

4540

R. Day
Page II

DECISION



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

04421

FILE: B-189894

DATE: November 23, 1977

MATTER OF: Bick-Com Corporation

DIGEST:

Where agency issues solicitation subject to Davis-Bacon Act, but utilizes erroneous wage determination and discovers error after bid opening but prior to award, agency cancellation of solicitation is proper.

The Bick-Com Corporation (Bick-Com) protests the Air Force's proposed cancellation of invitation for bids (IFB) F27604-77-90084 for the replacement of siding on military family housing at Pease Air Force Base, New Hampshire. The solicitation, which is subject to the Davis-Bacon Act, 40 U.S.C. § 275a (1970), contained an erroneous wage determination which was not discovered until after bids were opened. The bids were opened on June 16, 1977. Bick-Com was low bidder.


Toward the end of July the Air Force advised Bick-Com that there was a delay in making an award because the solicitation contained a general wage determination applicable to building, heavy, highway, and marine construction whereas the proper wage determination would be one which was applicable to residential construction. The Air Force ultimately determined that the only course of action open to it was cancellation of the solicitation and so advised Bick-Com whereupon Bick-Com filed its protest of such an action with our Office.

Bick-Com admits that the work the solicitation called for properly falls within the category of residential work and that the wage rate determination found in the solicitation is improper. However, Bick-Com argues that cancellation is unfair because any mistake made was not Bick-Com's but the Air Force's, and in any event the insertion of a lower rate (the residential wage rates are lower than the wage rates contained in the solicitation) would not impact on the bid Bick-Com submitted because its employees receive pay at rates established by unions. Finally, Bick-Com urges that consideration should be given to the fact that its price has been publicly disclosed.

B-189894

In B-170501, April 22, 1971 we considered a similar situation where after opening, but prior to award, the contracting office discovered that the wage rate determination included in the solicitation was erroneous and thereupon notified all bidders that their bids were rejected and the project would be readvertised. In that case the low bidder was also bound by union agreements to pay wages at a rate in excess of the federal wage rates. The low bidder also argued the unfairness of competition after the disclosure of the initial bids at bid opening. After reviewing the requirements of the Davis-Bacon Act, 40 U.S.C. 276a (1970) and the previous opinions of this Office construing the statutory language, we concluded that where erroneous rates are used it is obvious that the intent of the Davis-Bacon Act has not been satisfied and that an award made in those circumstances would not constitute an award based on the bid submitted, but upon terms negotiated after bid opening, and that such an award would violate the basic principles of the competitive bidding procedure.

Accordingly, we perceive no basis upon which to object to the Air Force's cancellation of this solicitation and the protest is denied.


Deputy Comptroller General
of the United States