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DECISION



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

[Protest of IFB for Janitorial Services]

FILE: B-196829

DATE: March 31, 1980

MATTER OF: A & C Building and Industrial
Maintenance Corporation

DLG00031

DIGEST:

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1. Where it is not clear from record whether contracting officer knew that incumbent contractor used specific categories of employees on prior contract or general maintenance employees, GAO cannot conclude contracting officer erred in failing to include such categories in Standard Form 98 or that IFB's wage determination is defective.
2. Wage determination's "Cost of Living Allowance" provision for subsequent wage adjustment based on locality's Consumer Price Index, does not render IFB defective because all bidders are competing on equal basis and must anticipate what future wage rates are likely to be using formula providing for maximum escalation as stated in wage determination. It is bidder's responsibility to project its costs and include in contract price a factor to cover any maximum potential increase in wages.

This is a protest by A&C Building and Industrial Maintenance Corporation (A&C), the incumbent contractor, under invitation for bids (IFB) No. PBO-DD-19547 issued by the General Services Administration (GSA). A&C maintains that the IFB for "complete janitorial" services at the JFK International Airport runs afoul of the Service Contract Act (SCA) because it does not contain wage determinations for certain job categories. A&C also objects to the provision in the solicitation's wage determination requiring limited

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escalation in wage rates based upon an increased cost of living index. We deny the protest.

The contracting officer submitted to the Department of Labor (DOL) Standard Form (SF) 98, "Notice of Intention to Make A Service Contract and Response to Notice," characterizing the services to be performed as "complete janitorial" services and identifying the classes of workers who would be employed on the contract as "janitor/porter" and "supervisor." A&C, as the incumbent contractor, has a collective bargaining agreement covering the employees performing under the contract, and the contracting officer submitted to DOL a copy of the agreement, Federal Procurement Regulations (FPR) 1-12.905-3(c) (1964 ed. amend. 190), which has wage rates for "handypersons," "forepersons," and "starters." DOL then issued its wage determination setting forth minimum wages for handypersons, forepersons, starters, janitors, elevator operators, and waxers. A&C argues that the collective bargaining agreement does not include all specific job categories encompassed by the contract work, and that since DOL has previously issued wage determinations for those job classifications for the procurement's geographic locality, the contracting officer erred in not indicating those categories on the SF 98 to DOL. AGC 800009

DOL regulations require a contracting officer to file with the SF 98 information concerning the number and classes of service employees "expected to be employed under the contract," as well as the incumbent contractor's collective bargaining agreement, if there is one applicable to the contract work. 29 C.F.R. 4.4 (1979). Here the contract involves the traditional janitorial tasks of dusting, cleaning, and floor maintenance as well as paper baling, rubbish removal, snow removal, window washing, exterminating and landscaping. It is these latter categories that the protester argues the contracting officer should have identified on the SF 98.

It is not clear from the record, however, whether the contracting officer had reason to expect that these

various categories of employees would be utilized to perform the contract. On the one hand, the incumbent apparently was performing much of the work with general maintenance and custodial workers and had a collective bargaining agreement covering those categories of workers. On the other hand, some of the work was performed by non-union workers, and other specific work was subcontracted. There is no indication in the record, however, as to whether any of this work was performed by general maintenance workers or specific categories of employees such as window washers or landscapers. Therefore, we cannot conclude that the contracting officer erred in submitting the SF 98 or that the resulting wage determination is deficient.

In any event, if there are additional classifications and wage rates relevant to contract performance which are not included in the wage determination, DOL regulations (29 C.F.R. 4.6(b)(2)) provide an orderly method by which omitted employees appropriately can be classified and afforded SCA protection. See Midwest Service and Supply Co. and Midwest Engine Incorporated, B-191554, July 3, 1978, 78-2 CPD 34.

The DOL Wage Determination's "Cost of Living Allowance" provision to which A&C objects states:

"Cost of Living Allowance: Effective 1-1-80, in the event that the percentage increase in the cost of living (CPI for the City of New York) from November 1978 to November 1979 exceeds 10%, an increase in wages of \$.03 an hour for each full 1% increase in excess of 10% shall be granted. In computing the increase above 10%, increases of less than .5% shall be ignored, increases of .5% or more shall be considered a full point. In no event shall the wage increase exceed \$.15 an hour."

A&C states that since the relevant index for the prescribed period had not been issued before bid opening, bidders could not "calculate a responsible bid with any accuracy or confidence." //

In our view, this provision gives a reasonable estimate as to the range within which wage rates may increase based upon the CPI for the relevant period and provides for a maximum escalation of \$.15. All bidders are competing on an equal basis because all bidders must anticipate what future wage rates are likely to be within the maximum escalation provided in the wage determination. We have previously stated that bidders should be able to formulate their costs based on their estimate of the wage rates employees actually will require to perform the work involved. See Downtown Copy Center, B-193157, April 12, 1979, 79-1 CPD 261. Economic risks are inherent in devising a bid price for any fixed price contract, and a bidder should project its costs and include in its contract price a factor to cover any potential increase in wages. See Palmetto Enterprises, 57 Comp. Gen. 271 (1978), 78-1 CPD 116; Suburban Industrial Maintenance Co., B-190588, March 6, 1978, 78-1 CPD 173. We think this clause was not so indefinite as to render the IFB defective.

The protest is denied.



For the Comptroller General
of the United States