SCA-39

June 27, 1979 (3.5 minutes)

This is in reply to your recent letter requesting clarification of the Department of Labor's position with respect to the provisions of section 4.165(c) of Regulations, 29 CFR Part 4, in light of the statutory requirements of sections 2(a)(1) & (2) and 4(c) of the Service Contract Act, as amended in 1972. Apparently, a constituent has suggested that the provisions of section 4.165(c) of the Regulations are no longer valid and that the 1972 Amendments allow a contractor to pay in accordance with its own collectively bargained rates in lieu of the wages and fringe benefits found to be prevailing in the locality.

The legislative history of the 1972 Amendments makes it very clear that "sections 2(a)(1), 2(a)(2), and 4(c) must be read in harmony to reflect the statutory scheme." (S. Rept. 92-1131, 92nd Cong., 2nd Sess. 4.) Therefore, since section 4(c) refers only to the predecessor contractor's collective bargaining agreement, the reference to collective bargaining agreements in sections 2(a)(1) and 2(a)(2) can only be read to mean the predecessor contractor's collective bargaining agreement. The fact that a successor contractor has its own collective bargaining agreement does not negate the clear mandate of the statute.

Wile the Amendments of 1972 were intended "to explicate the degree of recognition to be accorded collective bargaining agreements" (Id., p 4) they did not change the chief statutory objective of assuring that "service employees are paid at least the prevailing wages and fringe benefits for the same work in their locality ***" (Id., p. 1; emphasis added). To allow a contractor to pay lower wage rates than those established as prevailing in a locality, as a result of collective bargaining, would be contrary to the dominant purpose of the Act. It would also provide for multiple wage standards in a single bid solicitation to the detriment of a nonunion contractor required to base its bid on the higher "prevailing in the locality" wage rate in the wage determination.

The instant proposal allowing a contractor to bid on the basis of its own collective bargaining agreement was previously considered in 1975. However, after Congressional and public hearings on those proposed regulations, the provision which would have allowed a contractor to use its own collective bargaining agreement was rejected on the basis of the evidence presented which clearly demonstrated that such a procedure was contrary to the intent of the statute.

We agree that variance hearings pursuant to section 4(c) of the Act may be invoked to determine whether rates set forth in the predecessor contractor's collective bargaining agreement are substantially higher or lower than the rates prevailing in the locality. In fact, both types of variance hearings have been conducted in the past. However, this is a separate issue and does not affect our position that the successor contractor's collective bargaining agreement is immaterial and irrelevant to the successor's obligations under the Service Contract Act. The requirements of section 4(c) apply only if the predecessor contractor's employees were paid in accordance with the predecessor's collective bargaining agreement and such bargaining agreement was not contrary to the predecessor's obligations under the Service Contract Act.

Accordingly, even though section 4.165(c) of Regulations, 29 CFR Part 4, has not been revised since its issuance in 1968, the interpretation set forth therein remains valid and is not contrary to the 1972 Amendments to the Service Contract Act.

Sincerely,

Donald Elisburg
Assistant Secretary