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DECISION

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

FILE: B-154687 DATE: January 26, 1977

MATTER OF: Department of the Air Force's inclusion in contract of adjusted Davis-Bacon wage rate and adjustment of contract price

DIGEST:

Contract to be performed in area where union scale is prevailing rate may be modified to include wage rates contained in union agreement which had been inadvertently omitted from wage determination issued by Department of Labor since such omission was clerical error. Also, equitable adjustment in contract price for any increase in cost of performance resulting from increased wage rates should be based upon difference between new rates and rates actually used by contractor in computing labor costs for bid.

By letter of December 22, 1976, the Deputy Assistant Secretary (Programs and Acquisition) has requested an advance decision concerning a modification of contract No. F24604-76-90151 to permit the payment of higher wages and an increase in the contract price.

The above contract, for the rehabilitation of family housing at the Malmstrom Air Force Base, Montana, was awarded to Praxis, Ltd., on September 27, 1976. This contract is subject to the Davis-Bacon Act, 40 U.S.C. § 276a (1970), and includes wage determination MT 76-5027, dated April 9, 1976. However, subsequent to award, the Air Force received a "letter of inadvertence" from the Department of Labor explaining that due to an inadvertence, erroneous wage rates for laborers were reflected in the above wage determination. Apparently, the error resulted from a failure on the part of the Department of Labor to modify the wage determination to reflect increased wages resulting from a union agreement which became effective on May 3, 1976. We are advised that the union rates are the prevailing rates in that area of Montana where the contract is to be performed.

Our opinion is requested as to whether under the above circumstances the Air Force would (1) be permitted or required to modify the contract to incorporate the new minimum wages set out in the

"letter of inadvertence," and (2) if the contract must be modified, whether the Air Force must pay the contractor any increased costs resulting therefrom.

Our interpretation of the Davis-Bacon Act is that its provisions contemplate that minimum wage conditions based upon prevailing wage determinations are to become effective only when, as expressly directed, they have been included in advertised or negotiated specifications and that the act does not authorize making such conditions effective in any other way. See Hendry Corporation, B-179871, April 1, 1975, 75-1 CPD 189; 42 Comp. Gen. 410 (1963). However, we have permitted the correction of contract wage rates in instances where the advertised conditions have contained inadvertent errors, i.e., clerical errors, as opposed to errors of judgment. See 29 C.F.R. § 1.9(c) (1976), 40 Comp. Gen. 557 (1961).

Thus, the primary question to be answered is whether the circumstances of the present case indicate an error in judgment or merely a clerical error. The record indicates that since union scale is the prevailing rate in the Malmstrom Air Force Base area, the Department of Labor should have considered the union agreement in question in making its determination. Had it done so, the error would not have occurred. On the basis of the facts in the present case we cannot conclude that the inadvertence was caused by an error of judgment. The error was caused by a failure to utilize the correct basic wage rate document (the union agreement) for the laborers in question. An error of this kind is, in our opinion, one of a clerical nature and within the contemplation of the phrase "other clerical mistakes in processing the schedules" mentioned in 40 Comp. Gen. 557, supra, at page 559. See B-154687, September 22, 1964. We therefore conclude that the corrected rates should be incorporated in the subject contract by modification with an equitable adjustment of the contract price.

Of course, in determining the amount of such contract adjustment it should be kept in mind that a minimum wage schedule is not a representation that labor can be obtained at such rates, and that it is incumbent on each bidder for a Government contract to base his bid on his own investigation and estimate for the wages he will have to pay. For these reasons, the fact that the minimum wage rates incorporated into the contract are raised in the process of amendment does not necessarily mean that the increase in the cost of performance is to be measured solely by the difference between the minimum wage rates.

Instead, any price adjustment should be based upon the difference between the new minimum rates and the rates actually used by the contractor in computing labor cost estimates on which its bid was based. See B-154443, July 29, 1964.

R. F. Keller

Deputy Comptroller General
of the United States