

DOCUMENT RESUME

03871 - [A2774003]

[Refusal to Include Certain Classifications of Workers in Wage Determination for Project]. B-190004. September 28, 1977. 2 pp.

Decision re: University Mechanical & Engineering Contractors, Inc.; by Milton Soclar (for Paul G. Dembling, General Counsel).

Issue Area: Federal Procurement of Goods and Services (1900).

Contact: Office of the General Counsel: Procurement Law I.

Budget Function: General Government: Other General Government (806).

Organization Concerned: Department of Labor; Tahoe-Truckee Sanitation Agency.

Authority: Davis-Bacon Act (40 U.S.C. 276a). B-182408 (1975).

B-193475 (1975). B-185336 (1975). Framlea Corp. v. Dembling, 360 F. Supp. 806 (1973). United States v. Einghamton Construction Co., 347 U.S. 171 (1954). Nello L. Teer Company v. United States, 348 F.2d 533 (1965).

The protester requested review of a decision by the Department of Labor not to include certain classifications of workers in its wage determination for a project. The refusal of the agency to add the classification of "plumber or fitters helper" to the wage determination was not reviewed since the courts have held that the correctness of the wage determination is not subject to judicial review. This has been interpreted as precluding review by GAO. (Author/SC)

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# DECISION



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

*Miller  
P.E. #1*

FILE: B-190004

DATE: September 28, 1977

MATTER OF: University Mechanical & Engineering Contractors,  
Inc.

## DIGEST:

Refusal by Department of Labor to add classification of "plumber or fitters helper" to wage determination will not be reviewed by GAO since courts have held that correctness of wage determination is not subject to judicial review. GAO has interpreted these decisions as precluding review by GAO.

By letter of September 7, 1977, with enclosures, counsel for University Mechanical & Engineering Contractors, Inc. (UMEC), requested our Office, in effect, to overrule a decision by the Department of Labor (DOL) not to include certain classifications of workers in its wage determination for project No. C-06-1121-020-04, Tahoe-Truckee Sanitation Agency.

On October 15, 1975, the Tahoe-Truckee Sanitation Agency contracted with De. E. Webb Corporation and UMEC, a joint venture, for the construction of a waste water treatment facility in Tahoe Vista, California. Since this project was funded, in part, by Federal funds, the contractor agreed not only to comply with the requirements of the State labor standards relative to the payment of prevailing wages, but also to comply with the wage determination issued by DOL. The determination issued by DOL was issued pursuant to DOL's authority under the Davis-Bacon Act. 40 U.S.C. § 276a (1970). The list of prevailing wage rates, which was included in the contract, was based on a wage determination issued by DOL and published in the Federal Register. A statement immediately following the list stated, in part, that "Any classification omitted herein shall be not less than \$9.735 per hour." The rate of \$9.735 was the wage rate for laborers and was the lowest rate on the list.

We are advised by UMEC that in bidding for this contract the laborers rate of \$9.735 was overlooked and UMEC submitted its bid based on the use of "plumbers or fitters helpers," a classification

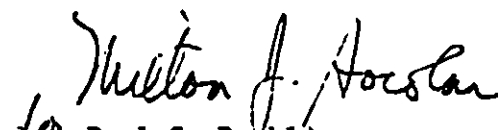
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sanctioned by the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL-CIO, Local Union No. 350. The wage rate, as established by the collective bargaining agreement, was lower than \$9.735 per hour rate.

It is UTEC's position that the above-mentioned wage rates are the prevailing wage rates for its geographical area for the plumbers and fitters helper classification. Therefore, according to UTEC an additional classification should be added to the DOL wage determination applicable to the present project, the State wage rate determination should be altered accordingly and the contract should be modified to reflect the prevailing wage rate for this classification. DOL refused to add this classification to its wage determination.

Under the decision of the United States Court of Claims in Nello L. Teer Company v. United States, 348 F.2d 533 (1965), the Secretary of Labor's determination to include or omit certain classifications of workers in a wage determination is not subject to review by the courts, or by a Government agency. This decision was based on the holding by the Supreme Court in United States v. Binghamton Construction Co., 347 U.S. 171 (1954), that the correctness of a prevailing wage determination made by the Secretary of Labor is not subject to judicial review. We have construed the latter decision as precluding this Office from reviewing the correctness of a wage determination. See Framlea Corporation v. Dembling, 360 F. Supp. 806 (1973); International Union of Operating Engineers, B-182408, February 12, 1975, 75-1 CPD 90; Associated Builders & Contractors, Inc.; New England Yankee Chapter, B-183475, April 8, 1975, 75-1 CPD 215; Talon Construction Company, B-185336, December 3, 1975, 75-2 CPD 370.

Accordingly, since the matter complained of relates to the propriety or correctness of a prevailing wage determination, our Office is precluded from further reviewing the matter and no further action will be taken.

*for*   
Paul G. Dembling  
General Counsel