

7112
DECISION



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

L. Crowley
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FILE: B-189335

DATE: July 26, 1978

MATTER OF: The Cage Company of Abilene, Inc.

DIGEST:

When solicitation for services to be provided throughout five-state region divides region into service areas and requires performance within designated service areas, separate Service Contract Act wage determinations for each service area, rather than single composite wage determination for entire area, are more appropriate. However, GAO does not object to use of composite wage rates where it appears Department of Labor learned that specific performance areas were designated only after solicitation and wage determination were issued.

The Cage Company of Abilene, Inc. (Cage) protests the award of any contract under invitation for bids (IFB) number GWS-7FWR-70007, issued by the Federal Supply Service, General Services Administration Region 7, Fort Worth, Texas (GSA) for the repair and overhaul of heavy construction, material handling and miscellaneous equipment.

Cage contends that the Department of Labor (DOL) wage determination included with the solicitation does not comply with the Service Contract Act of 1965, as amended, 41 U.S.C. 351 et seq. (1970 and Supp.V 1975) (hereafter Act), because the wage rates therein are composite rates for the entire five-state area comprising Region 7. Cage's position is that such rates do not reflect those prevailing in the localities where the services will be performed as required by the Act.

The use of such composite wage rates was recently considered in two other protests by Cage. The Cage Company of Abilene, Inc., B-188119, B-187665, June 13, 1978, 57 Comp. Gen. _____, 78-1 CPD _____. We concluded that DOL's use of a wide geographic area as the locality

basis for a wage determination was not clearly contrary to law when the place of performance of the required services was not known. See also Midwest Service and Supply Co., et al., B-191554, July 13, 1978, 78-2 CPD _____. However, in the Cage decision we also stated:

"--DOL's use of composite prevailing wage rates for an entire GSA region, when a solicitation divides the region into service areas and requires that the services be performed within each area, while not clearly illegal, is inappropriate since DOL is aware, prior to bid submission, of distinct localities within the region where contract services will be performed. In this regard, however, DOL has informed us that it is now aware that under solicitation -70008 performance was restricted to designated service areas and that because a specific locality can be ascertained when such geographic restrictions are imposed, it has commenced issuing separate wage determinations for each service area."

Similarly, the use of a composite wage rate here was also inappropriate since the services were required to be performed in designated service areas. Since it appears that the solicitation and wage determination in this case were issued prior to DOL's learning that specific service areas were designated, however, we will not object to the use of the five-state composite rates. We are, however, advising the Administrator of General Services and the Secretary of Labor of the need for contracting officers to clearly inform DOL when performance under the type of contract here involved will be limited to specific geographic areas so that DOL can issue wage determinations based on these geographic localities.

The protest is summarily denied. See Midwest Service and Supply Co., supra.

Deputy


Comptroller General
of the United States



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July 26, 1978

The Honorable Joel W. Solomon
Administrator of General Services

Dear Mr. Solomon:

Enclosed is a copy of our decision B-189335 of today, summarily denying the protest of The Cage Company of Abilene, Inc., in connection with solicitation No. GWS-7FWR-70007.

The issue in the case involves the propriety of the use of composite wage rates, based on a five-state area, when specific performance areas are designated in the solicitation. We have been informed by the Department of Labor that when solicitations contain geographic restrictions on where the required services may be performed, separate wage determinations for each service area would be issued. We are further advised that your contracting officers, in submitting a Notice of Intention to Make a Service Contract and Response to Notice (SF 98) to the Department of Labor, are indicating that the exact place of performance for the services is "unknown" even though the performance is restricted to the geographic limits of a service area. Your attention is invited, for example, to SF 98 No. A0226226, submitted by Region 7 to the Department of Labor, and the resulting wage determination (No. 75-1046, Rev. 21, June 20, 1978). This apparently is not sufficient to place the Labor Department on notice that performance is restricted to specific service areas, with the result that appropriate wage determinations are not being issued.

We therefore recommend that your contracting personnel be instructed to indicate on the SF 98 that contract performance must be accomplished within the specific geographic limit for each service area wherever the solicitation will impose that requirement, and to indicate what those service areas are.

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We would appreciate advice as to the action taken on this recommendation.

Sincerely yours,

Deputy

R. F. K. 11u
Comptroller General
of the United States

Enclosure



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

A. Crowley
PLH

B-189335

July 26, 1978

The Honorable F. Ray Marshall
The Secretary of Labor

Dear Mr. Secretary:

Enclosed is a copy of our decision B-189335 of today, summarily denying the protest of The Cage Company of Abilene, Inc.

The issue in the case involves the propriety of the use of composite wage rates, based on the five-state area encompassed by Region 7 of the General Services Administration (GSA), when the solicitation limits performance of services to specific geographic areas. We were informed by your Department, in connection with our consideration of prior protests filed by Cage (see The Cage Company of Abilene, Inc., B-188119, B-187665, June 13, 1978, 57 Comp. Gen.), that separate wage determinations would be issued for each such performance area in the future. We are advised, however, that this is not being done in all cases, apparently at least in part because GSA's contracting officers are not providing appropriate information when submitting SF 98s.

Accordingly, by letter of today, copy enclosed, we are recommending to the Administrator of General Services that his contracting personnel be instructed to indicate on the SF 98 whenever performance must be accomplished within specified service areas.

We further recommend that your personnel be instructed to carefully scrutinize the SF 98s submitted in connection with these regional requirements contracts to insure that appropriate wage determinations are issued.

Sincerely yours,

Deputy

Comptroller General
of the United States

Enclosures