

Phillips  
P.L.Z.

**DECISION**



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

04748

FILE: B-189495 DATE: January 17, 1978

MATTER OF: P.J. Stella Construction Corp.

**DIGEST:**

Where contracting activity incorporated "Residential" wage rates in IFB in addition to "Building" rates, contractor was not justified in assuming lower "Residential" rates applied, since there was nothing to show that "Residential" rates had ever been employed by contractor in connection with type of work covered by contract or that wage rate applied. Case distinguishable from 45 Comp. Gen. 532 (1966) where contractor had choice between two separate wage schedules and contractor had indicated that it had used lower wage rate in contracts for work of similar nature.

By letter of July 13, 1977, with enclosures, the Associated General Contractors of Massachusetts, Inc., requested a decision by this Office concerning the proper wage rates to be paid on contract No. DACA51-77-C-0064, awarded to the P.J. Stella Construction Corp. (Stella) by the Department of the Army New York District, Corps of Engineers.

Invitation for bids (IFB) No. DACA51-77-B-0064, issued on February 4, 1977, solicited bids for expansion of the United States Army Reserve Center with organizational maintenance shop, Hanscom Air Force Base, Bedford, Massachusetts. The original bid package contained Davis-Bacon Act Wage Rate Determination No. MA76-2102 and modification No. 1 and 2. The determination described the work to be covered as "Building construction (including residential), heavy and highway construction, and marine construction." Following the work description, the determination was titled "Building, Heavy,

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and Highway Construction." There was only one basic schedule of wage rates with the exception of the "Power Equipment Operators" and "Laborers" classifications. The "Power Equipment Operators" were listed separately under three types of construction (building, heavy and highway, and marine). However, it is our understanding that the present controversy does not involve this particular classification. The wage rates for "Laborers" were listed separately under "Heavy and Highway" as well as under the basic wage rate schedule. We note that the wage rate for this classification was the same under both listings.

Amendment No. 1 to the invitation, dated February 16, 1977, incorporated modification No. 3 to the determination. This modification contained changes to various craft classifications and applied to all types of construction to which the basic determination applied. Amendment No. 7 to the invitation, dated March 14, 1977, contained wage rate modification No. 4, as it appeared in the Federal Register on March 11, 1977. This modification changed the wage rates for "Carpenters & Soft floor layers" and "Electricians." In addition to these two changes, the modification added several classifications of workers, including "Carpenters," "Electricians" and "Laborers," for a particular type of construction work only, namely "All work, including demolition, repair and alteration of any existing structure which is intended for predominantly residential use." The wage rates for the classification under this addition were lower than the corresponding classifications under the basic wage rate schedule.

Bids were opened on March 22, 1977, and Stella was determined to be the low responsive, responsible bidder and was awarded contract No. DACA51-77-C-0064 on March 31, 1977.

When Stella submitted its initial payrolls it was discovered that the residential rates set out in modification No. 4 were being paid by Stella. By

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letter of May 27, 1977, the Area Engineer advised Stella that in the opinion of his office the basic hourly wage rates as set forth in the contract specifications were not being met and that he was requesting guidance from the Labor Relations Advisor, Office of Counsel, New York District. By letter of June 10, 1977, Stella was advised that the Labor Relations Advisor agreed with the Area Engineer's opinion of what the proper wage rate was for the contract.

It is Stella's position that it should not have to pay the higher rate since there was more than one wage rate included in the invitation and the contracting agency did not unequivocally indicate in the IFB which wage schedule was applicable to the contract work in question. Stella contends that the facts in the present case are the same as in 45 Comp. Gen. 532 (1966). In that case, our Office held that if an IFB requests bids on a project which calls for a wage schedule applicable to only one particular type construction, it is incumbent on the contracting officer to unequivocally indicate in the IFB which particular wage schedule is applicable to the contract work. As a result of this decision the Department of Labor (DOL) issued DOL memorandum No. 68 which sets forth instructions to the contracting agencies regarding procedures for the inclusion of wage rates in bidding documents. DOL memorandum No. 68 provides, as does section 18-704.2(f) of the Armed Services Procurement Regulation (ASPR) (1976 ed.), that only the rate schedule or individual rates applicable to the particular type construction be included in the bidding documents.

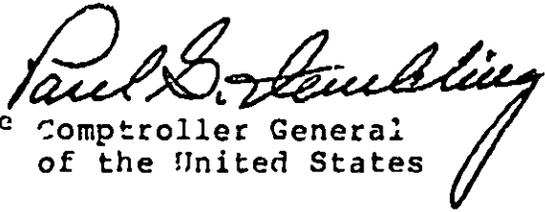
It is clear that the contracting officer should have included only those rates applicable to the particular type of construction rather than incorporating the complete wage determination as it appeared in the Federal Register. See B-173734, September 7, 1971. Had the contracting officer followed the procedures set forth in DOL memorandum No. 68 and ASPR § 18-704.2(f), the present controversy would not have occurred. However, the primary issue to be resolved is whether the present situation is one which is

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covered by our holding in 45 Comp. Gen. 532. While Stella argues that the facts in the two cases are the same, we do not find this to be the case. In 45 Comp. Gen. 532, there were two different schedules of wage rates, the "Building" schedule containing the lower wage rate used by the contractor and the "Heavy and Highway" schedule containing a higher wage rate for the classification employed. Since the contractor had indicated that it had used the lower wage rate in the "Building" schedule in connection with other contracts covering work of a similar nature, we concluded that the contractor's interpretation was not entirely unjustified. However, there is nothing in this case to show that the "Residential" schedule had ever been employed by Stella in connection with the type of work covered by the present contract.

Thus, while the contracting activity was remiss in not designating the schedule of rates which was to apply to the contract, there was no justification for Stella to assume that a military reserve center was intended for "predominantly residential use" and that "Residential" rates applied.

For the above reasons, we are unable to conclude that the contracting activity's determination that the "Residential" schedule did not apply to the subject contract was improper.

  
For The Comptroller General  
of the United States