



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Prestige Construction Company

File: B-224327

Date: November 19, 1986

DIGEST

Cancellation of invitation for bids is justified when agency, after consulting with the Department of Labor, concluded that original wage determination was erroneous.

DECISION

Prestige Construction Company protests the cancellation of invitation for bids (IFB) No. 614-73-86, issued by the Veterans Administration Medical Center, Memphis, Tennessee (VA), for the development of approximately 3.5 acres into permanent parking and recreational areas, with work to include construction of curbs, gutters, sidewalks, storm drainage, gates and a basketball court, relocation of existing utilities, landscaping, paving, and erection of fencing.

We deny the protest.

Bids were opened on August 19, 1986. Prestige was the low bidder. However, one of the other bidders, E.B. Construction Company, complained that the Davis-Bacon Act, 40 U.S.C. § 276(a) (1982), wage determination included in the solicitation was incorrect because the work called for by the solicitation should have been classified as "Highway Construction," rather than as "Building Construction." After consulting with the Wage Determination Section, Wage and Hour Division, Department of Labor (DOL), VA concluded that wage rates based on classification of the work as highway construction should be used. VA then canceled the solicitation.

Prestige argues that the solicitation should not have been canceled, and that it should have been awarded a contract. According to Prestige, the work covered by the solicitation was an integral part of the hospital's construction of the spinal cord injury unit building. Noting that work incidental to building construction, such as grading, paving, and

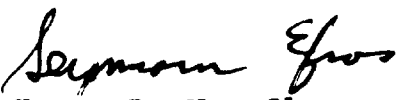
installation of utilities, is classified as building construction in DOL's All Agency Memorandum No. 130, Prestige contends that the classification of the work as building construction was proper. Finally, Prestige requests that we, in conjunction with VA, obtain a written decision from DOL concerning the classification of this work.

While cancellation after sealed bids have been opened is not justified absent a clear and compelling reason for doing so, we have held that cancellation is justified where an agency has issued a solicitation containing an erroneous wage determination, and the error was not discovered until after bid opening. See Southern Systems, Inc., B-193844, Feb. 14, 1980, 80-1 CPD ¶ 133 (holding that failure to include a proper Davis-Bacon wage determination in the solicitation could not be cured retroactively after bid opening, and that the appropriate way to rectify the situation was by cancellation and readvertisement).

In the present case, VA, based on advice from DOL, concluded that the solicitation contained an erroneous wage determination. In fact, the record shows that DOL advised VA that the IFB wage determination (TN83-1088) was erroneous for two reasons: (1) because determination TN83-1088 had been superceded by wage determination TN86-5 and (2) because VA should have classified the project as highway rather than as building construction, requiring the use of a different wage determination. While Prestige argues that the wage determination was not erroneous, its argument is misdirected because it is not the function of our Office to determine the correctness of a DOL wage determination. See Associated General Contractors, B-190775, Jan. 17, 1978, 78-1 CPD ¶ 40. We think that VA acted reasonably in following DOL's advice as to the proper wage determination. Hence, we have no objection to the cancellation of the solicitation based on that advice.

Finally, Prestige requests that our Office obtain a written decision from DOL concerning the proper classification of this project. Prestige should direct its challenge to the wage determination through the DOL administrative process established by 29 C.F.R. Part 7 (1985); Serv-Air Inc.; AVCO, B-195183, Oct. 24, 1980, 80-2 CPD ¶ 317.

The protest is denied.

for 
Harry R. Van Cleve
General Counsel