

**DECISION**

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

**FILE:** B-221203                      **DATE:** December 12, 1985  
**MATTER OF:** Associated Naval Architects, Inc.

**DIGEST:**

The Department of Labor, not GAO, is the proper forum to determine whether a solicitation is subject to the provisions of the Service Contract Act.

Associated Naval Architects, Inc. (ANA) protests a determination that solicitation No. 50-EANC-6-00018, issued by the Department of Commerce for the repair of survey launches, is subject to the provisions of the Service Contract Act of 1965. ANA asserts that it cannot afford to pay the labor rates and fringe benefits mandated by the Service Contract Act, and argues that the solicitation is properly subject to the provisions of the Walsh-Healey Act. We dismiss the protest.

The Service Contract Act of 1965, 41 U.S.C. §§ 351-358 (1982), generally provides for the payment of minimum wages and fringe benefits established by the Department of Labor to employees performing service contracts entered into by the United States. The Walsh-Healey Act, 41 U.S.C. §§ 35-45, generally provides for the payment of minimum wages to employees performing federal contracts for the manufacture or furnishing of materials, supplies, articles, and equipment.

ANA states that previous solicitations for vessel repairs issued by the Department of Commerce have been subject to the Walsh-Healey Act, not the Service Contract Act. ANA requests a ruling by this Office that the Service Contract Act is not applicable to this or other such procurements. We will not consider the matter.

It is well-settled that the primary responsibility for interpreting and administering the Service Contract Act is vested in the Department of Labor. 29 C.F.R. § 4.101(b) (1984); B.B. Saxon Co., Inc., 57 Comp. Gen. 501, 506 (1978), 78-1 CPD ¶ 410 at 9. Thus, in determining whether or not Service Contract Act provisions are

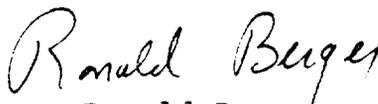
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applicable to a given procurement, contracting agencies must take into account the views of the Department of Labor unless those views are clearly contrary to law. Hewes Engineering Co., Inc., B-179501, Feb. 28, 1974, 74-1 CPD ¶ 112 at 3.

In the present matter, the Department of Commerce advises us that although earlier solicitations for vessel repairs were in fact issued under the Walsh-Healey Act, it views the solicitation in question as subject to the Service Contract Act because of a recent ruling by the Department of Labor that a contract for the repair of shipboard diesel engines was one for services and, therefore, subject to the Service Contract Act. The agency filed a Standard Form 98, Notice of Intention to Make a Service Contract, with the Department of Labor, and a wage determination has been issued for the solicitation. 29 C.F.R. §§ 4.4; 4.3.

Accordingly, if ANA wishes to challenge the applicability of the Service Contract Act to the present solicitation and future similar solicitations, the firm's proper course of action is to bring the matter before the Department of Labor's Wage and Hour Division Administrator for an official ruling, subject to appeal to the Board of Service Contract Appeals. 29 C.F.R. §§ 4.101(g); 8.1(b)(6).

The protest is dismissed.

  
Ronald Berger  
Deputy Associate  
General Counsel