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When State or Local Minimum Wage Requirements Exceed Federal Prevailing Wages—Are Government Contractors Entitled to Reimbursement Through the REA Process?

The Civilian Board of Contract Appeals (“CBCA”) decided April 23, 2024 against a federal services contractor seeking compensatory relief through a request for equitable adjustment (“REA”) for increased costs arising from employee wages paid pursuant to local county minimum wage requirements that exceeded the federal prevailing wage amounts mandated under the Service

Contract Labor Standards (“SCLS”) and Fair Labor Standards Act (“FLSA”). [*Didlake, Inc. v. General Services Administration, CBCA 7769, 7911*]

The contractor, Didlake, Inc., (“Didlake”) provides janitorial and related services and holds a multi-year General Services Administration (“GSA”) services contract (“Contract”). The Contract authorized performance beginning March 1, 2022, and contained the appropriate Federal Acquisition Regulation (“FAR”) clauses incorporating the SCLS [FAR 52.222-41] prevailing wage and FLSA [FAR 52.222-43] minimum wage requirements. Further, the Contract contained the applicable SCLS Wage Determination. (issued by the U.S. Department of Labor (“DOL”)) for the janitorial services labor category in the county where the work was being performed, which set an hourly rate of \$15.40.

Subsequent to Contract award, a pending local county minimum hourly wage increase applicable to janitorial and related services took effect, resulting in an hourly minimum wage requirement of \$15.65.

Didlake’s contract was firm fixed-price and its pricing was developed based on the wage determination rate of \$15.40. Shortly following the effective date of the local wage increase, Didlake sought from the GSA a modification to the Contract to incorporate the newly required local wage rate, which was in excess of the federal wage determination incorporated in the Contract. The GSA understood Didlake’s situation, however, did not modify the existing Contract, noting the Contract terms and conditions apply to the DOL wage determination requirements, not any state or local wage requirements. Although Didlake was required to pay its employees in accordance with the local minimum wage laws, these same laws are outside the terms of the Contract and for which the GSA is not responsible.

Didlake submitted to GSA its REA seeking reimbursement for increased labor costs due to the difference in the revised local county minimum wage and DOL wage determination. The GSA denied Didlake’s REA and Didlake appealed its case to the CBCA. The CBCA reasoned similarly to GSA’s determination, i.e., the Contract’s terms and conditions pertain to federal labor law compliance requirements and, therefore, does not provide for dealing with minimum wage requirements imposed by jurisdictions other than the DOL.

Takeaway

Federal contractors need to be aware of pending or anticipated state or local minimum wage requirements when bidding on and performing under federal government contracts. State and local minimum wage requirements often differ from DOL prevailing wage rates in contract wage determinations, including both the amount of the hourly wage as well as the timing or effective date of the hourly wage. The cost or pricing impacts associated with local minimum wage requirements exceeding the DOL amounts are allowable and reimbursable, when accounted for and included in the negotiated contract pricing. Contractors seeking contract modifications to existing fixed-price contracts for the recovery of increased employee wages that were not considered during the bidding or pricing process, may be denied based on this CBCA decision.

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