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DECISION



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

FILE: B-217433 **DATE:** February 26, 1985
MATTER OF: Hatch & Kirk, Inc.

DIGEST:

GAO will not review agency's decision not to include Service Contract Act wage determination in solicitation where question of applicability of act to work covered by solicitation is before Department of Labor for resolution.

Hatch & Kirk, Inc., protests that the National Oceanic & Atmospheric Administration (NOAA), Department of Commerce, did not include a Service Contract Act (SCA), 41 U.S.C. § 351, et seq. (1982), wage determination in solicitation No. WASC-85-00021 and did not request a Department of Labor (DOL) determination as to the applicability of the SCA to the solicitation prior to the issuance of the solicitation.

The record indicates that Hatch & Kirk by letter of March 15, 1984, to DOL's Wage and Hour Division, raised the question of the applicability of the SCA to the predecessor of the above solicitation (solicitations Nos. WASC-84-00073 and WASC-84-00025). In its response of April 6, 1984, the Wage and Hour Division indicated that, judging from the information furnished, it appeared that the procurements were covered by the SCA. DOL made a preliminary determination that the SCA was applicable to the procurements and requested NOAA to furnish a report regarding the matter.

NOAA did not respond to DOL's request until December 3, 1984, which was subsequent to the issuance of solicitation No. WASC-85-00021, on November 27, 1984. In its response, NOAA disagreed with DOL's preliminary determination, arguing that the Walsh-Healey Act, 41 U.S.C. § 35, et seq. (1982), was applicable to the procurement rather than the SCA.

NOAA's issuance of the present solicitation prior to a final determination by DOL concerning the applicability of

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the SCA to the predecessor procurement is, at most, a procedural deficiency in the absence of a final ruling or determination by DOL sustaining the preliminary determination. Accordingly, we do not consider any further action to be due by our Office at this time.

The protest is dismissed.



Robert M. Strong
Deputy Associate
General Counsel