

Axel



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Grace Industries, Inc.

File: B-224325

Date: November 13, 1986

DIGEST

1. Protest that invitation includes erroneous wage determination is dismissed where contracting agency agrees and advises of intent to issue a corrected wage determination.

2. Protest concerning allegedly improper service contract liquidated damages clause is denied where protester does not show that the clause by its terms imposes an impermissible penalty in that there is no possible relationship between its provisions and any contemplated losses. Moreover, propriety of actual implementation of the clause involves a matter of contract administration, which General Accounting Office does not review.

DECISION

Grace Industries, Inc., protests the propriety of two provisions in invitation for bids (IFB) No. N62470-86-B-5280 issued by the Department of the Navy for custodial services. Grace contends that the IFB contains an erroneous Department of Labor (DOL) wage determination and that the IFB's liquidated damages provision is improper because it constitutes an unenforceable penalty. We dismiss the protest on the first matter, and we deny the protest on the second.

The Navy admits that the challenged wage determination is defective and reports that DOL intends to issue a new, corrected one. This advice makes this aspect of Grace's protest academic. In any event, we do not review the accuracy of DOL wage rate determinations issued in connection with solicitations subject to the Service Contract Act of 1965, as amended, 41 U.S.C. § 351 et seq. (1982). Professional Carpet Service, B-203287, June 3, 1981, 81-1 C.P.D. ¶ 445.

Grace initially advanced two reasons why the liquidated damages provision, clause E.6 (entitled "Consequences of

Contractor's Failure to Perform Required Services"), is improper. First, the clause forces the contractor "down to a level the government considers to be acceptable." Second, the clause allows the government to assess an additional 10 percent for administrative costs over and above the amount assessed for deficient performance.

The agency report notes that Grace failed to give any details or examples showing how the operation of clause E.6 results in unreasonable or arbitrary deductions. The report gives a detailed explanation of how the Navy applies clause E.6 together with clause B.4 (entitled "Schedule of Deductions") and the contract's engineering performance standards to ensure proportionate deductions when the contractor's performance is only partially deficient.

Grace admits in its comments on the agency report that clause E.6 may not be by its terms impose an improper penalty, but claims that such penalty nevertheless results from its application. Grace asserts that in its experience government inspectors fail to use the contractually-required engineering performance standards and instead apply an undefined "local standard."

Our Office will object to a liquidated damages provision only where the protester show that by its terms it imposes an impermissible penalty in that there is no possible relation between the liquidated amounts impose and the losses contemplated by the parties. Environmental Aseptic Services Administration and Larson Building Care Inc., 62 Comp. Gen. 219 (1983), 83-1 C.P.D. ¶ 194. As indicated above, Grace's protest does not suggest the provision in the Navy's solicitation is objectionable under that standard. Moreover, we have held that a liquidated damages provision may include deductions for administrative costs, as well as for work either not performed or unsatisfactorily performed, since such costs clearly are associated with any corrective work. Industrial Maintenance Services, Inc., B-207949, Sept. 29, 1982, 82-2 C.P.D. ¶ 296. Finally, as to Grace's complaint that the monetary deduction scheme will be applied unfairly, the implementation of an otherwise valid payment deduction system for deficient performance is a matter of contract administration, which our Office does not review. Environmental Aseptic Services Administration, B-221316, Mar. 18, 1986, 86-1 C.P.D. ¶ 268.

Accordingly, we dismiss the protest in part and deny it in part.

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for Harry R. Van Cleve
General Counsel