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**DECISION**



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

**FILE:** B-218203

**DATE:** March 28, 1985

**MATTER OF:** U.S. PolyCon Corp.

**DIGEST:**

Protest is dismissed where the underlying solicitation has been canceled and the cancellation renders the protest academic.

U.S. PolyCon Corp. (U.S. PolyCon) protests certain of the specifications contained in invitation for bids No. NOO128-85-B-0021, issued by the Department of the Navy for a prefabricated insulated piping system. The protester contends that portions of the specifications that pertain to the design and installation of the system are inconsistent with Federal Guide Specification 15705 and unduly restrictive of competition since they preclude U.S. PolyCon from offering its system.

The Navy has advised us that it has canceled the subject solicitation and that if the requirement is subsequently resolicited, "the solicitation will cite the requirements for an underground heat distribution system, as specified in Federal Guide Specification 15705." We will not consider a solicitation protest when the subject solicitation has been canceled since that action renders the protest academic. See Splendid Dry Cleaners, B-215102.2, Feb. 22, 1985, 85-1 C.P.D. ¶ 225.

The protest is dismissed.

A handwritten signature in black ink, appearing to read "R. M. Strong", written over a horizontal line.

Robert M. Strong  
Deputy Associate General Counsel

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

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**FILE:** B-215346**DATE:** March 29, 1985**MATTER OF:** John B. Tucker**DIGEST:**

Employee has not shown that he was entitled to a supervisory pay adjustment under 5 U.S.C. § 5333(b) for the supervision of one or more prevailing rate employees. The employing agency states that the employee did not have regular responsibility for the supervision of the technical aspects of the work of the prevailing rate employee. Where the record presents irreconcilable disputes of fact between a Government agency and an individual claimant, we are bound to accept the agency's statement of the facts.

This decision concerns the appeal by Mr. John B. Tucker of our Claims Group's disallowance of his claim for a pay adjustment as a supervisor of wage board employees.<sup>1/</sup> The Claims Group determined that Mr. Tucker was not entitled to a pay adjustment under 5 U.S.C. § 5333(b) as a supervisor of one or more prevailing rate employees whose rate of basic pay exceeded his rate since he did not exercise supervision over the "technical aspects" of the work concerned. Upon review, we sustain the determination of the Claims Group that the employee was not entitled to a supervisory wage adjustment.

**BACKGROUND**

Mr. Tucker was employed as a grade GS-11 Civil Engineer with the United States Forest Service, Department of Agriculture, Mount Baker - Snoqualmie National Forest, Washington. Effective September 23, 1979, he was granted an adjustment of compensation under 5 U.S.C. § 5333(b) from step 4 to step 10 of grade GS-11 on the basis that he was responsible for the supervision of a prevailing rate

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<sup>1/</sup> Mr. Tucker has appealed the Claims Group's action through his attorney Mr. William C. Decker of Seattle, Washington.

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employee with a higher rate of pay. That employee was a grade WS-12, step 2 Engineering Equipment General Foreman. The position occupied by Mr. Tucker at that time was that of Supervisory Civil Engineer, grade GS-810-11.

During the summer of 1981 the Forest Service determined that the supervisory pay adjustment given Mr. Tucker had been erroneous. Action was taken to terminate his increased compensation and, at the same time, he was assigned to a position (in the same grade) which did not involve supervisory duties. Thus, on September 6, 1981, he was placed in a position in which he was not supervising the wage grade employee and the extra pay he had been receiving was discontinued.

Although Mr. Tucker was placed in debt for the pay he had received under the authority of 5 U.S.C. § 5333(b), his debt to the Government for that pay was waived. Thus he has retained the extra compensation he received. His current claim is based on his contention that he had been entitled to the higher rate of pay and should have continued to receive that rate after his supervisory duties had terminated because he had been involuntarily removed from the former position. He seeks, in effect, a review of the Forest Service's determination that he had not been entitled to a supervisory pay adjustment.

By letter dated May 26, 1982, the agency advised our Claims Group that Mr. Tucker had not met all the requirements for the pay adjustment which he had received in September 1979. The reason given was that technical aspects of the wage grade foreman position were the responsibility of the foreman himself since he had final authority over technical matters involved in implementing engineering plans and projects which had been approved by the Supervisory Civil Engineer. The agency maintained that under the position description applicable to the Supervisory Civil Engineer, Mr. Tucker's assigned supervisory duties over the wage grade employee were limited to administrative matters.

By settlement certificate dated July 29, 1982, the Claims Group upheld the agency's disallowance of Mr. Tucker's claim on the basis that he did not exercise regular supervision over the technical aspects of the work of a prevailing rate employee. By letters dated February 17

and October 1, 1984, the claimant has appealed this disallowance through his attorney.

ANALYSIS

Under the authority of 5 U.S.C. § 5333(b), a General Schedule employee may be paid at a step rate above that to which he is otherwise entitled when he "regularly has responsibility for supervision (including supervision over the technical aspects of the work concerned)" of one or more prevailing rate employees whose rate of basic pay is higher than the General Schedule employee's rate of pay. The implementing regulations promulgated by the Office of Personnel Management provide that supervision must include reviewing the "\* \* \* work products of individual prevailing rate employees when the reviews require a substantial subject matter or technical knowledge \* \* \*." 5 C.F.R. § 531.304(c)(2).

Thus, the controlling law and regulation emphasize that the supervision exercised by the General Schedule employee must include responsibility for the technical aspects of the wage board employee's work in addition to administrative supervision. In order to qualify for this special pay the General Schedule employee must possess the technical skills of the wage board position in order to exercise supervision over these aspects of the wage board employee's work. If there is no requirement for technical supervision, increased pay is not authorized.

A review of the position description of the grade GS-11 Supervisory Civil Engineer position held by Mr. Tucker during the period from September 23, 1979, to September 6, 1981, shows that the duties of that position included giving assistance to subordinate supervisors in planning, procedures, and standards of accomplishment and performance. Duties also included the evaluation of the performance of subordinate supervisors. The supervisory duties and responsibilities of the Supervisory Civil Engineer position are set forth in broad terms which would not necessarily exclude technical supervision over the work performed by the prevailing rate employees, including the grade WS-12 foreman. At the same time, the position description does not specifically establish that the Supervisory Civil Engineer was responsible for the supervision of the technical aspects of the work carried out by the grade WS-12 foreman.

The claimant's attorney contends that Mr. Tucker had frequent contact with the grade WS-12 employee on a regular and continuous basis, that all work assignments were discussed, and that the work projects were thoroughly reviewed, planned, and organized by both employees. He also points out that Mr. Tucker evaluated the performance of the grade WS-12 employee. He states that, as a Civil Engineer, Mr. Tucker had final authority to approve or disapprove, on a technical basis, the work which was performed in that his training and experience as a Civil Engineer qualified him to make final determinations as to how a job would be accomplished. Thus, Mr. Tucker's attorney concludes that his client was properly entitled to payment of the supervisory pay adjustment authorized by 5 U.S.C. § 5333(b) for the period from September 23, 1979, to September 6, 1981.

In addition Mr. Tucker has submitted statements from another engineer and from the individual who occupied the grade WS-12 foreman position through September 30, 1980. In his statement the other engineer stated that it was his understanding that the grade WS-12 foreman received direction and supervision from Mr. Tucker, who also prepared his annual performance ratings. He also states that while the grade WS-12 foreman was responsible for the day-to-day operation of the road maintenance work and crews, Mr. Tucker assigned and reviewed his work and that of the maintenance crews from time to time. The statement concludes that when technical, scheduling or budgeting problems arose that the grade WS-12 foreman could not resolve, Mr. Tucker was responsible for resolving them.

In his statement the grade WS-12 foreman states that during the period September 1979 through September 30, 1980, Mr. Tucker was his immediate supervisor. He states that although Mr. Tucker did not directly initiate and plan some of the technical aspects of the operation, "his area of responsibility did include all of the technical supervision responsibility." He states that Mr. Tucker's supervision included direction on personal management, work planning and control, supervision of reports compilation, selection of equipment, budget planning and control and many other matters "where technical knowledge is a necessity."

The agency had determined that the position occupied by Mr. Tucker during the period from September 23, 1979, to

September 6, 1981, did not include responsibility for technical supervision of the wage grade employee. The agency has also stated that in actual practice Mr. Tucker did not exercise such technical supervision. The statements by Mr. Tucker's fellow employees indicate that he was capable of providing technical supervision and that, at times, he provided such supervision. However, they do not support a conclusion that Mr. Tucker had been officially assigned responsibility for technical supervision of the wage grade employee or that he, in fact, performed such supervision on a consistent basis.

Furthermore, as noted above, the position descriptions applicable to the two positions do not specifically require that Mr. Tucker supervise the technical aspects of the prevailing rate employee's job performance. It is also pertinent to note that the wage grade position was basically that of an engineering equipment operator, apparently road building and maintenance machinery, whereas Mr. Tucker was a professional civil engineer. It would not be part of the professional position to be knowledgeable about the technical aspects of equipment operation and, therefore, supervision of these aspects of the wage grade position should not have been a requirement in the civil engineering position.

We do not conduct adversary hearings but must settle claims on the basis of the written record presented by the parties. 4 C.F.R. § 31.7. Where the record, as here, presents irreconcilable disputes of fact between a Government agency and an individual claimant, we are bound to accept the agency's statement of the facts. George W. Lovill, B-196465, April 16, 1980, and Dwight L. Fields, B-204044, September 28, 1981.

In view of the position taken by the Department of Agriculture, we cannot conclude that Mr. Tucker was properly entitled to the payment of a supervisory pay adjustment during the period in question. Thus, we find that, while the waiver action was proper, there is no basis upon which we may consider his claim for continuation of that pay adjustment following the elimination of all his supervisory responsibility over the wage rate foreman position.

B-215346

In accordance with the above, the settlement of our Claims Group is sustained.

*for* *Narry R. Van Cleve*  
Comptroller General  
of the United States