

**DECISION**



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

**FILE:** B-218427.2 **DATE:** May 15, 1985  
**MATTER OF:** Crowley Towing & Transportation Company

**DIGEST:**

1. GAO does not review the accuracy of wage rate determinations issued by the Department of Labor in connection with solicitations subject to the Service Contract Act.
2. Protest against the exclusion of tugboat engineers and captains from coverage of the Service Contract Act in solicitation for tugboat towing services is dismissed where the agency admits that it mistakenly classified the engineers and captains and intends to issue an amended wage determination including them.

Crowley Towing & Transportation Company (Crowley) protests the Department of Labor's Service Contract Act wage determination and the failure to include in it certain employees in request for proposals (RFP) No. N00033-85-R-2002 issued by the Military Sealift Command (MSC) for tugboat towing services in San Diego Harbor.

We dismiss the protest.

Crowley contends that MSC incorporated a prevailing wage and benefit determination for tugboat deckhands that is lower than the wage and benefit levels currently being paid those employees under the collective bargaining agreement of a predecessor contractor. Crowley also contends that the determination that tugboat captains and engineers are not service employees for whom a prevailing wage and benefit determination has to be made is improper.

Because the courts have held that a prevailing wage rate determination made by the Secretary of Labor is not subject to judicial review, our Office does not review the accuracy of wage rate determinations issued in connection with solicitations subject to the Service Contract Act.

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See Geronimo Service Co., B-210008.2, Feb. 7, 1983, 83-1 C.P.D. ¶ 131. A challenge to a Service Contract Act wage rate determination should be processed through the administrative procedures established by the Department of Labor. Professional Carpet Service, B-203287, June 3, 1981, 81-1 C.P.D. ¶ 445.

As to the collective bargaining agreement of the alleged predecessor contractor, MSC has informed us that this is the first time that all the tugboat services have been commercially contracted at San Diego Harbor, since they have been performed almost exclusively by the Navy itself in the past. Consequently, there appears to be some question as to whether there is a predecessor contractor. In any event, we have stated that a wage determination only specifies the minimum wages and benefits to be paid and is not a guarantee that the appropriate workforce can be employed by an offeror at those rates. Geronimo Service, Co., B-210008.2, supra.

The protester asserts that MSC's exclusion of tugboat captains and engineers from the act's coverage is based on the agency's view that they are "professional" employees, which the act specifically exempts from its coverage. 41 U.S.C. § 357(b) (1982); see also the Department of Labor's implementing regulations at 29 C.F.R. § 541.301 (1984). We have been informally advised by MSC, however, that before best and final offers are submitted, it intends to amend the RFP's wage and benefit determination to include both tugboat engineers and tugboat captains. Consequently, Crowley's protest on this matter is academic.

The protest is dismissed.



Robert M. Strong  
Deputy Associate General Counsel