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

FILE: B-210057 **DATE:** January 24, 1983

MATTER OF: Geronimo Service Co.

DIGEST:

1. GAO 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 a Service Contract Act wage determination should be processed through the administrative procedures established by the Department of Labor.

2. Incumbent contractor which prepared bid based on a collective bargaining agreement with its employees was not prejudiced by inconsistencies between the Department of Labor wage determination in the solicitation and the collective bargaining agreement. The wage determination included a provision which put all bidders on notice that the wage determination specified only minimum wages and benefits, and that the contract awardee would be required to comply with the collective bargaining agreement.

Geronimo Service Co. protests a Service Contract Act wage determination incorporated into Navy solicitation No. N62471-82-B-2138 for custodial services at various Navy installations in Hawaii. Geronimo, the incumbent contractor, complains that the wage determination, issued by the Department of Labor, is inconsistent with the current collective bargaining agreement covering the employees involved, and will result in Geronimo's being unfairly underbid by competitors unaware they will be required to perform in accordance with the collective bargaining agreement. Because it is the policy of this Office not to review the correctness of a wage rate determination made by the Department of Labor, the protest is dismissed.

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By letter dated September 30, 1982, Geronimo protested to the Navy contracting officer that Department of Labor wage determination No. 78-440 (Rev. 10) included in the solicitation materials was defective in that it was inconsistent in several respects with the current collective bargaining agreement. The Department of Labor then issued wage determination No. 78-440 (Rev. 11), which was incorporated into the IFB to correct many of the discrepancies pointed out by Geronimo in its letter to the Navy. Nonetheless, Geronimo protests that the wage determination remains inconsistent with the collective bargaining agreement in several critical respects, including medical plan costs, dental plan costs, the existence of a scheduled wage increase, and the requirement that the employer furnish employee uniforms.

Geronimo contends that it is prejudiced by the understated wage determination because, as the incumbent contractor, it must calculate its bid in accordance with the terms of the collective bargaining agreement. The other bidders, however, will be unaware of the substantially higher wages and benefits in the collective bargaining agreement and, as a consequence, will underbid Geronimo. (Under the Service Contract Act, successor contractors generally are required to adhere to the predecessor contractor's collective bargining agreement. See 41 U.S.C. § 353(c).)

Because the courts have held that a prevailing wage rate determination made by the Secretary of Labor is not subject to judicial review, this Office does not review the accuracy of wage rate determinations issued in connection with solicitations subject to the Service Contract Act. A challenge to a Service Contract Act wage determination should be processed through the administrative procedures established by the Department of Labor. Professional Carpet Service, B-203287, June 3, 1981, 81-1 CPD 445.

In any event, wage determination No. 78-440 (Rev. 11) 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 a 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 bidders 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 not a guarantee that the appropriate work force can be employed by the bidder at those rates. In a situation such as this, it is the responsibility of the bidder to project costs and to take into consideration in its bid calculation the possible impact of a collective bargaining agreement on its cost of performance. Safeguard Maintenance Corporation, B-198356, April 23, 1980, 80-1 CPD 292. Here, all bidders should have been aware of the collective bargaining agreement, and, if they desired, should have attempted to learn the precise wages and fringe benefits called for by that agreement. Thus, Geronimo should not have been at a competitive disadvantage as a consequence of its status as the incumbent contractor. A&C Building and Industrial Maintenance Corporation--Reconsideration, B-196829.2, September 18, 1980, 80-2 CPD 202.

The protest is dismissed.

Harry R. Van Cleve
Acting General Counsel