



In the Matter of:

BIOSPHERICS, INC.

ARB CASE NO. 98-027

***In re:* General Services Administration
Contract Nos. GS00K90AFC2893 and
GS00K94AFD2465 for information
services, Cumberland, Allegany County,
Maryland**

(Formerly ARB CASE NO. 97-086)

DATE: April 21, 1998

**ORDER DISMISSING AMENDED PETITION
AND
ORDER ESTABLISHING BRIEFING SCHEDULE**

Petitioner, Biospherics, Inc., filed a Petition For Review in this matter on April 14, 1997, seeking review of a February 14, 1997 decision of the United States Department of Labor, Wage and Hour Division, denying Biopherics the conformance rates it had requested for certain wage categories in the above-referenced contracts.^{1/} Based on Petitioner's representations that the parties were engaged in settlement negotiations that could resolve the underlying dispute, the Board issued orders, on three separate occasions, staying consideration of the petition until November 10, 1997.

On November 10, 1997, Petitioner Biospherics filed an Amended Petition for Review to seek review of "an additional issue, i.e., for what periods [o]f time, if any, Service Contract Act wage determinations applied" to the contracts. On November 21, 1997, the Board established a briefing schedule requiring the Petitioner to file a statement in support of both the Petition for Review and the Amended Petition for Review and requiring the Administrator to file the administrative record and a brief in response to the Petition and Amended Petition for Review.

The Administrator filed a Motion to Dismiss the Amended Petition for Review stating that the Wage and Hour Division has not issued a final appealable order concerning the issue raised in the amended petition. Biospherics filed a Motion for Suspension of Briefing Schedule

^{1/} Petitioner had filed a Petition for Review earlier, on September 25, 1996, concerning GSA Contract No. GS00K94AFD2465, ARB Case No. 97-001. On October 28, 1996, the Board remanded the matter to the Wage and Hour Division for reconsideration and issuance of a final determination, and this appeal followed.

and Opposition to Administrator's Motion to Dismiss Amended Petition for Review. The Administrator proceeded and filed a Statement in Opposition to Petition for Review on January 21, 1998, as provided in the November 21 briefing schedule.

Upon consideration of the parties' arguments, we conclude that there is no final appealable order concerning the matter raised in Petitioner's Amended Petition and therefore, that request is untimely, and not ripe for review by the Board. *See* 29 C.F.R. §8.7(b); *Technical Support Services, Inc.*, BSCA Case No. 92-33, Dec. 30, 1992. Accordingly, Petitioner's Amended Petition for Review **IS DISMISSED without prejudice**, and is remanded to the Wage and Hour Division for reconsideration and issuance of a final determination. The Wage and Hour Division should issue a final order regarding the matter raised in the Amended Petition for Review **within 60 days of the date of this order**. The Board declines to hold a hearing or status conference at this juncture, as requested by Petitioner.

The following schedule is established in order to complete briefing of the matter raised in Petitioner's Petition for Review of the Administrator's February 14, 1997 letter:

1. Petitioner Biospherics shall file a statement -- **not to exceed 30 double-spaced typed pages** -- in support of the Petition for Review **on or before May 11, 1998**.
2. All other parties and Interested Persons may file a reply brief -- **not to exceed 15 double-spaced typed pages** -- **on or before May 28, 1998**.
3. Docket entries for this matter shall be filed by directing submissions to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Room S-4309
Washington, DC 20210

SO ORDERED.

KARL J. SANDSTROM
Member

PAUL GREENBERG
Member