DECISION

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

FILE: B-220028 DATE: December 26, 1985

MATTER OF: Aquasis Service, Inc.

DIGEST:

1. Contracting officer acted properly when he forwarded a copy of the protester's collective bargaining agreement to the Department of Labor, but did not change the Service Contract Act wage rate determination in the solicitation because he reasonably determined that the collective bargaining agreement would not affect the contract to be awarded under the solicitation as the collective bargaining agreement did not come into effect until after the proposed start date of the new contract.

2. GAO does not review the wage rate determinations issued by the Department of Labor in connection with solicitations subject to the Service Contract Act.

Aquasis Services, Inc., protests the proposed award of a contract to Robertson-Penn, Inc., by the Department of the Army pursuant to invitation for bids (IFB) No. DAHC30-86-B-0002 for operation of a dry cleaning facility at Fort Myer, Virginia. Aquasis, the incumbent contractor, complains that the agency failed to incorporate in the solicitation a specific notice of a collective bargaining agreement negotiated prior to bid opening or a wage rate reflecting that agreement. According to the protester, this will result in its being underbid since, as the incumbent contractor, only it will be obligated to pay the wage rates and benefits in the agreement unless they are incorporated into the solicitation.

The protest is denied in part and dismissed in part.

The protester argues that the solicitation included a Department of Labor (DOL) wage rate determination, specifying the minimum wage and fringe benefits to be paid,

required under the Service Contract Act of 1965, 41 U.S.C. §§ 351-358 (1982), that was inconsistent with the collective bargaining agreement negotiated prior to the September 5, 1985, bid opening. The protester argues that since it notified the agency of the agreement on August 14, the agency should have withdrawn the wage rate determination in the solicitation and requested from DOL a new determination based on the collective bargaining agreement. Pending receipt by the agency of the new determination, the protester contends the agency should have amended the solicitation to include the notice provided for in Defense Acquisition Regulation (DAR) § 7-2003.85,[1]/ which, in essence, states that a new wage rate determination has been requested and that if a wage rate is not incorporated into the solicitation, the terms of the collective bargaining agreement between the union and incumbent contractor would apply.

The agency states that it was unnecessary to request a new wage rate determination from DOL or to amend the solicitation to incorporate the DAR notice because the Service Contract Act requirement that a successor contractor abide by the terms of a predecessor contractor's collective bargaining agreement is not applicable here. The agency maintains that since Aquasis' agreement was not effective until October 1, the planned start date of the successor contract, the agreement never actually applied to the employees under the predecessor contract and, thus, would not bind any successor contractor other than Aquasis. It is the agency's view that it complied with the applicable regulations when it forwarded a copy of Aquasis' agreement to DOL and informed the protester that the agreement did not affect the solicitation.

The Service Contract Act requires a successor contractor to pay service employees employed on the contract the same wages and benefits provided for in a collective bargaining agreement to which the employees would have been entitled if they were employed under the predecessor contract. 41 U.S.C. 353(c) (1982); SEACO, Inc., B-211226, Aug. 1, 1983, 83-2 CPD ¶ 146. In order for

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[1]/ Since the Federal Acquisition Regulation (FAR) and Department of Defense FAR Supplement coverage pertaining to the Service Contract Act have not yet been issued, the provisions of Defense Acquisition Regulation, section XII, part 10, are to be followed.

the Service Contract Act to apply, however, the collective bargaining agreement must be applicable to work performed under the predecessor contract. 29 C.F.R. § 4.163(f) (1985). DOL's regulations specifically state that the act is not applicable "if the predecessor contractor entered into a collective bargaining agreement for the first time, which did not become effective until after the expiration of the predecessor contract." Id.

The record here shows that while the collective bargaining agreement was negotiated during the term of the predecessor contract, it was not to become effective until October 1, the proposed start date of the successor contract. In these circumstances, where the solicitation had already incorporated a current Service Contract Act wage determination, we think the contracting officer acted properly by providing a copy of the bargaining agreement to DOL and advising the protester that he had done so and that he did not intend to amend the solicitation or request a new wage rate determination. See DAR § 12-1005.2.

The protester's disagreement with the contracting officer's action here is, in essence, that the wage determination in the solicitation should be changed to conform with its bargaining agreement. This Office does not review wage rate determinations under the Service Contract Act. Any challenge to the wage determination contained in the solicitation must be processed through the administrative procedures established by the DOL and set forth at 29 C.F.R. § 4.55. See Geronimo Service Co., B-210008.2, Feb. 7, 1983, 83-1 CPD ¶ 131.

The protest is denied in part and dismissed in part.

Harry R. Van Cleve
General Counsel