

95358

**DECISION**



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

52531

FILE: B-182408

DATE: February 12, 1975

MATTER OF: International Union of Operating Engineers

**DIGEST:**

Protest against award on basis that bids were obtained in reliance on improper Davis-Bacon Act, 40 U.S.C. § 276a (1970), wage determination should have been pursued through Department of Labor administrative procedure provided for by 29 C.F.R., Part 7, since correctness of prevailing wage determination by Secretary of Labor is not subject to judicial review or review by GAO.

By telegram of October 10, 1974, from its business manager and letter of November 1, 1974, from its counsel, Local 77 of the International Union of Operating Engineers protested award under solicitation 219-74, issued by the Virginia Department of Highways for a Federal aid system construction project in Fairfax County.

The basis of the protest is that the bids under the above solicitation were obtained in reliance on an improper Davis-Bacon Act, 40 U.S.C. § 276a (1970), wage determination. In his letter of November 1, 1974, counsel for the protester alleges that the second of two wage determinations issued for the above project was hastily issued without giving the protester an opportunity to comment and that the rates favored non-union contractors to the prejudice of the protester. While counsel states that it is protesting against award under solicitation 219-74, issued by a grantee under the Federal Aid Highway Act, 23 U.S.C. § 113 (1970), we agree with the Federal Highway Administrator who stated in a report to our Office that the protest relates solely to the sufficiency or the use of the wage determination furnished by the Secretary of Labor. Accordingly, the protest will be treated as one against actions taken by the Department of Labor.

The record indicates that on May 2, 1974, the Virginia Department of Highways, pursuant to 23 U.S.C. § 113 and § 1.5 of title 29 of the Code of Federal Regulations (C.F.R.), in anticipation of the issuance of a solicitation for the above-mentioned project requested a wage determination from the

B-182408

Department of Labor. In response to the request, the Department of Labor issued Wage Determination 74-VA-298 on June 11, 1974, which had an expiration date of October 8, 1974. According to the request, the solicitation was to be issued on June 5, 1974, with bid opening scheduled for July 17, 1974. However, the solicitation was not issued until July 17, 1974, and bid opening was scheduled for October 2, 1974. On September 16, 1974, the Secretary of Labor issued Supersedes Decision 74-VA-509 with an expiration date of January 13, 1975. This latter determination is the determination which the protester finds objectionable. The supersedes decision was incorporated into the advertised specifications, circulated to, and acknowledged by, all bidders.

Regarding the allegation that bids under the above solicitation were obtained in reliance on an improper wage determination, the courts have held that the correctness of a prevailing wage determination made by the Secretary of Labor is not subject to judicial review. See United States v. Binghamton Construction Co., 347 U.S. 171 (1954); and Nello L. Teer Co. v. United States, 348 F.2d 533 (1965). We have construed the former decision as precluding this Office from reviewing the correctness of a wage determination in situations such as we have in the present case. See B-174622, November 30, 1971. The protester should have availed itself of the administrative process established by 29 C.F.R., Part 7 (1974), whereby the wage determination could have been challenged through Department of Labor channels.

In view of the fact that all of the matters complained of relate to the propriety or correctness of a prevailing wage determination and this Office is precluded from reviewing such matters, we are unable to take any action in connection with this protest.

Acting

  
Comptroller General  
of the United States