

DECISION

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

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FILE: B-215391**DATE:** October 30, 1984**MATTER OF:** Kleen-Rite Corporation**DIGEST:**

1. An allegation that a price deduction formula for a reduction in space is defective and thus arbitrary and unjust is without merit where the record establishes that the formula is not defective as alleged.
2. An hourly deduction rate for work unsatisfactorily performed is unobjectionable and not excessive where the record establishes that the rate used accurately reflects the cost to the government in the event of unsatisfactory performance.

Kleen-Rite Corporation protests the inclusion of two clauses in invitation for bids (IFB) No. GS-03-84-B-0051, issued by the General Services Administration (GSA) for janitorial and related services at the federal building in Philadelphia, Pennsylvania. We deny the protest.

Kleen-Rite first challenges the Reduction in Space clause, which provides a formula for calculating a deduction from the contract price when the area to be cleaned is reduced by 2,500 or more square feet for periods of 30 days or longer. Kleen-Rite contends that the reduction of space formula is arbitrary and unjust because it incorrectly assumes that a reduction in space results in a corresponding reduction in certain more or less constant services (e.g., the contractor must continue to clean the same number of stairways and elevators even after a reduction in office space to be cleaned). This allegation is without merit.

As the agency explains in its report, the reduction of space formula does reflect the fact that certain constant services will be unaffected by a cleaning reduction. The

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IFB states that the deduction rate is derived by first subtracting from the monthly contract price the percentage of cost attributable to unaffected ancillary services, and then dividing the resulting figure by the net square foot area to be cleaned. This figure then is divided by the 21 working days in a month to arrive at a deduction rate stated in dollars per day per square foot of unoccupied space. It is GSA's position that subtracting the cost of unaffected ancillary services from the numerator of the deduction formula adequately accounts for the fact that the contractor will remain responsible for these services even in the event of a space reduction. Kleen-Rite has not shown otherwise and in fact has opted not to rebut GSA's position. We thus find no basis for objecting to the space reduction clause.

Second, Kleen-Rite alleges that the Deduction for Other Work clause is defective because it provides for a contract price deduction of \$12.39 per hour for work omitted or unsatisfactorily performed by the contractor. Kleen-Rite maintains that this per hour rate constitutes an impermissible penalty because it exceeds the comparable GSA rate stated elsewhere in the IFB. Again, we find this allegation without merit.

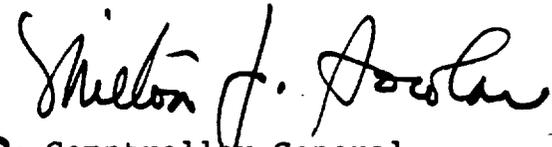
GSA explains it used the \$12.39 rate because this is the actual average field office labor rate which encompasses all costs recoverable by the government, including fringe benefits such as health insurance, life insurance, and administrative and overhead expenses. The comparable GSA base rate^{1/} does not include these costs and, GSA states, was incorporated in the invitation only for informational purposes as required by the Service Contract Act, 41 U.S.C. § 351 (1982). GSA maintains that because these additional costs are recoverable as damages, the \$12.39 rate is a reasonable measure of damages related to unsatisfactory performance.

The deductions for noncompliance with the performance requirements essentially relate to liquidated damages,

^{1/}The rate is stated in the solicitation as \$7.44 per hour. The solicitation also states that in addition, workers must be paid the following fringe benefits, expressed as a percentage of the base rate: retirement 24.7 percent, health insurance 3.5 percent, and life insurance .5 percent.

that is, fixed amounts which one party to a contract can recover from the other upon proof of violation of the contract, and without proof of the damages actually sustained. See Environmental Aseptic Services Administration and Larson Building Care Inc., 62 Comp. Gen. 219 (1983), 83-1 CPD ¶ 194. A liquidated damages provision properly may include administrative costs in addition to the price of the work not performed or unsatisfactorily performed. Industrial Maintenance Services, Inc., B-207949, Sept. 29, 1982, 82-2 CPD ¶ 296. We will object to such a provision as imposing an impermissible penalty only where a protester shows there is no possible relation between the liquidated amounts and the losses which are contemplated by the parties. Massman Construction Co., B-204196, June 25, 1982, 82-1 CPD ¶ 624. Kleen-Rite has made no such showing, again choosing not to respond to GSA's explanation. We thus will not object to this provision.

The protest is denied.

for 
Comptroller General
of the United States