The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Ryan-Walsh, Inc.

File: B-232330

Date: December 8, 1988

DIGEST

1. General Accounting Office does not review the accuracy of wage rate determinations issued by the Department of Labor in connection with solicitations subject to the Service Contract Act. A challenge to such a wage determination should be processed through the administrative procedures established by the Department of Labor.

2. Where contracting agency incorporated into its solicitation latest Department of Labor wage determination which includes a provision notifying offerors that the wage determination specifies only minimum wages and benefits and that awardee will be required to comply with the collective bargaining agreement, agency has done all that is required to insure that incumbent contractor subject to a collective bargaining agreement is not prejudiced by its status.

DECISION

Ryan-Walsh, Inc. protests the Service Contract Act wage determination included in request for proposals (RFP) No. DAHC24-88-R-0010 issued by the Army for stevedoring and related terminal services. Ryan-Walsh, which is the incumbent contractor and is subject to a collective bargaining agreement, argues that the wage determination is inconsistent with that agreement. Thus, according to Ryan-Walsh, the solicitation is ambiguous since union and non-union offerors may not be bound to the same requirements and may not propose on the same basis. We dismiss the protest.

After Ryan-Walsh filed its protest, the Department of Labor (DOL) issued a revised wage determination, 74-752 (Rev. 8), dated August 24, 1988, which was incorporated into the solicitation. According to the protester, the revised wage determination adequately addresses a number of issues which it raised in its protest. Nonetheless, Ryan-Walsh argues that the wage determination is deficient and inconsistent

with the collective bargaining agreement's terms relating to meal hour payments, the "container royalty fund," and travel time payments.

We will not consider this matter on its merits. It is our policy not to review the correctness or accuracy of DOL wage determinations issued in connection with solicitations subject to the Service Contract Act. See Rampart Services, Inc.--Reconsideration, B-220800.2, Nov. 12, 1985, 85-2 CPD ¶ 542. Therefore, a challenge to a Service Contract Act wage determination should be processed through the administrative procedures established by the Department of Labor and set forth in title 29 of the Code of Federal Regulations, rather than through a bid protest filed in our Office. See Consolidated Marketing Network, Inc., B-219387, Sept. 3, 1985, 85-2 CPD ¶ 262.

In any event, we do not believe that the solicitation is ambiguous or unclear with regard to offerors' responsibilities under the Service Contract Act. In this respect, the wage determination includes the following note:

> "In accordance with Section 4(c) of the Service Contract Act, as amended, the wage rates and fringe benefits set forth in this wage determination are based on collective bargaining agreement(s) under which the incumbent contractor is operating. The wage determination sets forth the wage rates and fringe benefits provided by the collective bargaining agreement and applicable to performance on the service contract. However, failure to include any job classification, wage rate or fringe benefit encompassed in the collective bargaining agreement does not relieve the successor contractor of the statutory requirements to comply as a minimum with the terms of the collective bargaining agreement insofar as wages and fringe benefits are concerned."

This provision notifies all offerors of their legal responsibility to comply with the incumbent contractor's collective bargaining agreement. The wage determination only specifies the minimum wages and benefits to be paid. It is the responsibility of each offeror to project costs and to take into consideration in its proposal calculation the possible impact of the collective bargaining agreement's wages and fringe benefits provisions on its cost of performance. Safeguard Maintenance Corp., B-198356, Apr. 23, 1980, 80-1 CPD ¶ 292. Here, the solicitation notified all offerors of the collective bargaining agreement and of their Service Contract Act obligations regarding the

agreement. It also incorporated the latest DOL wage determination. Thus, the contracting agency did all that the law requires to insure that Ryan-Walsh is not at a competitive disadvantage as a consequence of its status as the incumbent contractor having to comply with the collective bargaining agreement. Geronimo Service Co., B-210008.2, Feb. 7, 1983, 83-1 CPD ¶ 131.

The protest is dismissed.

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