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DECISION

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

FILE: B-195434 DATE: May 5, 1980

MATTER OF: Davho Company, Inc. DLG04572

DIGEST:

Where contract was for work in basement of five story building and "Building Construction" section of contract's wage determination contained classification of "Electricians (above 3 stories)" and "Electricians (up to and incl. 3 stories)," there was no logical basis to assume that latter classification, which had lower wage rate, was applicable, since only logical interpretation of notations within parenthesis is that they refer to size of structure rather than location of work.

Davho Company, Inc. (Davho), through its counsel, submitted a [claim for ~~an~~ equitable adjustment] alleging AGC00017 that the General Services Administration (GSA) directed a higher electricians' Davis-Bacon wage rate to be paid under contract No. GS-01B-PCC-1420 than Davho and its subcontractor were entitled to rely upon.

The contract called for the removal of three existing boilers and one incinerator and the installation of two new boilers, burners and an incinerator at the Federal Building and United States Courthouse in Providence, Rhode Island. This particular building was an existing five story structure with a basement. The contract specifications contained Davis-Bacon Act Wage Rate Determination AQ-3119 which covered the state of Rhode Island. The determination described the work to be covered as "Building (including residential), Heavy, Highway, and Marine Construction." Following the work description, there appeared the title "Building Construction." Under this title, there were two wage rates for the electrician classification. One wage rate was for "Electricians (above 3 stories)." The wage rate was $8.40 per hour plus fringe benefits. The second wage rate was for

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"Electricians (up to and incl. 3 stories)." This wage rate was $5.25 per hour plus fringe benefits. There was another section of the determination entitled "Heavy, Highway and Marine Construction" which listed an electrician classification with a wage rate of $8.40 per hour plus fringe benefits. However, the present controversy only involves the two electrician wage rates listed under the "Building Construction" section.

According to Davho, prior to the submission of its bid, it obtained an estimate from a local electrician based on the $5.25 rate and it submitted the bid based on that rate. The local firm which ultimately was given a subcontract for the electrical work also based its estimate on the $5.25 rate.

During an inspection visit to the site, GSA discovered that the electricians were being paid the $5.25 rate. GSA wrote to the Employment Standards Administration, United States Department of Labor, inquiring whether the $5.25 rate applied to the immediate job site. The Employment Standards Administration advised GSA that the $5.25 rate only applied to "residential" construction and that the work at the Federal Building and United States Courthouse fell within the category of "building" construction. Davho subsequently was ordered by GSA to see that the $8.40 rate was paid to electricians thereafter. Davho submitted a claim to GSA for $1,804.71 resulting from the order. This claim was denied. Davho appealed to the GSA Board of Contract Appeals which dismissed the claim for lack of jurisdiction.

Under our Davis-Bacon wage adjustment authority, we will consider a claim based on an allegation that an IFB was deficient in designating the Davis-Bacon wage rate for application. P.J. Stella Construction Corp.--Reconsideration, B-189495, March 31, 1978, 78-1 CPD 256.

It is Davho's position, essentially, that the wage determination did not state that the $5.25 rate was applicable only to "residential" construction and that, since all of the work was to be performed in the basement of the building, it was reasonable to assume that the $5.25 rate for "Electricians

(up to and incl. 3 stories)" would be applicable. In support of this position, Davho cites 45 Comp. Gen. 532 (1966) which held that, if an invitation for bids (IFB) requests bids on a project which calls for a wage schedule applicable to one particular type of construction, it is incumbent on the contracting officer to unequivocally indicate in the IFB which particular wage schedule is applicable to the contract work. In that case there were two wage schedules in the IFB, one applying to "building construction" and the other to "heavy highway construction," and both contained classifications which pertained to the jobs to be performed by the workmen in question. There was no indication in the IFB as to which schedule applied to the work in question. The contractor in that case, on previous Government contracts for similar work, had used the "building construction" schedule with the lower wage rates. Thus, it was not unreasonable for the contractor to expect that the "building construction" schedule was applicable. However, in the present case, while there were two wage rates for electricians, only one of which applied to the project, there was an indication of which rate applied to the project, i.e., "Electricians (above 3 stories)." Moreover, there is no indication that Davho had used the lower wage rate on previous Government contracts for similar work.

As GSA has indicated, to carry the wage rate interpretation urged by Davho to its logical conclusion would result in electricians working on the fourth floor of a building receiving $3.15 per hour more than electricians working on the third floor of the same building and an escalation or decline in the wage rate for the individual electrician depending on whether he moved up to the fourth floor or down to the third floor. We believe that the only logical interpretation of the notations "up to and incl. 3 stories" and "above 3 stories" is that they refer to the size of the structure rather than the location of the work.

Thus, while the contracting activity could have avoided the present controversy had it deleted the

lower wage rate for electricians from the schedule, there was no logical basis for an assumption that the lower rate was applicable.

Davho's reliance upon Dawson Construction Company, Inc., B-189036, February 9, 1978, 78-1 CPD 108, is inappropriate. The crux of the holding in Dawson was that clerical errors in Davis-Bacon wage determinations could be corrected after award, but errors in judgment could not. Unlike Dawson, the present case involved the application rather than the correction of the wage rate provided.

Accordingly, the claim is denied.

Milton J. Socolar

For the Comptroller General
of the United States