DECISION

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

FILE: B-210057.2 DATE: April 13, 1983

MATTER OF: Geronimo Service Co.

DIGEST:

Prior decision is affirmed because protester has not established that it was based on an erroneous conclusion of law or fact.

Geronimo Service Co. (Geronimo) requests reconsideration of our decision in Geronimo Service Co., B-210057, January 24, 1983, 83-1 CPD 86. We affirm the decision.

Geronimo had protested that Navy solicitation No. N62471-82-B-2138 for custodial services at various Navy installations was defective because it included a Department of Labor wage determination which allegedly was inconsistent with a collective bargaining agreement that the successful bidder would be bound by. Geronimo contended that it had to base its bid on the higher rates contained in the collective bargaining agreement because as the incumbent contractor it was operating under that agreement. Geronimo alleged that it was prejudiced because bidders who were unaware of the terms of the collective bargaining agreement would base their bids on the lower rates contained in the wage determination.

We dismissed the protest because our Office does not review the accuracy of wage determinations that are issued in connection with solicitations covered by the Service Contract Act. We also noted that the wage determination included with the solicitation contained a legend that put all bidders on notice that the successful bidder would be bound by the collective bargaining agreement. In this respect, under the Service Contract Act, successor contractors generally are required to adhere to the predecessor contractor's collective bargaining agreement. See 41 U.S.C. § 353(c) (1976).

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Geronimo now claims that the real basis for its protest was the Navy's failure to advise all bidders expressly of the inconsistencies between the wage determination and the collective bargaining agreement. Geronimo contends that the Navy, aware of the alleged inconsistence because of Geronimo's protest, should not have relied on the legend contained in the solicitation, but either should have postponed the procurement to obtain a new wage determination, or should have distributed copies of the collective bargaining agreement to the prospective bidders. Geronimo also argues that the Navy violated Defense Acquisition Regulation (DAR) § 12-1005.2(b)(5)b. (DAC 76-20, September 17, 1979), which concerns situations where the incumbent is operating under a collective bargaining agreement, and a wage determination is requested from the Department of Labor but not received in time to be included in a solicitation. The regulation states that in such a case, the solicitation should not include the "wage determination" in the incumbent's contract, but instead should advise prospective bidders through a clause specified at DAR § 7-2003.85 (DAC 76-28, July 15, 1981) that they must consider the incumbent's collective bargaining agreement in computing their bids.

We find no merit in these arguments to warrant reversal of our decision. The wage determination legend in issue put all bidders on notice that the successful bidder would be required to comply with the terms of the collective bargaining agreement whether or not they were reflected in the wage determination itself. We stated:

> "The wage determination only specifies the minimum wages and benefits to be paid--it is not a guarantee that the appropriate work force can be employed by the bidder at those rates. In a situation such as this, it is the responsibility of the bidder to project costs and to take into consideration in its bid calculation the possible impact of a collective bargaining agreement on its cost of performance. * * * Here, all bidders should have been aware of the collective bargaining agreement, and, if they desired, should have attempted to learn the precise wages and fringe benefits called for by that agreement. Thus, Geronimo should not have

> been at a competitive disadvantage as a consequence of its status as the incumbent contractor. * * **

Geronimo has not shown that this is an erroneous conclusion of law or fact, which is required for a successful reconsideration request. See 4 C.F.R. § 21.9(a) (1983). First, we do not see how DAR § 12-1005.2(b)(5)b. applies here. The wage determination included in the solicitation was not simply the one in the incumbent's contract, but was issued by the Department of Labor specifically for this procurement; Geronimo just does not agree with its contents. In any event, and even if the wage determination does not conform to the collective bargaining agreement, the fact is that the wage determination notice clearly places on the prospective bidders the burden to ascertain the details of the collective bargaining agreement and consider them in calculating their bids. It does so by expressly warning that the terms of the collective bargaining agreement, not the wage determination, dictate the minimum wages and fringe benefits payable. Since all bidders thus were charged with the same knowledge regarding the basis for bidding, we cannot conclude, as a legal matter, that Geronimo was at an unfair competitive disadvantage in this competition. See Geronimo Service Co., B-210008.2, February 7, 1983, 83-1 CPD 131.

Our decision is affirmed.

for Milton J. Socolar
Comptroller General
of the United States