

SHOULD THERE BE A WAGE ADJUSTMENT FOR AN INCREASE IN A LOCAL MINIMUM WAGE?

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Does the Service Contract Act provide for an increase in contract wage prices when there is an upward adjustment in the local (county) minimum wage. That's the question in *Didlake, Inc. v. General Services Administration*, CBCA 7769, 7911, April 23, 2024. Not surprisingly, the Board denied the upward adjustment.

Didlake had a multi-year contract with the General Services Administration ("GSA") to provide janitorial services at a Food and Drug Administration facility in Montgomery county, Maryland. When Montgomery County enacted a statute raising the minimum wage for janitors to \$15.65 per hour, Didlake demanded to be paid the higher county wage rate instead of the \$15.40 per hour for janitors under the applicable wage determination ("WD") in the contract. The contract included the Service Contract Act ("SCA") and Fair Labor Standards Act clauses, and included a WD with a prevailing wage determination of \$15.40 per hour for janitors.

The contracting officer denied the request, stating there was no authority to adjust the contract price, and Didlake appealed its claim for \$32,787.

The Board noted that under the SCA, contracts must pay the prevailing wage rates as set forth either in a WD issued by the Department of Labor ("DOL"), or in an applicable collective bargaining agreement. If either of those amounts increase during a period of contract performance, the contractor is entitled to a price increase if the wage determination causes the contractor to pay increased wages. The Board noted that the question of whether a state or county wage rate should prevail over a DOL WD was a case of first impression for the board.

Didlake sought to rely the "Objectives and Scope" and "Federal Requirements" section of the contract within the "Description/Specifications/Statement of Work" (Section C), but these sections describe the work to be performed and do not mention wage determinations. However, there are separate sections of the contract that are wage-specific, and the contract must be read as a whole. Applying Didlake's interpretation of the Statement of Work would render meaningless the wages and wage determination section of the contract.

The Board held there were several reasons why the DOL WD (not the county rate) was the applicable WD:

- 1) The DOL WD was attached to the contract, which stated that the DOL WD applied
- 2) Case law provides that a contractor is entitled to a price adjustment associated with complying with an increase in the federal minimum wage rate, DOL prevailing wage rate or the predecessor's collective bargaining agreement.

Didlake had an obligation to pay county minimum wages because it was conducting business in a place subject to the county minimum wage, but was not entitled to an adjustment for the reasons stated above.

Takeaway. There is no basis for adjusting wage rates in an SCA federal contract as a result of a local (county) minimum wage increase—unless that increase is reflected in the applicable wage determination for the contract.

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