of appeal rights under prior year contracts.

Carhart filed an action with the Armed Services Board of Contract Appeals (ASBCA) on August 11, 1980, for additional compensation for services performed under contracts in fiscal years 1977 through 1979 and prior to State's offering a BOA in fiscal year 1980. In that pending action, Carhart essentially questions the validity of the International Visitor Program, and the contracts and the amounts paid to the escort-interpreter thereunder; Carhart also requests compensation for alleged "retaliatory black-listing" preventing Carhart from receiving work in fiscal year 1980.

State had ordered no work from Carhart in fiscal year 1980 because Carhart executed the offered BOA under reservation subject to the claim which eventually was denied by State and appealed to the ASBCA. State refused to offer Carhart a BOA for fiscal year 1981

[Protest of Agency Refusal To Offer Basic Ordering Agreement]

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because it could not enter into a contract with anyone challenging the program and the validity and enforceability of the contracts thereunder. State views Carhart's objections before the ASBCA, pertaining to fiscal years 1977-1980, as "fundamental and continuing."

State's argument that GAO should not decide the protest because of the pending Board case has merit. We recognize that Carhart's exclusion from eligibility for contracts ordinarily would be appropriate for our review. However, consideration of the protest necessarily would involve the validity of State's contract procedures, which Carhart has not protested here but questioned in another forum. In these circumstances, we will not decide the protest.

Protest dismissed.



For Harry R. Van Cleve
Acting General Counsel