

DECISION



11469
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

PL II

FILE: B-194748.3

DATE: September 21, 1979

MATTER OF: Midwest Service & Supply **DLG 02813**
Company

DIGEST:

[Protest of]

GAO has previously held that Department of Labor's determination that application of Service Contract Act to ~~contract for overhaul~~ **IFB]** of heavy equipment is not contrary to law. Where issue is subject to pending litigation, GAO need not consider administrative law judge's contrary position.

Midwest Service and Supply Company (Midwest), pro-*AGC 00017* tests the application of the Service Contract Act of 1965 (SCA), 41 U.S.C. § 351 et seq. (1976), to invitation for bids (IFB) GSD-8DPR-90007, issued by the General Services Administration (GSA). The IFB is for an indefinite requirements-type contract for maintenance, repair and overhaul of equipment, engines, and related items.

The Department of Labor (DOL) suspended the appli-*AGC 00009* cation of the SCA to the overhaul and modification of engines from October 1978 to October 1979. Accordingly, GSA amended the solicitation to the effect that the SCA would not apply to the overhaul and modification of engines which might be the subject of this solicitation.


Midwest argues that DOL's moratorium on the applica- tion of the SCA to the overhaul of engines but not to the overhaul of heavy equipment is discriminatory and irrational, since under the IFB, various items of heavy equipment will undergo the same type of processing as will the engines excepted from the SCA. Midwest requests that the solicitation be amended to exclude the overhaul of equipment from the SCA as well.

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Our decisions hold that DOL is primarily responsible for administering the SCA and that contracting agencies must follow the views of DOL as to whether the SCA is applicable unless those views are clearly contrary to law. Digital Equipment Corporation, B-194363, April 23, 1979, 79-1 CPD 283. In a prior protest by Midwest, we stated that DOL's determination that the SCA applies to the overhaul of heavy equipment and engines was not clearly contrary to law. Midwest Service and Supply Co. and Midwest Engine Incorporated, B-191554, July 13, 1978, 78-2 CPD 34. The decision to temporarily waive the SCA's application only to the overhaul of engines is within the Secretary of Labor's authority as administrator of the SCA. 41 U.S.C. § 353(b). See Kentron Hawaii, Ltd. v. Warner, 480 F. 2d. 1166, 1175 (D.C. Cir. 1973).

Moreover, although an administrative law judge has decided that the overhaul and modification of heavy equipment and engines is not subject to the SCA, that decision has been reversed by the Administrator of the Wage and Hour Division. Midwest is seeking review of that reversal in the United States District Court. We believe it would be inappropriate for us to consider the validity of the position taken by the administrative law judge while the matter is the subject of litigation.

The protest is denied.



Deputy Comptroller General
of the United States