

DOCUMENT RESUME

02128 - [A1112129]

[Post-Bid-Opening Cancellation of Invitation for Bids].
B-187710. April 18, 1977. 3 pp.

Decision re: United Service Associates, Inc.; by Robert F. Keller, Deputy Comptroller General.

Issue Area: Federal Procurement of Goods and Services (1900).

Contact: Office of the General Counsel: Procurement Law I.

Budget Function: General Government: General Property and Records Management (804).

Organization Concerned: General Services Incorporated; General Services Administration: Atlanta Regional Office.

Authority: Service Contract Act of 1965, as amended (41 U.S.C. 351-353). F.P.E. 1-12.905-4(a). F.P.R. 1-2.404-1(a). 55

Comp. Gen. 97. 56 Comp. Gen. B-182436 (1975). B-178701 (1975). B-186385 (1976).

The protester objected to the cancellation of an invitation for bids that contained a wage determination superseded by a wage revision. The revision was received by contracting agency officials less than 10 days before bid opening. The post-bid-opening cancellation was proper, since the agency determined that sufficient time had existed prior to bid opening to notify bidders. (Author/SC)

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DECISION



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

A. Boyle
Proc I

FILE: B-187710

DATE: April 18, 1977

MATTER OF: United Service Associates, Inc.

DIGEST:

Post-bid-opening cancellation of invitation containing wage determination superseded by wage revision received by agency officials less than 10 days before bid opening was proper. Since agency determined that sufficient time had existed prior to bid opening to so notify bidders, compelling reason to cancel existed because in circumstances interests to be protected by Service Contract Act and GAO decisions required that latest revision be included in invitation.

United Service Associates, Inc. (USAI), protests the cancellation of invitation for bids (IFB) No. 4 PBO-29 issued by the Atlanta Regional Office of the General Services Administration (GSA) for cleaning services at the Ballistic Missile Center, Huntsville, Alabama. The cancellation was prompted by a protest filed here after bid opening by General Services Incorporated, alleging that the IFB did not contain the then current wage determination as required by the Service Contract Act of 1965, as amended (41 U.S.C. §§ 351-58), and implementing regulations.

The IFB contained wage determination No. 67-438, revision 16, dated April 14, 1976; however, revision 17, dated May 14, 1976, increased the minimum hourly rate from \$2.41 to \$2.56. GSA officials in Atlanta were notified of revision 17 by telephone on May 25 and received a copy of the revision on the morning of May 28, the day of bid opening. GSA determined, after bid opening, that sufficient time had existed to notify prospective bidders of a postponement of bid opening to incorporate revision 17 into the IFB. Therefore, GSA concluded that award based on the unrevised IFB would be improper under Federal Procurement Regulations (FPR) § 1-12.905-4(e) (1964 ed. temp. reg. 29), which provides in pertinent part as follows:

"Any contract agreed upon, in excess of \$2,500 shall contain an attachment specifying the minimum wages and fringe benefits for service employees to be employed thereunder, as determined in any applicable currently effective wage determination made and included in the register including any expressed in any document referred to in subparagraph (1) or (2) of this paragraph (a):

* * * * *

"(2) Any revision of the register by a wage determination issued prior to the award of the contract or contracts * * * which changes previously determined minimum wage rates and fringe benefits for service employees employed on covered contracts in the locality. However, revisions received by the Federal agency later than 10 days before the opening of bids, in the case of contracts entered into pursuant to competitive bidding procedures, shall not be effective if the Federal agency finds that there is not a reasonable time still available to notify bidders of the revision."

Consequently, GSA canceled the IFB pursuant to FPR § 1-2.404-1(a) (1964 ed. amend. 121), which permits cancellation after bid opening when there is a compelling reason.

USAI essentially contends that there was no compelling reason to cancel because: (1) FPR § 1-12.905-4(a) clearly permits award based on an IFB containing a superseded wage determination when the new wage determination is not available 10 days before bid opening; and (2) there was no showing that revision 17 affected any submitted bid--since revision 17 established minimum wage rates, it was possible that all bids were based on wage rates higher than those in revision 17.

FPR § 1-12.905-4(a) provides that revised wage determinations received later than 10 days prior to bid opening shall not be effective if the contracting agency "finds that there is not a reasonable time still available to notify bidders of the revision." It has been held that contracting agencies cannot automatically ignore revisions received less than 10 days prior to bid opening but must make a positive finding as to the time available to notify bidders. International Union


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of Operating Engineers v. Arthurs, 355 F. Supp. 7 (W.D. Okla.), aff'd, 480 F.2d 603 (10th Cir. 1973); Since GSA determined that sufficient time existed to notify bidders of revision 17, under FPR § 1-12.905-4(a), GSA correctly concluded that the IFB did not contain the appropriate wage determination under which the bidders should have been competing.

We have recognized that affording protection to service workers and thereby furthering the purpose of the Service Contract Act may be regarded as a compelling reason to cancel an IFB after bid opening in order to resolicit based on a revised wage determination. Square Deal Trucking Company, Inc., B-182436, February 19, 1975, 75-1 CPD 103. In addition, we have held that an IFB not containing the correct wage determination should be canceled and the requirement resolicited based on the correct wage determination. Dyneteria, Inc., 55 Comp. Gen. 97 (1975), 75-2 CPD 36, affirmed on reconsideration, Tombs & Sons, Inc., B-178701, November 20, 1975, 75-2 CPD 332. Moreover, we have held that the proper way to determine the effect of a change in the Government's specification is to compete the procurement under the new rates even where the wage rate change was effective after bid opening in a situation where a similar "10-day rule" was applicable. Dyneteria, supra. See also High Voltage Maintenance Corp., 56 Comp. Gen. ____ (B-186386, December 9, 1976), 76-2 CPD 473.

In view of revision 17's upward adjustment of wage rates, the interests to be protected by the Service Contract Act, and our prior decisions, the contracting agency clearly had a reasonable basis under FPR § 1-2.404-1(a) to cancel the IFB after bid opening even in the absence of a specific showing that all bids were based on wage rates higher than these in revision 17.

Accordingly, USAI's protest is denied.


Deputy Comptroller General
of the United States