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DECISION

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

FILE: B-203731 DATE: September 23, 1982

MATTER OF: PRC Government Information Systems, division of Planning Research Corporation

DIGEST:

1. Protest that geographic scope of contract is excessively broad is untimely because, while it was filed with the contracting agency prior to the time for receipt of initial proposals as required, the subsequent protest to GAO was not filed within 10 days of initial adverse agency action--the passage of the time for receipt of initial proposals without a change in the protested solicitation provision.

2. Where initial incorrect wage determination was deleted from solicitation after the receipt of initial proposals and new wage determinations were added, the contracting agency was not required to cancel the solicitation and resolicit to include firm that protested initial wage determination, but did not submit a proposal, where the initial wage determination was not void ab initio, where the change resulting from the new determination was not so substantial as to require a complete revision of the solicitation, and where the protester has not shown that it was reasonably prevented from submitting a competitive proposal.

PRC Government Information Systems, division of Planning Research Corporation (PRC), protests request for proposals No. CDPP-W-80-H-A0008-W4 for ADP support services, issued by the General Services Administration (GSA). Essentially, PRC protests GSA's decision not to cancel the solicitation and reopen competition when the

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Department of Labor (DOL) ruled, in response to a protest by PRC, that the Service Contract Act, 41 U.S.C. § 351, et seq. (1976), wage determination included in the solicitation was improper. Instead, GSA amended the solicitation to delete the original wage determination and include the new, correct wage determinations. Since PRC had not submitted a proposal, claiming that the erroneous wage determination made that too risky, PRC contends that GSA's action prevented it from joining the competition.

We deny this portion of the protest.

PRC also protests the geographic scope of potential performance of the contract, contending that it is so broad that task orders issued for services outside the so-called primary and secondary areas will constitute improper sole-source procurements. This issue was not timely raised and, therefore, we dismiss it.

Factual Background

The solicitation contemplated a 1-year contract with two 1-year options for a wide range of ADP technical support services. This contract is the mandatory source for the requirements of GSA and several other Federal agencies for needs within the primary and secondary areas. The primary area is composed of 10 sites and any location within a specific mile radius of each site. The secondary area includes all of GSA regions 2 and 4 and a portion of GSA region 3. In addition, the solicitation provided that the contract "may be used" to provide coverage in other GSA regions that do not have existing contracts for the services, or to provide coverage for services that exceed the scope of an existing regional contract.

Prices were to be submitted on a fixed-price hourly basis for 32 separate categories of employees. These hourly rates were to be the sole compensation for work performed. There were three separate price schedules within which the geographical areas were grouped.

The solicitation estimated hours of work for the various locations, but no specific amount of work was guaranteed. The contractor would be issued task orders,

which it was to respond to by submitting proposals showing how the work would be done and how many hours of labor would be provided in each category. The number of hours proposed for each category, multiplied by the fixed contract price for that category and then totaled, would yield the proposed fixed price for the task. There is a maximum dollar amount of $500,000 per task order.

The solicitation also included the standard Service Contract Act clause and wage determination No. 77-117, January 30, 1981. The wage determination listed the Federal Data Processing Center, Huntsville, Alabama (the contract's largest single work site), as the "locality." However, the wage determination also provided that it was applicable to all service employees employed on the contract, regardless of the place of performance. During the preproposal conference, GSA stated that the wage determination was a "national" wage determination.

By letter of April 2, 1981, PRC complained, among other things, that the nationwide wage determination was improper, that the scope of the contract was too broad and that it would be difficult to submit an offer as the solicitation stood. PRC asked that the solicitation be amended. GSA amended the solicitation to change some features that PRC had complained of, but did not change the wage determination or the scope of the contract. GSA also responded to PRC's complaints by letter of April 17, 1981, stating why it disagreed with PRC's position. On April 27, 1981, prior to the time set for receipt of proposals on that day, PRC protested to GSA, again complaining that the nationwide wage determination was improper and that the contract scope was overly broad. PRC also informed GSA that these problems with the solicitation were so serious as to prevent PRC from submitting an offer and that PRC felt that competition was restricted by the problems. PRC asked that the solicitation be canceled and reissued with the objectionable elements removed or changed. The protest was referred to DOL for its comments.

Two offers were received in response to the solicitation--from the incumbent Computer Sciences Corporation (CSC) and from Computer Data Systems, Inc. (CDS). GSA then began the process of evaluation and negotiation.

On June 8, 1981, GSA received DOL'S letter of June 4, 1981, which advised that the nationwide wage determination contained in the solicitation was inappropriate. DOL issued 14 new wage determinations--13 local determinations for the primary and secondary areas and one nationwide determination to cover task orders outside the primary and secondary areas. On June 8, 1981, GSA indicated to PRC that it did not intend to cancel and resolicit, but that it would only amend the solicitation. That amendment (No. 3), incorporating the new wage determinations and permitting the two firms that had submitted offers to revise price proposals, was issued with an effective date of June 11, 1981. Amendment No. 4, changing the price schedules, was issued on June 16, 1981.

PRC then protested to our Office on June 18, 1981. Award was subsequently made to CDS.

Scope of the Contract

PRC argues that the portion of the contract covering services outside the primary and secondary areas is impermissibly broad and that task orders issued for work in that area will be tantamount to impermissible sole-source contracts. PRC contends that such task orders should be competitively procured separately.

This is a protest of an alleged solicitation defect apparent on the face of the solicitation. To be timely, it must be filed with GAO or the contracting agency prior to the time for receipt of initial proposals. 4 C.F.R. § 21.2(b)(1) (1982). PRC filed its protest with GSA prior to that time. When a protest is timely filed initially with the contracting agency, to be timely, any subsequent protest to GAO must be filed within 10 days of actual or constructive notice of "initial adverse agency action." 4 C.F.R. § 21.2(a) (1982). Where, as here, the agency protest is of an apparent solicitation defect, the passage of the time for receipt of initial

proposals without correction of the defect is initial adverse agency action. McCaleb Associates, Inc., B-197209, September 2, 1980, 80-2 CPD 163. PRC did not file its protest here within 10 working days of the time for receipt of initial proposals; therefore, it is untimely and will not be considered.

PRC argues that the protest is timely for two reasons. First, PRC contends that because it understood that GSA might not fully consider its protest prior to the closing date for receipt of initial proposals and, therefore, asked for cancellation and resolicitation as a remedy, closing is not initial adverse agency action. Second, PRC argues that since it also protested orders to be issued under the contract, it was not required to protest until each order is issued. In this regard, PRC cites our decision in Tosco Corp., B-187776, May 10, 1977 77-1 CPD 329, for the proposition that a protester need not file a protest concerning one of a series of procurement actions at the beginning of the series. Alternatively, PRC contends that even if the issue is untimely, it should be considered under our "significant issue" exception. 4 C.F.R. § 21.2(c) (1982).

The nature of the complaint, not the relief requested, is relevant to what constitutes initial adverse agency action. PRC complained of an alleged defect in the solicitation. Once GSA accepted initial proposals without having corrected the alleged deficiency, it was taking action adverse to PRC's position, and PRC was required to protest to GAO within 10 working days. PRC's argument that it was also protesting the issuance of any orders under the contract does not make the protest timely. It was obvious from the solicitation that such orders could be issued once the contract was awarded. The complaint is really against the solicitation provision. The Tosco decision is inapposite in these circumstances and, in any event, does not stand for the proposition for which PRC cited it.

Finally, the matter is not for consideration under our "significant issue" exception. This exception is to be used sparingly--only when the subject of the protest is a matter of widespread interest to the procurement community and has not previously been considered by GAO. Essentially, PRC's complaint is that the requirement for

services outside the primary and secondary areas should be procured separately. The question of when requirements should be procured separately has been considered a number of times by GAO. See, e.g., Interscience Systems, Inc., B-201890, June 30, 1981, 81-1 CPD 542; Ampex Corporation, B-191132, June 16, 1978, 78-1 CPD 439. Consequently, the issue is not for consideration.

Service Contract Act

Protester's Arguments

PRC contends that the solicitation should have been canceled and reissued with the new wage determinations, rather than amended to include them. PRC bases its contention on the following grounds: (1) the wage determination in the solicitation was void ab initio, (2) the changes in the solicitation resulting from the new wage determinations were of such magnitude as to require resolicitation, and (3) GSA delayed sending necessary information to DOL, thus contributing to the new wage determinations not being issued until after the closing date for receipt of proposals.

PRC argues that the original nationwide wage determination was clearly contrary to the intent of the Service Contract Act, and that both GSA and DOL should have known that it was improper. According to PRC, when a solicitation contains such a clearly illegal wage determination, it is tantamount to having no wage determination. Since the act requires that all solicitations have the proper determination, the only appropriate remedy is cancellation of the solicitation and resolicitation with the proper wage determination.

The protester cites Southern Packaging and Storage Company, Inc. v. United States, 458 F. Supp. 726 (D.S.C. 1978), aff'd, 618 F.2d 1088 (4th Cir. 1979), in arguing that the nationwide wage determination was clearly illegal. According to PRC, those cases hold that the use of a nationwide wage determination in a solicitation is improper to the extent that the place or places of performance of the contract are known. PRC also points to DOL's statement in the Federal Register that it would henceforth adhere to the principles set forth in those cases. 46 Fed. Reg. 4320, 4326 (January 16, 1981).

PRC argues that the places of performance were known in this case, so the principle of the Southern Packaging cases apply. Therefore, since the initial wage determination in this case was issued after the cases were decided and after DOL's declaration of adherence to that principle, the wage determination was a legal nullity requiring cancellation of the solicitation.

PRC also argues that the changes in the wage determination, specifically affecting offeror risk, were so great that only cancellation and resolicitation is a proper course of action. PRC claims that under the initial wage determination, it, and probably potential offerors other than the incumbent, could not submit an intelligent offer. Under the new wage determinations, however, PRC and others would be able to compete due to increased information and reduced risk. In this regard, PRC claims, citing Iroquois Research Institute, 55 Comp. Gen. 787 (1976), 76-1 CPD 123, that since the Federal Procurement Regulations (FPR) do not provide detailed guidance concerning this matter, the Defense Acquisition Regulation (DAR) must be used for guidance. DAR § 3-805.4(b) (DAC #76-17, September 1, 1978) states, in pertinent part, that:

> "* * * no matter what stage the procurement is in, if a change or modification is so substantial as to warrant complete revision of a solicitation, the original should be canceled and a new solicitation issued. * * *"

PRC details the magnitude of the change in the following way. The contract is a fixed-price contract for services. Consequently, the wages to be paid the service employees as guided by the wage determination are critical to determining costs and prices. Under the initial nationwide wage determination, the offeror would bear the risk of regional price variations and fluctuations because it is required to pay at least the nationwide average regardless of where the work is performed or what the local prevailing rate actually is. PRC contends that the incumbent's risk in that situation is substantially lower "because of its existing labor force and its experience with the distribution of work under the contract." Under the new wage determinations with the changed price schedules, local

variations are better accounted for, and offeror risk is substantially reduced, especially for nonincumbents. This changes the basis for pricing and, thus, the nature of the contract.

PRC also contends that this general change is magnified by the specific wage determinations. The protester points out that, now, instead of a single wage rate for each category of service employee, there is a range of wage rates, with an average range of 35 percent between the highest and lowest rates. Also, PRC states that 8 of the 13 regional wage determinations, including the largest performance location, are lower than the nationwide determination. This permits an offeror to reduce its risk and offer a lower price than was previously possible.

PRC complains that GSA's tardiness in transmitting PRC's concerns about the wage determination to DOL was a major factor in the issuance of the proper wage determinations after the closing date for receipt of initial proposals. PRC first raised its concerns in a letter to GSA, dated April 2, 1981, although it did not protest until April 27, 1981. GSA did not refer PRC's letter of April 2, 1981, to DOL, but did refer its protest. PRC contends that GSA should have contacted DOL immediately after receipt of the April 2, 1981, letter, which may have permitted DOL to issue the proper wage determinations prior to the closing date. PRC cites High Voltage Maintenance Corp., 56 Comp. Gen. 160 (1976), 76-2 CPD 473, as an example of a case in which the agency delayed sending Service Contract Act information to DOL, which delayed the issuance of a new wage determination, and GAO sustained the protest partially based on that factor.

PRC states that GAO has not previously considered the factual situation presented here, but cites several GAO decisions which, it argues, support its position. The decisions and PRC's interpretation of them follow.

Hayes International Corporation, B-199050, March 21, 1981, 81-1 CPD 151. The protester objected to a nationwide wage determination, citing the Southern Packaging cases. GAO agreed with the Southern Packaging cases, but denied the protest because the solicitation was issued prior to the Court of Appeals decision and

closed prior to the expiration of the time for seeking review by the Supreme Court and because the contract was awarded and performed before DOL issued its intent to follow the cases. Here, the protest should be sustained because the solicitation was issued after the decisions and after the DOL announcement and, thus, the wage determination was void ab initio.

High Voltage Maintenance Corp., supra. This case states the general rule that the proper way to determine the effect of changes in Service Contract Act wage determinations is to compete the procurement using the new rates.

B.B. Saxon Co., Inc., 57 Comp. Gen. 501 (1978), 78-1 CPD 410. GAO held that a procuring agency could not leave a wage determination out of a solicitation when DOL determined that the Service Contract Act applied. GAO recommended that the defective solicitation be canceled and resolicited. Here, GSA has ignored DOL's proper wage determination, so the solicitation should be canceled and resolicited.

Minjares Building Maintenance Corp., 55 Comp. Gen. 864 (1976), 76-1 CPD 168. GAO stated that an amendment was an appropriate way to incorporate a new wage determination into a solicitation. However, in Minjares, the wage determination was merely a revised determination for the same locality, and there was no indication that competition was hindered by the original defective wage determination. Here, the wage determination was entirely restructured and competition has been restricted by the faulty wage determination. Consequently, merely amending the solicitation is not an appropriate response.

Agency's and Interested Parties' Arguments

In response to PRC's argument that the original nationwide wage determination was void ab initio, GSA states that it followed the proper procedures in requesting a wage determination and that it was bound by DOL's wage determination. Until DOL issued the new determinations, the initial determination was valid and fulfilled the requirement that the solicitation include a valid wage determination.

According to GSA, the request for a wage determination was made well before issuance of the solicitation to be certain that a wage determination would be available in sufficient time. GSA requested a nationwide determination because the requirement historically had been procured using a nationwide determination. Both GSA and CDS argue that it is far from clear that the Southern Packaging cases prohibit a nationwide wage determination in this instance. They both point out that in Southern Packaging, performance was to be at the contractor's place of business and the agency knew what firms would be probable bidders. Here, the actual places of performance will not be certain until task orders are issued. Consequently, a nationwide wage determination was at least reasonable.

GSA notes that nothing in the Service Contract Act or the implementing regulations requires cancellation and resolicitation if the wrong wage determination is initially included in a solicitation.

Concerning the timeliness of its request to DOL, GSA states that since it thought that it had adequately answered PRC's concerns in its letter of April 17, 1981, there was no reason for it to request review of the wage determination until PRC's protest of April 23, 1981. GSA received that on April 27, 1981, and sent it to DOL on April 30, 1981. CDS points out that PRC delayed resolution of the problem by waiting a month after issuance of the solicitation before it objected to the wage determination.

GSA contends that its decision to amend rather than cancel in this situation is entirely consistent with regulations and case law and was necessitated by the facts surrounding the procurement. GSA points to FPR § 1-3.805-1(d) (1964 ed. amend. 153) which states, in pertinent part, that:

> "When, during negotiations, a substantial change occurs in the Government's requirements or a decision is reached to relax, increase, or otherwise modify the scope of work or statement of requirements, such change or modification shall be

> made in writing as an amendment to the request for proposals, and a copy shall be furnished to each prospective contractor.* * *" (Emphasis added by GSA.)

GSA interprets this to mean all offerors who have a reasonable chance to be a contractor. Since PRC did not submit an offer, it does not fall into this category.

GSA, while stating that it is not bound by DAR § 3-805.4(b), asserts that its decision complies with that regulation. GSA points to the language stating that a solicitation should be canceled "if a change or modification is so substantial as to warrant complete revision of a solicitation." According to GSA, the wage rate change was not very substantial in impact on the procurement. The solicitation evaluation factors provided that technical factors would be significantly more important than price in determining the awardee. The wage determination change could affect only price, not technical factors.

Also, GSA points out that, prior to the new wage determination, the solicitation contained three price schedules. After the new determinations, the rates were grouped into four groups within which rates were similar. GSA contends that the amount of change within the schedules was minimal. According to GSA, there was only token change in the rates that represent 87 percent of the contract volume. Additionally, only 10 of the 32 positions listed in the solicitation were subject to the wage determinations. Consequently, GSA asserts that the new wage determinations had only limited effect on contract prices, and price was less important than technical factors. GSA also notes that the prices received appear to have been controlled by prevailing market conditions rather than by the minimum wage rates in the solicitation. CSC also argues that the change was minimal. CSC compared the average of the new wage determinations for each category of employee with the nationwide wage rate for each category and found that the difference for all but three categories was less than 50 cents.

GSA also argues that circumstances made cancellation and resolicitation not a viable course of action. GSA asserts that the procurement was in an advanced state, and that resolicitation would have taken approximately 4 months. GSA claims that such a delay could have adversely affected a number of "vital Government projects." Also, GSA contends that resolicitation would have been unfair to the offerors who had already expended substantial time and money to compete. In GSA's opinion, it received adequate competition and, based on contacts it had with other potential offerors, it was unlikely that any additional firms other than PRC would have joined the competition upon resolicitation.

GSA, CDS and CSC cite several GAO decisions in support of the determination to amend the solicitation rather than to cancel and resolicit. The cases and the parties' interpretations are as follow.

Cardion Electronics, 58 Comp. Gen. 591 (1979), 79-1 CPD 406. The standard of review by GAO of an agency decision concerning cancellation of a solicitation is whether the agency's decision has a reasonable basis. The protester was a potential offeror which did not submit a proposal due to certain alleged defects in the solicitation. The solicitation was later amended to correct other deficiencies and the firm protested asking for cancellation and resolicitation. GAO found that the agency was not required to cancel and resolicit it because the change in the requirements was not substantial and because the protester had not submitted a proposal or protested the alleged defects to GAO. Also, we found that an individual contractor's perception of the risk involved in a contract is not of concern to the Government.

University of New Orleans, B-184194, 76-1 CPD 22. GAO upheld a protest of an amendment to a solicitation and recommended that competition be reopened to all offerors who had submitted a proposal, but not to other potential offerors.

Raytheon Service Company; Informatics Systems Company, 59 Comp. Gen. 316 (1980), 80-1 CPD 214. GAO upheld the agency's decision to calculate the effect of a new wage determination on offers rather than amending the solicitation and permitting offerors to revise proposals when a new wage determination was issued after submission of best and final offers.

Mindares Building Maintenance Company, supra. GAO held that when a new wage determination is issued after submission of initial proposals, the agency may amend the solicitation rather than cancel and resolicit.

GAO Analysis

We find that GSA was not required to cancel and resolicit because the solicitation was not void ab initio, the evidence does not show that GSA improperly delayed sending information to DOL, the changes in the solicitation were not so substantial as to warrant complete revision, and PRC was not reasonably prevented from submitting a competitive offer by the initial wage determination.

Initially, we point out that our review of agency decisions concerning cancellation of solicitations is limited to whether the exercise of agency discretion is reasonable. Apex International Management Services, 60 Comp. Gen. 172 (1981), 81-1 CPD 24. PRC contends that the Apex decision changed the standard to whether the agency decision had a "sound basis." According to PRC, this is a stricter standard. We disagree. The decision used the terms sound basis and reasonable basis synonymously and did not change the standard.

Concerning PRC's argument that GSA's use of a nationwide wage determination was clearly improper, void ab initio, and, therefore, tantamount to no wage determination, we conclude that the inclusion of the nationwide wage determination eventually found to be inappropriate by DOL was not clearly improper or unreasonable in the circumstances. The Southern Packaging decisions do not totally prohibit nationwide wage determinations. The Court of Appeals stated, in a footnote:

"We postulate that there may be the rare and unforeseen service contract which might be performed at locations throughout the country and which would generate truly nationwide competition. In such a case, national wage rates may be permissible, although we do not decide the point." Southern Packaging and Storage Company, Inc. v. United States, supra, at 1092.

While DOL ultimately decided that the present situation is not such a rare case where a nationwide wage determination is appropriate, it was at least arguably applicable. In previous years, the requirement had been competed using a nationwide wage determination, and DOL, the agency charged with administering the Service Contract Act, issued the nationwide wage determination for use by GSA here. Further, one could argue that since the contract requirements are indefinite the places of performance of the contract cannot be known until the task orders are issued. Also, the contract is a nationwide contract and could conceivably fall within the situation discussed in the above-quoted footnote. That nationwide wage determinations are not per se illegal was recognized in Hayes International Corporation, supra.

Additionally, nothing in the statute or regulations concerning the Service Contract Act requires cancellation of a solicitation when an incorrect initial wage determination is changed. Also, GAO decisions do not require such action. While in High Voltage Maintenance Corp., supra, we found that the solicitation should be canceled and resolicited when a wage determination was issued after closing, in that case there was no wage determination in the solicitation. The same was true in B.B. Saxon Co., Inc., supra. Here, we cannot say that an arguably correct wage determination that was ultimately proven to be inappropriate is tantamount to no wage determination. Where, as here, there is a wage determination in the RFP which is later replaced with a new determination, we have found amendment to be apppropriate. Minjares Building Maintenance Company, supra. While we recognize, as PRC argues, that Minjares involved a less substantial wage rate change than the instant case, the principle is the same.

Concerning PRC's complaint that GSA should have notified DOL of PRC's April 2, 1981, letter objecting to the wage determination, we agree with GSA. At that point, GSA had received a valid wage determination from DOL and, while PRC had objected, it did not protest. We think that it was reasonable for GSA to wait until PRC protested before notifying DOL. Additionally, PRC could have notified DOL itself, or could have protested earlier.

Concerning PRC's argument that the degree of change between the first and second wage determinations was so substantial as to require cancellation, all parties have recognized and argued our decision in Cardion Electronics, supra, which sets forth the standard for the degree of change in a request for proposals which necessitates cancellation and resolicitation.

The essential facts in Cardion are that Cardion proposed to the Federal Aviation Administration (FAA), prior to the date for receipt of initial proposals, that certain changes be made in the request for proposals. The FAA did not make those changes, so Cardion notified the FAA that it could not compete. Cardion did not protest at that time. During negotiations with the single offeror, the FAA amended the RFP to make certain technical changes. At that time, Cardion protested here, arguing that the solicitation should be canceled and the requirement resolicited because the amendment reduced the scope of the contract and the risk borne by the contractor. Cardion argued that the change in the RFP was so substantial that the amendment amounted to a new procurement.

In Cardion, we stated the basic issue and standard, which are applicable to this case, as follows:

> "* * * has Cardion shown that FAA's decision that the changes in requirements are not so substantial as to warrant complete revision of the RFP has no reasonable basis?"

We also found that the magnitude of the change should not be measured by an individual offeror's perception of the change in amount of risk involved in the contract. Additionally, we stated that the scope of change permitted in an RFP before cancellation is required is greater than the amount of change allowable in the scope of an existing contract.

We find that the change resulting from the new wage determinations, while substantial, did not change the fundamental purpose or nature of the RFP. As PRC has argued, the new rates account for regional variations with substantial variation between the highest and lowest rates, and the majority of the new rates are lower than the previous rate. This generally would permit offerors to price proposals with greater precision and to offer lower prices than they could under the nationwide determination. As GSA and the interested parties argue, the far more important technical factors in the RFP were not changed and the new wage rates were not totally different. Also, wage rates set the minimum wage, but the prevailing wage is often higher and is set by the market. This appears to be true here. It it our opinion that GSA's determination that the changes were not so substantial as to require complete revision of the solicitation was reasonable.

PRC points to the following language in Cardion, which it argues requires GSA to cancel and resolicit:

> "If a prospective offeror believes the terms of the RFP involve too much risk, it has a choice of either submitting a proposal in response to the RFP, or protesting prior to the closing date for receipt of initial proposals and specifically challenging those areas of the RFP it believes should be changed. * * *"

Cardion did neither, and we upheld the agency's decision to amend, not cancel, the solicitation. PRC contends that since it did file a protest prior to the closing date, it fulfilled the requirement set forth in Cardion. Once its protest was found to have merit, that is, the wage determination was changed as it asked, then it must be permitted to join the competition.

While the latter-quoted section of Cardion does state that a prospective offeror has a choice of protesting or submitting a proposal, we find it implicit in Cardion that to preserve its right to join the competition if the solicitation is changed as it requests, a protester that does not submit an offer must show that the defect in the solicitation was so material that the protester was reasonably prevented from submitting a competitive offer and that the change allows it to submit a competitive offer.

We find that PRC was not reasonably prevented from submitting a competitive offer. PRC claims that it could not submit an intelligent, competitively priced offer because the single nationwide wage determination requires it to pay an amount that could be more than the prevailing rate in many areas. PRC also argues that the incumbent's risk is lower because of its existing workforce and experience with the distribution of work under the contract. PRC then alleges that the increased number of local wage rates reduces risk and price, especially for the nonincumbent contractor.

Given the change in wage rates (generally lower), we understand that all offerors, incumbent or not, could possibly submit lower prices after the change than before. However, we do not see how the initial wage rate provided any special advantage to the incumbent or how the new wage rates decreased any inherent incumbent advantage. Under either scheme, all offerors would be required to pay at least the wage rate. The fact that the incumbent has an existing workforce does not change that requirement in either case and whatever advantage the incumbent might gain from its existing workforce would be the same under either scheme. Additionally, the incumbent's knowledge of the work distribution is the same in either case and the effect of that knowledge is the same.

In addition, PRC admits to having knowledge of the actual prevailing wages in the various performance localities and the RFP provides figures showing the historical distribution of work under the contract, so even some of the inherent advantages of incumbency do not appear to be a factor here.

All offerors appear to be able to compete equally under either scheme. This was borne out by the fact that a nonincumbent was able to submit a competitive offer under the initial wage determination and then won the competition under the revised determination. In short, we do not think that PRC was materially prejudiced by the initial incorrect wage rate to the extent that it was prevented from submitting a competitive offer.

We deny the protest in part and dismiss the protest in part.

Harry R. Van Cleve
for Comptroller General
of the United States