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DECISION

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

FILE: B-186239 DATE: November 9, 1976

MATTER OF: North Landing Line Construction Co.
Request for Reconsideration

DIGEST:

Prior decision that protester's reliance on defective specifications was not prejudicial to its competitive position is affirmed. Protester's claim of prejudice is conjectural and not sufficient to outweigh obvious prejudice to contractor if award were to be disturbed.

North Landing Line Construction Co. (North Landing) requests reconsideration of our decision, dated September 29, 1976. There we upheld award to a bidder who had failed to acknowledge a solicitation amendment increasing Davis-Bacon wage rates for ironworkers where the work to be performed would not actually require use of ironworkers. We noted, however, that in future solicitations the agency should insure that its specifications are not susceptible of being interpreted by bidders to require the use of a particular trade which is not actually required to perform the contract.

Specifically, North Landing's bid was $148 higher than the bid of the awardee. It claimed that its bid included 120 hours for ironworkers based on a reasonable reading of the specifications. Since the amendment increased the wage rate for ironworkers by $.50 per hour, including fringe benefits, we stated that the effect of the amendment increased the protester's bid by $60.00 and the protester therefore was not adversely affected by the agency's acceptance of the low bid which failed to acknowledge the amendment.

North Landing now contends that the amended wage determination did, in fact, injure its competitive position in that consideration should be given to the effect of burden rates (overhead, general and administrative and mark-ups on subcontractor costs) necessarily applied to the hourly increase of $.50. North Landing asserts that when these indirect costs are added to the $.50 per hour increase, the total effect of the wage rate amendment on its bid price was an increase of $156.40. Inasmuch as the difference between its bid price and that of the low bidder was only $148.00, it contends the amendment was the cause of its bid being higher than that of the awardee.

The solicitation provided for the refurbishment of interior panel boards and high bay area lighting in a building used by the National Aeronautics and Space Administration (NASA) for, among other things, testing an aircraft. The record is clear that if the aircraft which is undergoing tests were to be moved to facilitate the overhead work, ironworkers could be used and the amendment containing the increased Davis-Bacon wage rates would be applicable.

However, during a site visit for the bidders, which North Landing did not attend, other bidders were informed orally that NASA would not permit the aircraft to be moved. The contractor states that it included in its low bid price no factor for the cost of ironworkers and its bid contemplated performing the required work with the aircraft in place. When making its own site visit, and when it read the specifications, North Landing assumed that the aircraft had to be moved. It apparently included in its bid price a factor for the cost of moving the aircraft with ironworkers.

We have no documented evidence of the actual burden rates applicable to the hourly increase other than the statements of North Landing in requesting reconsideration. We, of course, agree that the competitive effect of an hourly increase should be calculated with due regard for the indirect costs. North Landing's calculations assume that the cost of the ironworkers at the increased rate would not have been exceeded by the cost of performing the work with the aircraft in place. This alternative would require extendible scaffolding and the labor for assembly and disassembly or extendible mobile equipment with the necessary operators. It would involve increased safety precautions for equipment and personnel protection and increased property damage insurance or risk factors in the bid for such liability. Further, there would be cost factors for the decreased efficiency resulting from the inconvenience of working around the aircraft being tested. That North Landing intended to move the aircraft "to facilitate the overhead work" lends support for the belief that performing the work with the aircraft in place would be more difficult, involve greater risk and hence be more expensive than would be the case with the aircraft removed. At this time, there is no objective way of clearly determining what North Landing's bid would have been in the absence of the inapplicable amendment.

Thus, we believe that the prejudice claimed by North Landing is conjectural and not sufficient, under all of the circumstances, to outweigh the obvious prejudice to the low bidder if the award was disturbed.

Accordingly, the decision upon reconsideration is affirmed.

Acting Comptroller General
of the United States