



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: C.N.Y. Enterprises, Inc.; B&R Food Systems, Inc.; ABC Services, Inc.

File: B-234063, B-234063.2, B-234063.3

Date: January 26, 1989

DIGEST

The General Accounting Office does not review Department of Labor wage determinations issued in connection with solicitations subject to the Service Contract Act.

DECISION

C.N.Y. Enterprises, Inc., B&R Food Systems, Inc., and ABC Services, Inc. protest the terms, as amended, of invitation for bids (IFB) No. F05600-89-B-0009, issued by the Department of the Air Force for food services at Lowry Air Force Base in Colorado. The solicitation was amended to incorporate a Department of Labor (DOL) wage determination that requires the contractor to credit employees of the predecessor contractor who it hires with unused sick leave accrued under the predecessor contract. The protesters argue that the requirement to credit accrued sick leave places them at a competitive disadvantage relative to the incumbent contractor, since presumably the incumbent has already recovered the cost of the sick leave under the current contract, while any competitor will have to increase its bid price to account for the possibility that the employees will use the accrued sick leave.

We dismiss the protests.

As a general matter, our Office does not review wage rate determinations under the Service Contract Act, 41 U.S.C. § 353(c) (1982). Rather, any challenge to a wage determination contained in the solicitation must be processed through the administrative procedures established by the DOL. See 29 C.F.R. § 4.55 (1988); A&C Building and Industrial Maintenance Corp., B-230839, July 21, 1988, 88-2 CPD ¶ 67; Kime-Plus, Inc., B-229990, May 4, 1988, 88-1 CPD ¶ 436.

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In any case, we point out that the Act requires that successor contractors pay service employees any "accrued wages and fringe benefits" provided for in a collective bargaining agreement, reached as a result of arms-length negotiations, to which the employees would have been entitled if they were employed under the predecessor contract. 29 C.F.R. § 4.1b(a); see generally, Leamington Motor Inn.--Request for Reconsideration, B-227927.2, Aug. 20, 1987, 87-2 CPD ¶ 189. As the Air Force has informed us that the requirement to credit accrued sick leave is in accordance with a collective bargaining agreement between the incumbent contractor and its employees' union, it appears that the Act would require a successor contractor to credit the accrued sick leave. There is no requirement that the agency eliminate any resulting competitive advantage in favor of the incumbent. See also University Research Corp., B-228895, Dec. 29, 1987, 87-2 CPD ¶ 636 (government has no duty to equalize position of competitors unless competitive advantage results from a preference or unfair action by the government).

The protests are dismissed.

Michael A. Golden

^{for}
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