

95370

DECISION



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

50519

FILE: B-182164

DATE: February 6, 1975

MATTER OF: Super Building Maintenance

DIGEST:

There is no objection to proposed award where contracting agency suspected mistake in low bid for custodial services because contract estimate, based on minimum wage rates in IFB under Service Contract Act, 41 U.S.C. § 351, et seq. (1970) and required manhours, was higher than low bid and bidder verified he would not be required to pay himself minimum wage rates and would pay those rates to members of family or others consistent with provisions of Act. Moreover, contracting agency is charged by Act and implementing regulations with monitoring contract awarded to bidder for violations of contract labor standards.

Invitation for bids (IFB) No. F04626-75-B-0005 was issued July 19, 1974, by the Department of the Air Force for the custodial services for buildings 1175 and 1176 at Travis Air Force Base, California.

Ten bids were received. Mr. Rufus Gainey was the low bidder at \$9,960.00 (after discount). The other nine bids ranged from \$12,471.43 to \$37,314.40 (after discount). The contracting agency's estimate of \$11,936.16 to perform the contract was based on the minimum manhours required by the specifications and the minimum hourly wage established by the wage determination of the Department of Labor under the Service Contract Act, 41 U.S.C. § 351, et seq. (1970), which was incorporated into the IFB. Since Mr. Gainey's bid was below this amount, and since paragraph 6 of the IFB special provisions required bids to be computed on the basis of minimum wage rates, the contracting officer suspected a mistake in bid and requested verification of the bid price. Mr. Gainey orally and by letter assured the contracting officer that his bid price was accurate and correct. Therefore, the contracting officer recommended award to Mr. Gainey as the low responsive and responsible bidder.

Subsequently, Super Building Maintenance (Super), the third low bidder, protested the recommendation of award to Mr. Gainey on the ground that his bid price was not based on the wage determination rate utilizing calculations similar to those used by the contracting officer. Super, therefore, contends that Mr. Gainey should not be awarded the contract since his bid was far below cost.

In verifying his low bid, Mr. Gainey advised the contracting officer that he intends to perform the contract personally which would obviate the necessity for computing his bid on the basis of the latest wage determination rate since he was not required to pay himself the minimum wage. If, on rare occasions, he could not perform, he would use members of his immediate family or persons outside of his immediate family, in which case he would comply with the minimum wage provisions. The Service Contract Act states in § 351(b)(1) that:

"No contractor who enters into any contract with the Federal Government the principal purpose of which is to furnish services through the use of service employees as defined herein and no subcontractor thereunder shall pay any of his employees engaged in performing work on such contracts less than the minimum wage specified under section 206(a)(1) of Title 29."

Section 357(b) of the Act provides that:

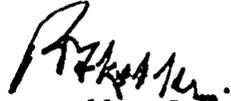
"The term 'service employee' means guards, watchmen, and any person engaged in a recognized trade or craft, or other skilled mechanical craft, or in unskilled, semiskilled or skilled manual labor occupations; and any other employee including a foreman or supervisor in a position having a trade, craft or laboring experience as the paramount requirement; and shall include all such persons regardless of any contractual relationship that may be alleged to exist between a contractor or subcontractor and such persons."

Consistent with Mr. Gainey's bid verification, we note that, under the aforementioned provisions of the Act, Mr. Gainey as an

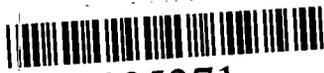
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apparent sole proprietor or employer would not be required to pay himself the minimum wage rate. He would be required to pay the minimum wage to members of his immediate family or any other individual which he employs on a part-time or full-time basis. Moreover, under the Act and implementing regulations (29 C.F.R. § 4.191 (1974)), the contracting agency is charged with monitoring any contract awarded to Mr. Gainey for violations of the contract labor standards stipulations. See B-177941, September 21, 1973, and Matter of International Brotherhood of Teamsters (Local 814), B-181068, August 13, 1974.

In view of the above, we find no legal objection to the proposed award of the contract to Mr. Rufus Gainey. The protest is, therefore, denied.



Deputy Comptroller General
of the United States



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DECISION

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

50578

FILE: B-182971

DATE: February 6, 1975

MATTER OF: NYTEK Electronics

DIGEST:

Protest against resolicitation of procurement filed nearly 4 months after closing date for receipt of proposals under resolicitation is untimely under Bid Protest Procedures and Standards and is not for consideration.

At about the same time the law firm of Sleizer, Merry & Winocur filed an appeal with the Armed Services Board of Contract Appeals from the contracting officer's final decision denying the claim of NYTEK Electronics for an alleged termination for convenience of contract N00140-74-C-0699 (Navy Regional Procurement Office, Philadelphia, Pennsylvania), it protested to our Office against the award to another concern after the award to NYTEK was recalled.

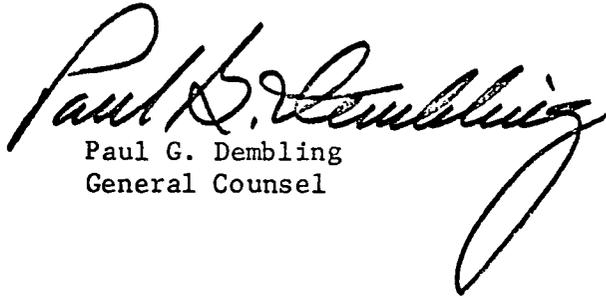
By letter of January 9, 1975, the law firm was advised that the protest would be processed in accordance with our Bid Protest Procedures and Standards.

The basis of the protest against the subsequent award is that it was improper for the Navy to recall the award to NYTEK and resolicit the procurement under a new solicitation after its price was exposed. However, the resolicitation was issued August 27, 1974; the closing date for the receipt of proposals was September 11, 1974; and award thereunder was made October 16, 1974. Our Bid Protest Procedures and Standards in 4 C.F.R. § 20.2(a) state:

"* * * Protests based upon alleged improprieties in any type of solicitation which are apparent prior to bid opening or the closing date for receipt of proposals shall be filed prior to bid opening or the closing date for receipt of proposals. * * *"

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The protest dated January 3, 1975, received in our Office January 6, 1975, nearly 4 months after the closing date for receipt of proposals, is thus untimely. Accordingly, contrary to the advice in the January 9 letter, the protest is not for consideration and no further action will be taken by our Office on the matter.

A handwritten signature in black ink, appearing to read "Paul G. Dembling". The signature is written in a cursive style with a large, sweeping loop at the end.

Paul G. Dembling
General Counsel