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

JAN 9 1973

B-176399

Cohen, Shapiro, Polisher, Shiekman and Cohen
Attorneys at Law
Twenty-second Floor
Philadelphia Saving Fund Building
Philadelphia, Pennsylvania 19107

Attention: Harold Greenberg, Esquire

Gentlemen:

Reference is made to your letter of September 5, 1972, and prior correspondence, protesting the rejection of the low bid of Service Rental for Industry (Service) for the rental of cleaning cloths and mops under General Services Administration (GSA) invitation for bids (IFB) No. FSS-1G-721.5-2-73 for the period July 1, 1972, to June 30, 1973.

The bid was rejected because it failed to acknowledge an amendment to the IFB which included the Department of Labor wage determinations for laundry and dry cleaning services under the Service Contract Act not theretofore included.

You have indicated that Service did not acknowledge the amendment with the bid because it did not receive the amendment prior to bid opening. However, our Office has held that the failure to furnish an amendment does not warrant the acceptance of the bid or a modification thereof after the time fixed for opening of bids. 40 Comp. Gen. 126 (1960).

Further, you have contended that Service is largely an automated operation and only one category in the wage determination would apply to it; that it is a union contractor paying in excess of the rate prescribed in the amendment; and that at the time it bid it was performing the prior annual contract which contained prescribed wage rates. In your estimation, considering the amount of time that would be utilized by the employee engaged in the job category involved during the one-year period of the contract, total wages of no more than $56 on a $40,000 contract are at issue. However, in a meeting with representatives of our Office, you did acknowledge that other job categories not specifically named in the wage determination are involved in the work. In that connection, we note that the Service Contract Act provision in the IFB provides that "any class of service employee which

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is not listed therein [in the wage determination], but which is to be employed under this contract, shall be classified by the Contractor so as to provide a reasonable relationship between such classifications and those listed in the attachment [the wage determination] * * *." Therefore, the effect of the wage determination goes beyond the individual job category that you contend is the only one that specifically applies.

Moreover, in B-174647, February 10, 1972, 51 Comp. Gen. 500, a situation similar to the immediate one, except that it pertained to Davis-Bacon Act wage rates, our Office quoted with approval from B-157832, November 9, 1965, as follows:

> "'Since the wage rates payable under a contract directly affect the contract price, there can be no question that the IFB provision requiring the payment of minimum wages to be prescribed by the Secretary of Labor was a material requirement of the IFB as amended. As stated previously, the requirements of the Davis-Bacon Act were met when the amendment furnishing the minimum wage schedule was issued, the purpose of the Act being to make definite and certain at the time of the contract award the contract price and the minimum wages to be paid thereunder. 17 Comp. Gen. 471, 473. In such circumstances, it is our view that a bidder who failed to indicate by acknowledgment of the amendment or otherwise that he had considered the wage schedule could not, without his consent, be required to pay wage rates which were prescribed therein but which were not specified in the original IFB, notwithstanding that he might already be paying the same or higher wage rates to his employees under agreements with labor unions or other arrangements. Accordingly, in our opinion, the deviation was material and not subject to waiver under the procurement regulation. B-138242, January 2, 1959. Furthermore, to afford you an opportunity after bid opening to become eligible for award by agreeing to abide by the wage schedule would be unfair to the other bidders whose bids conformed to the requirements of the amended IFB and would be contrary to the purpose of the public procurement statutes. B-149315, August 28, 1962; B-146354, November 27, 1961.'"

See also B-175752, June 7, 1972.

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You have also questioned that there was a proper competition because the minimum wage rates provided by the Department of Labor were different for New York than they were for Pennsylvania. However, in that regard we observe that the Service Contract Act provides for a wage rate determination based upon "prevailing rates * * * in the locality." 41 U.S.C. 351(a)(1).

Inasmuch as our Office is of the view that the bid of Service properly was for rejection as nonresponsive, the failure to provide it timely notice of the rejection does not appear to have acted to the prejudice of the bidder and the complaint in that regard is not material.

Accordingly, in view of the foregoing, the protest is denied.

Very truly yours,

[illegible] KELLER

Deputy Comptroller General
of the United States