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Government Contractors Beware: No Easy Relief if Local Minimum Wages Exceed DOL Wage Determinations

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Last week, in a case of first impression, the Civilian Board of Contract Appeals ("CBCA") denied a federal contractor's request for a contract adjustment to account for a change to the local county's minimum wage rate, which was higher than the federal prevailing wage in the contract. The dispute concerned the contractor, Didlake, Inc's ("Didlake"), appeal for increased payment for janitorial services provided at the United States Food and Drug Administration's ("FDA") headquarters in Montgomery County, Maryland.

Didlake is a nonprofit that employs disabled workers under the federal Ability One program, through which a services contract with the General Services Administration ("GSA") was awarded to Didlake. The underlying contract provides for a base year starting on March 1, 2022, and four option years. It incorporated the Federal Acquisition Regulation ("FAR") clauses implementing the Service Contract Labor Standards ("SCLS") and Fair Labor Standards Act ("FLSA"). The contract also incorporated a Department of Labor ("DOL") wage determination reflecting a prevailing wage rate of $15.40 per hour for janitors.

In November 2017, Montgomery County enacted a statute increasing the local minimum wage rate for several jobs, including janitorial services, over time. On July 1, 2022, the minimum wage rate for janitorial services under the local law increased to $15.65, surpassing the federal prevailing wage for the same work. Didlake notified the contracting officer of its plans to request an adjustment based on the increased minimum wage rate. On several occasions, both verbally and by e-mail, the contracting officer confirmed that GSA would honor pricing based on the higher minimum wage rate at the next contract anniversary (March 1, 2023). However, the contracting officer advised Didlake that doing so was not required by the SCLS or FLSA.

Eventually, Didlake formally submitted its request for a price adjustment in line with the earlier discussions. The contracting officer denied the requests, citing a lack of authority to adjust the contract price based on the increased local minimum wage rate. Thereafter, the contractor submitted adjustment requests, claiming increases totaling nearly $80,000. The requests were denied and Didlake appealed.

On appeal, Didlake relied on language in the contract requiring it to comply with all "federal, state, and local standards," arguing this obligation included compliance with the local Montgomery County minimum wage law. The CBCA found this argument unpersuasive, reasoning that the provision did not

mention wages. It further reasoned that Didlake's interpretation would render the contract's provisions concerning wages and the DOL wage determination meaningless. Ultimately, the CBCA determined that the SCLS requires federal contractors to pay workers either at the rate set by the relevant DOL wage determination or, where applicable, the rate set in a collective bargaining agreement.

First, the CBCA highlighted the fact that the DOL wage determination was attached to the contract and because the relevant FAR clause specified application of the DOL wage determination. Second, it cited the relevant FAR clause and concluded that contract price adjustments were only permitted in three specific instances: (1) where there are changes to the prevailing wages in the applicable DOL wage determination; (2) where there is an increased wage determination otherwise applied to the contract by operation of law; or (3) where the FLSA is amended post-award to increase the applicable minimum wage under the FLSA. Finally, the CBCA determined that because the contract was subject to the FLSA and SCLS—neither of which address state or county minimum wage rate rates—the government was no obliged to make a contract price adjustment based on the Montgomery County minimum wage increase.

Accordingly, while Didlake was required to pay its janitorial workers the higher local minimum wage rate, the GSA was not contractually obligated to pay Didlake the difference between the contract wage rate and the local minimum wage rate. The CBCA acknowledged this inequity but found that Didlake's obligation to pay the higher county minimum wage rate existed because Didlake decided to conduct business in a particular geographic area.

Key Takeaways

When it comes to raising the minimum wage, most of the action is at the state and local level. Many states and localities now have minimum wage rates that far exceed the federal minimum wage rate, including the recently increased federal contractor minimum wage rate ($16.20). For example, higher minimum wages exist in, among other places, Flagstaff, Arizona ($17.40), Berkely, California ($18.07), Denver, Colorado ($18.29), Washington, D.C. ($17.00), and Seattle, Washington ($17.25 and above). In most cases, state or local legislation increasing minimum wage rates do so over a period of years, with incremental increases on an annual basis.

Accordingly, the CBCA's decision serves as an important reminder for government contractors performing work covered by the SCLS to account for any applicable local or state minimum wage rates when preparing bids for government contracts. This includes consideration of any scheduled increases that are not yet effective. Failure to do so may result in increased project expenses and undermine profitability on a particular project.