Protest of	)	Date: September 23, 1991
	)	
ELLIS INDUSTRIES, INC.	)	
	)	
Solicitation No. 054482-91-P-0466	)	P.S. Protest No. 91-58

DECISION

Ellis Industries, Inc. (Ellis) protests the award of a contract for maintenance, welding and repair services for hydraulic equipment located at various locations in the Inglewood, CA, management service center area to Doug Armfield Dock Specialist (Armfield).

Solicitation No. 054482-91-P-0466 was issued by the Support Services Office, Long Beach, CA, on July 26, 1991, with an offer due date of August 16, 1991. The solicitation required an offeror to submit its hourly and overtime labor rates, along with any truck mileage or other charges it would assess, and evaluated the offers based on an estimated 100 hours of labor, twelve truck trips, and twelve occurrences of any specified other charges. The solicitation incorporated by reference the Service Contract Act clause and attached five pages of wage determinations for maintenance and repair occupations for Los Angeles and Orange counties. Armfield proposed a labor rate of $15.90 per hour; Ellis proposed a labor rate of $50.00 per hour, plus a $75.00 per trip truck charge. Award was made to Armfield on August 19, 1991, and Ellis' protest followed.

Ellis alleges that, in accordance with the labor rates mandated by the Service Contract Act, the prevailing wage to employees working on this contract would be $16.56 per hour (the wage rate for tool and die maker), and, therefore, Armfield's offer must be rejected because it proposed a labor rate below the statutorily required rate.

The contracting officer responds that the correct labor rate to be used is $15.97 per hour, the labor rate for pneumatic systems mechanics. Based on this labor rate, Armfield's offer is only $00.07 per hour less than the statutorily required rate. she also notes that Armfield is aware of its clearly stated obligations to pay the prevailing wage rate and the fact that it has offered slightly below that rate is not conclusive of the fact that he will not pay the required rate. she states that
st such a strategy could be justified by various business considerations, and that she will not substitute her business judgment for that of the offeror.

This protest must be denied. As the Comptroller General has stated:

> The fact that K & P may have proposed rates lower than that specified in the wage determination does not mean that K & P intends to violate the Service

> Contract Act, 41 U.S.C. '351, et seq. (1976), or that it will not comply with the act. It is possible that K & P may have submitted a below-cost bid with respect to those items. In this regard, we have held that there is no legal impediment to awarding to a bidder because it offers a below-cost bid so long as that bidder is determined to be responsible. See SEACO, Inc., B-211226, August 1, 1983, 83-2 CPD & [146].

K & P Incorporated and Kirsch Maintenance Service, Inc, Comp. Gen. Decs. B-212263, B-212263.2, October 11, 1983, 83-2 CPD & 436; see also Lightron of Cornwall, Inc., P.S. Protest No. 84-6, February 27, 1984 (offer not objectionable solely because it may be at a price below cost). The contracting officer found Armfield, the incumbent contractor for these services, to be a responsible offeror at the price offered. Therefore, there is no legal impediment to award of the contract to Armfield.[1/]

The protest is denied.

[Signed]

William J. Jones
Associate General Counsel
Office of Contracts and Property Law

[Compared to original 5/12/95 WJJ]

[1/] The contracting officer may wish to monitor Armfield's performance to ensure that appropriate Service Contract Act wages are paid by Armfield during the duration of the contract.