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DECISION

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

FILE: B-219387 **DATE:** September 3, 1985

MATTER OF: Consolidated Marketing Network, Inc.

DIGEST:

1. Protest that a Department of Labor (DOL) wage determination does not include two classes of employees required to perform a contract, where those classes were included in the contracting agency's request to DOL for wage determinations, should be pursued through DOL's administrative process for reviewing such matters, not through a bid protest to GAO.

2. GAO will not object to procuring agency's failure to incorporate revised wage rates into an IFB where the revisions were issued by the Department of Labor less than 10 days prior to bid opening and there was not enough time left before bids were due to notify the bidders of them.

Consolidated Marketing Network, Inc., protests that the Service Contract Act wage determinations incorporated into Department of the Air Force invitation for bids (IFB) No. F04700-85-B-0021 are incomplete and outdated. We dismiss the protest in part and deny it in part.

The solicitation was issued for a contractor to provide maintenance of military family housing and the surrounding grounds. Because it was a service contract, the Air Force submitted to the Department of Labor (DOL), on December 5, 1984, and February 14, 1985, standard forms requesting a wage determination for the classes of employees that would be performing the housing and grounds maintenance, respectively. DOL responded that Wage Determination No. 81-334 (Revision 2) covered employees performing housing maintenance and Wage Determination No. 81-833 (Revision 1) covered employees performing grounds maintenance. The wage determinations were incorporated into the IFB.

Consolidated first protests that the wage determination covering housing maintenance employees does not include wage rates for two classes of employees that will perform some of

the required work: supply clerk and dispatcher. The protester argues that, in fact, there are wage rates established for those employees, since they had been added to Consolidated's contract by amendment, and that any successor contractors must comply with them. Consolidated argues that the Air Force's failure to notify prospective offerors of these rates prejudiced Consolidated, as the incumbent, because other bidders could use lower wage rates in computing their bid prices.

The Air Force reports that these two classes were included on the form submitted to DOL, but the wage determination furnished by DOL to apply to the housing maintenance employees did not include wage rates for the classes. The Air Force notes, however, that the wage determination does include the following clause:

> "Any class of service employee required in the performance of the contract but not listed above shall be classified by the contractor so as to provide a reasonable relationship between such classes and those listed above, and shall be paid such monetary wages as are determined by agreement (evidenced in writing) of the interested parties, who shall be deemed to be the contracting agency, the contractor, and the employees who will perform on the contract or their representatives. In the absence of any agreement, the question of proper conformable wage rates is to be submitted to the Department of Labor by the contracting officer for a final determination. . . ."

The Air Force states that the wage rates for the two omitted employee classes will be determined pursuant to this clause.

We have reviewed the form the Air Force submitted to DOL and DOL's reply. As stated by the Air Force, the form did include supply clerk and dispatcher, but DOL's response did not include separate wage rate determinations for these employees. Further, it does not appear that those positions necessarily are subsumed by any of the wage determinations DOL did issue; the clause quoted above, therefore, would seem to apply, as the Air Force suggests. In our view, then, Consolidated is really questioning DOL's wage determination, not any action by the Air Force. See 52 Comp. Gen. 161 (1972). Such a challenge should be processed through the administrative procedures established by DOL and

set forth in title 29 of the Code of Federal Regulations, rather than through a bid protest to our Office. We therefore will not consider the matter further.

As to Consolidated's protest that the wage determinations are outdated, the Air Force states that on June 19, it contacted DOL and was informed that both wage determinations were revised on June 18, and that they would not apply to this procurement since bid opening was scheduled for June 21. In this respect, Department of Defense Federal Acquisition Regulation Supplement, 48 C.F.R. § 222.1007 (1984), provides that wage determinations received less than 10 days before bid opening need not be included in the solicitation unless the contracting officer finds that a reasonable time is available in which to notify bidders of the revision.

We have held that a contracting officer cannot automatically rely on the regulatory provision to ignore a wage determination received less than 10 days prior to bid opening, but instead must make an independent finding as to the time available to notify bidders. Square Deal Trucking Company, Inc., B-182436, Feb. 19, 1975, 75-1 C.P.D. ¶ 103. Here, it is not clear from the record whether the contracting officer formally determined there was time to notify bidders of the revised wage determination. As noted above, however, the contracting officer learned from DOL only 2 days before bid opening, and through an informal conversation, that the wage determination had been revised, and in that same conversation was told that the revision should not apply to this procurement because of the imminent bid opening, advice on which he relied, apparently. We see nothing wrong with such reliance, since incorporation of the revised wage determination would have required amending the IFB and notifying bidders of the amendment so that they could reevaluate their bid prices all within the short time left until bids were due. Under these circumstances, we do not believe it was unreasonable, in light of the regulation cited above, for the contracting officer to continue the procurement without the revised wage determinations.

The protest is dismissed in part and denied in part.

Harry R. Van Cleve
General Counsel