



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Ober United Travel Agency, Inc.

**File:** B-252363

**Date:** May 7, 1993

Barry Roberts, Esq., Roberts & Hundertmark, for the protester.

Sandra J. Boyd, Esq., and Gilbert J. Ginsburg, Esq., Epstein, Becker, & Green, P.C., for Scheduled Airlines Traffic Offices, Inc., an interested party.

Gregory H. Petkoff, Esq., Department of the Air Force, for the agency.

Linda S. Lebowitz, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

The General Accounting Office will not consider the applicability of the Service Contract Act to a procurement for the operation of travel management centers where the Department of Labor, which is statutorily charged with implementation of the Act, has determined that the Act applies, as evidenced by its issuance of a wage determination specifically covering travel clerk service employees.

### DECISION

Ober United Travel Agency, Inc. protests the terms of request for proposals (RFP) No. F44600-93-R-0001, issued by the Department of the Air Force for the operation of travel management centers at Langley Air Force Base in Virginia and Seymour-Johnson Air Force Base in North Carolina. Ober protests that the agency improperly included in the RFP provisions implementing the Service Contract Act of 1965, 41 U.S.C. §§ 351-358 (1988).

We dismiss the protest.

The Service Contract Act generally applies to any federal contract, "the principal purpose of which is to furnish services," and requires the contractor to pay its employees minimum wages and fringe benefits, as determined by the Department of Labor (DOL). 41 U.S.C. § 351. The RFP,

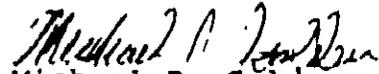
issued on November 30, 1992, required the contractor to provide all personnel, equipment, tools, materials, supervision, and other items or services necessary to manage and operate travel offices at the above-referenced military bases. The RFP identified three classes of travel clerks expected to be employed under the contract. The RFP incorporated provisions implementing the Service Contract Act and included a blanket wage determination, No. 87-0214 (Rev. 11), dated August 7, 1992, which was issued by the DOL and established the minimum wages to be paid to administrative support and clerical personnel service employees. Because this wage determination did not separately classify travel clerks, the agency contemplated that the contractor would initiate the standard "conformance" procedure, described in the wage determination, whereby the contractor would determine the applicable wage rates to be paid to travel clerks based on a comparison of skill levels for the travel clerk labor categories listed in the RFP, but omitted from the wage determination.

On February 16, 1993, prior to the closing time for receipt of proposals, the protester filed this protest basically challenging the agency's determination that the Service Contract Act applied to this procurement for the operation of travel management centers. While this protest was pending, the agency learned that the DOL, on February 9, 1993, issued a wage determination, No. 93-0055, which specifically covered travel clerks. The agency then filed with the DOL Standard Form (SF) 98--Notice of Intention to Make a Service Contract--and on April 20, the DOL responded to the agency's SF 98 by stating that wage determination No. 93-0055 applied to this procurement; the DOL attached the wage determination to its response.

Here, in response to the agency's filing of the Notice of Intention to Make a Service Contract, the DOL determined that the Service Contract Act applied to this procurement for the operation of travel management centers by issuing a wage determination specifically covering travel clerk service employees. 29 C.F.R. §§ 4.3, 4.4 (1992). Accordingly, we will not consider the protester's argument that the Service Contract Act does not apply to this procurement because the DOL, not our Office, is statutorily charged with interpreting and administering the Service Contract Act, and the contracting agency must follow the DOL's views on the applicability of the Service Contract Act unless they are clearly contrary to law. 29 C.F.R. § 4.101(b); Delta Oaktree Prods., B-248903, Oct. 7, 1992, 92-2 CPD ¶ 230; Associated Naval Architects, Inc., B-221203, Dec. 12, 1985, 85-2 CPD ¶ 652. In this case, the contracting agency's action is consistent with the DOL guidance and advice which resulted in a DOL determination

that the procurement at issue is covered by the Service Contract Act. Therefore, if Ober wishes to challenge the applicability of the Service Contract Act to the current procurement, its proper course of action is to bring the matter before the DOL's Wage and Hour Administrator for an official ruling. 29 C.F.R. § 4.101(g).

Accordingly, the protest is dismissed.

  
Michael R. Golden  
Assistant General Counsel