The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Kime-Plus, Inc.

File: B-229990

Date: May 4, 1988

DIGEST

1. Agency is not required to warn bidders of the incumbent contractor's view that the Service Contract Act makes payable to employees in job classifications that were not used under the predecessor contract the fringe benefits set out in the incumbent's collective bargaining agreement. The Service Contract Act's requirement that a successor service contractor pay employees no less than the rates in the predecessor's agreement does not apply where the agreement is inapplicable to the work performed under the earlier contract.

2. Prospective bidders are responsible for ascertaining the details of any collective bargaining agreements and considering them in the calculation of their bids.

3. General Accounting Office does not review the wage rate determinations issued by the Department of Labor in connection with solicitations subject to the Service Contract Act.

DECISION

Kime-Plus, Inc., the incumbent contractor, protests an alleged impropriety in invitation for bids (IFB) No. DAKF24-88-B-0001, issued by the Department of the Army for dining facility attendant service and full food service at Fort Polk, Louisiana. Kime-Plus argues that the agency improperly failed to warn other bidders of a possible interpretation of the terms of the protester's existing collective bargaining agreement with the employees' union at Fort Polk which, if correct, would be inconsistent with the wage determinations accompanying the IFB.

We deny the protest.

The issue the protester raises results from the fact that neither Kime-Plus' contract nor the collective bargaining agreement treats the job classifications of baker or cook,

since military personnel performed these duties during the predecessor contract period. The protester points out that the collective bargaining agreement entitles any covered food service employees to union membership shortly after employment, and that according to the agreement the employer expressly recognizes the union as the sole bargaining agent for all of its food service employees at Fort Polk. The protester urges that, even though the Department of Labor (DOL) wage determinations accompanying the IFB specify fringe benefits for cooks and bakers, the collective bargaining agreement's higher fringe benefits apply to those people because the Service Contract Act of 1965, 41 U.S.C. § 353(c) (1982), obligates a successor service contractor to pay employees no less than the rates in the predecessor's collective bargaining agreement. In the protester's view, the IFB misleads bidders into thinking that the agreement does not apply to cooks and bakers, which places the protester at a competitive disadvantage because it is aware of the fringe benefit variance and will bid higher fringe benefit amounts than will its competitors.

We find no merit in the protester's contention. In order for the Service Contract Act to apply, the collective bargaining agreement must be applicable to work performed under the predecessor contract. 29 C.F.R. § 4.163(f) (1987); see Northern Virginia Service Corp., B-224450 et al., Oct. 21, 1986, 86-2 CPD ¶ 439. The collective bargaining agreement here thus does not bind the bidders insofar as cooks and bakers are concerned since the work performed under the predecessor contract included neither job classification. Consequently, the agency had no duty to advise the other bidders of the protester's interpretation of the agreement.

Further, it is the responsibility of all prospective bidders to ascertain the details of any collective bargaining agreements and consider them in calculating their bids. See Trinity Services, Inc., B-215631, Dec. 3, 1984, 84-2 CPD ¶ 602. Since all bidders therefore are charged with obtaining the same knowledge regarding the basis for bidding, we cannot conclude that, as a legal matter, the protester is at an unfair competitive disadvantage in this competition. Geronimo Service Co., B-210057, Jan. 24, 1983, 83-1 CPD ¶ 86, aff'd on reconsideration, B-210057.2, Apr. 13, 1983, 83-1 CPD ¶ 398.

To the extent that the protester is suggesting that the wage determination in the solicitation should be changed to conform to the fringe benefit provisions of the collective

bargaining agreement, our Office does not review wage rate determinations under the Service Contract Act. Any challenge to the wage determinations contained in the solicitation must be processed through the administrative procedures established by the DOL and set forth at 29 C.F.R. § 4.55. See Aquasis Service, Inc., B-220028, Dec. 26, 1985, 85-2 CPD ¶ 717.

The protest is denied.

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General Counsel