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DECISION

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

FILE: B-187782 DATE: December 15, 1976

MATTER OF: What-Mac Contractors, Inc.

DIGEST:

1. Contracting agency's submission to Department of Labor (DOL) of Standard Form 98, Notice of Intent to Make a Service Contract, is not required to include information concerning wages and fringe benefits being paid by incumbent contractor to employees not covered by collective bargaining agreement.

2. Inclusion of minimum wage rates in solicitation is not guarantee that labor can be obtained at those rates and fact that contractor finds it must pay more than minimum rates does not render procurement defective.

3. Protester's allegations concerning solicitation defects apparent prior to bid opening are untimely under GAO Bid Protest Procedures, which require that such defects be protested prior to bid opening, and will not be considered on merits.

4. Asserted imposition of additional requirement after contract award is matter of contract administration and not for resolution under Bid Protest Procedures.

What-Mac Contractors, Inc. (What-Mac) protests the award to itself of a contract to provide armed guard protection service for the Internal Revenue Service Center, Ogden, Utah, under invitation for bids (IFB) No. GS-08B-11002, issued by the General Services Administration (GSA). Essentially, What-Mac contends that the solicitation precluded it from submitting a competitive bid and that GSA's award on the basis thereof is not in the best interests of itself or the Government.

First, What-Mac objects to the minimum hourly wage and fringe benefits set forth in the wage determination issued by the Department of Labor (DOL) under the Service Contract Act of 1965, as amended, 41 U.S.C. § 351 et seq. (1970), which was incorporated into the IFB. What-Mac contends that it learned, after bid opening, that these wage and fringe benefits did not accurately reflect the prevailing labor costs for the locality of contract

performance. What-Mac asserts that this situation resulted from GSA's failure to provide DOL all pertinent information regarding the wages and fringe benefits paid to the incumbent contractor's employees. What-Mac states that it relied on the wage determination in computing its bid and now finds itself unable to secure the local guard's services at these rates.

Federal Procurement Regulations (FPR) § 1-12.905-3 (1964 ed.) and DOL's regulations implementing the Service Contract Act, 29 C.F.R. § 4.4 (1976), require only that a procurement agency file with DOL a Standard Form 98, Notice of Intent to Make a Service Contract, at least 30 days prior to the issuance of a solicitation for any contract which may be subject to the Act. The agency is required to complete the form in accordance with the instructions printed thereon and to submit (1) supplementary information indicating the number of service employees (by class) expected by the agency to be employed by the contractor during the performance of the contract together with a specification of the wage rates and fringe benefits that would be paid to such employees if employed by the agency itself and (2) where applicable, copies of any existing collective bargaining agreements covering the wages and fringe benefits of the incumbent contractor's employees where the services under the proposed contract are substantially the same and for the same location.

There is nothing on the Standard Form 98 or in the applicable regulations which requires a contracting agency to provide DOL with information regarding the wages paid to an incumbent contractor's employees unless there is a collective bargaining agreement applicable to those employees. Here What-Mac has advised that the predecessor contractor's employees are not covered by any such agreement. Thus, we cannot conclude that GSA, in submitting a Standard Form 98 to DOL, acted improperly by not providing that information.

Furthermore, the inclusion of a minimum wage schedule in an IFB is not a representation that labor can in fact be obtained at such rates but rather is reflective only of the minimum rates it must pay as a condition of performing a Government contract. The fact that the contractor finds it must pay more for labor then the minimum stated in the IFB does not render the procurement defective. See, e.g., Maupin Plumbing & Heating Co., B-182395, February 3, 1975, 75-1 CPD 73.

Second, What-Mac contends that various terms of the solicitation were ambiguous. Specifically, the protester notes that while the IFB stated that contractors shall provide not less than 51,639 "productive

manhours" for the period of contract performance, the Guard Post Assignment Records attached to the IFB indicated that an additional 8,073 manhours would actually be required of the successful contractor. What-Mac also objects to the fact that the IFB provided the Government with the option of initiating negotiations with the contractor for an increase or decrease in the number of "productive manhours" specified in the IFB, yet "failed to establish when or at what point the additional hours could be requested." These contentions are untimely under our Bid Protest Procedures and are not for consideration on the merits since protest allegations based upon alleged improprieties in a solicitation which are apparent prior to bid opening must be filed prior to bid opening. 4 C.F.R. § 20.2(b)(1) (1975). Moreover, since What-Mac has been awarded the contract, any question it now has regarding specification requirements is for administrative resolution with the contracting agency.

Finally, the protester states that at a post-award conference it was advised of an additional requirement not indicated in the IFB, namely, that the contractor would be required to assume the cost of paying for a city police officer to direct traffic on the main road outside the IRS property during peak traffic hours. We have been advised by GSA that it has imposed no such requirement, but that the incumbent contractor voluntarily assumed the cost of supplying the traffic officer. In any event, the imposition of such a requirement after award of the contract would also be a matter of contract administration and not for resolution under our Bid Protest Procedures, which are reserved for considering whether an award or proposed award complies with legal requirements.

Accordingly, What-Mac's protest is denied.

Deputy Comptroller General
of the United States