UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

DENIED: April 23, 2024

CBCA 7769, 7911

DIDLAKE, INC.,

Appellant,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent.

Charlotte R. Rosen of Odin Feldman Pittleman PC, Reston, VA, counsel for Appellant.

Michael Converse, Office of General Counsel, General Services Administration, Washington, DC, counsel for Respondent.

Before Board Judges **SHERIDAN** and **CHADWICK**.

SHERIDAN, Board Judge.

Didlake, Inc. (Didlake) holds a multi-year contract with the General Services Administration (GSA) to provide janitorial and related services at the United States Food and Drug Administration (FDA) White Oak campus in Maryland. Didlake's appeals pose the questions as to (1) whether an increase in the local (county) minimum wage applies to the contract, as opposed to a Department of Labor (DOL) wage determination, and (2) if so, when the wage increase became applicable. Didlake elected the accelerated procedure of Board Rule 53 (48 CFR 6101.53 (2023)) and submitted the case on the written record under Rule 19. We deny the appeals because the county's implementation of a minimum wage did not entitle Didlake to a price adjustment.

Background

In November 2017, Montgomery County, Maryland, the jurisdiction in which the FDA White Oak campus is located, enacted a statute addressing minimum wage rates for several jobs, including janitorial services, which are the subject of this contract. *See* Montgomery County, Md., County Code, ch. 27 § 68 (2017). This was not an issue until the wage rate of janitors rose to $15.65 per hour, effective July 1, 2023, to be adjusted on July 1 of each year. When that happened, Didlake demanded to be paid the higher $15.65 county wage rate instead of the lower wage rate of $15.40 per hour for janitors under DOL WD [Wage Determination]-2015-4269, Revision 17 (Dec. 27, 2021) (DOL Revision 17).

Didlake's contract was awarded through the Ability One program for people with disabilities. It provides for a base year beginning on March 1, 2022, and four option years, plus an optional six-month extension after the fourth follow-on year. The contract is firm-fixed-priced and "performance based," meaning that Didlake is required to satisfy performance standards rather than applying any specified approach.

The contract is subject to the Service Contract Labor Standards (SCLS), formerly known as the Service Contract Act (SCA), and the Fair Labor Standards Act (FLSA). The contract incorporates Federal Acquisition Regulation (FAR) clauses 52.222-41 and 52.222-43 (48 CFR 52.222-41, -43 (2022)), which implement the SCLS and FLSA. In addition, the contract includes the prevailing DOL wage determination for Montgomery County, Maryland. DOL Revision 17. The DOL wage determination provided for a rate of $15.40 per hour for service employees classified as janitors, the only classification of SCLS-covered employees that Didlake utilizes for this contract. Didlake's proposal, which was incorporated into the contract, used the hourly rate of $15.40 to develop its price. We see no reference to the Montgomery County minimum wage rate in the contract.

Section I, of the contract, titled "Contract Clauses," details the terms and conditions of the contract and makes extensive reference to both the FAR and the General Services Administration Regulation/Manual (GSAR/M), including FAR 52.222-43, titled "Fair Labor Standards Act and Service Contract Act - Price Adjustment (Multiple Year and Option Contracts). As its title suggests, this FAR clause details the authority and process for adjusting the contract price on account of the requirements of the FLSA and SCLS.

In another section, titled "Supplemental Terms and Conditions," the contract "incorporates" the then-latest, applicable DOL wage determination, DOL Revision 17. This wage determination details the applicable wage rates under the contract at the time of award, including $15.40 per hour for the janitor classification.

On June 3, 2022, Curtis Salter, a Didlake officer, emailed the contracting officer, stating that effective July 1, 2022, Didlake would be subject to a minimum wage of $15.65

per hour in Montgomery County. Mr. Salter added that Didlake planned to submit a request to GSA for this increase. On June 16, 2022, the contracting officer responded that GSA would honor the higher of either the federal prevailing wage determination for janitors or the county minimum wage in effect at the next contract anniversary, March 1, 2023. The contracting officer added: "From my consultation with the services team, I understand the approach described above is a common practice. However, I would like to be clear that this approach is not compelled by statute (FLSA, SCLS) or equity."

After further correspondence, the contracting officer reiterated by email on July 11, 2022, that "as a gratuitous concession, GSA is willing to honor pricing based on whichever wage rate is higher at the time of next contract Follow-On Year (March 1, 2023)," but not as of July 2022. It appears that GSA representatives, including the contracting officer, repeated the offer on a conference call with Didlake the following day.

On July 29, 2022, Didlake submitted a request for a price adjustment for the county minimum wage along with supporting data. The contracting officer denied the request on August 2, 2022, writing, "As previously articulated, there is no authority to adjust the contract price on account of the basis Didlake has cited."

On December 20, 2022, Didlake submitted the adjustment request as a claim in the amount of $32,787.32. The contracting officer denied the claim on February 17, 2023. Didlake submitted a second claim on August 15, 2023, seeking, on the same basis, $46,015.60 for the period from July 1, 2023, through February 2024. The contracting officer denied that claim on October 13, 2023. Didlake timely appealed both denials; the appeal of the February 17, 2023, denial was docketed as CBCA 7769, and the appeal of the October 13, 2023, denial was docketed as CBCA 7911.

The Board consolidated the appeals, which were submitted on the record on an expedited basis at Didlake's election. *See* Rules 19, 53. The case was fully briefed.

Discussion

We decide the appeals de novo, so the parties start with a clean slate and the contracting officer's decision is not presumed to be correct. *Wilner v. United States*, 24 F.3d 1397, 1401-02 (Fed. Cir. 1994) (en banc). We begin by noting that we need not address the date for implementation of the county wage rate because that wage rate does not apply to this contract. As detailed below, the SCLS and FLSA, and their respective clauses contained in the contract, as well as the contract's incorporation of DOL Revision 17, make clear that $15.40 is the appropriate rate to apply to this contract during the time periods at issue.

These appeals raise questions of contract interpretation regarding whether the higher county wage took precedence over the wage set by the DOL wage determination. To resolve

an issue of contract interpretation, we look first to the plain language of the contract. *Foley Co. v. United States*, 11 F.3d 1032, 1034 (Fed. Cir. 1993). When interpreting a contract, the document must be considered as a whole and interpreted so as to harmonize and give reasonable meaning to all of its parts. *McAbee Construction, Inc. v. United States*, 97 F.3d 1431, 1434-35 (Fed. Cir. 1996). An interpretation that gives meaning to all parts of the contract is to be preferred over one that leaves a portion of the contract useless, inexplicable, void, or superfluous. *Gould, Inc. v. United States*, 935 F.2d 1271, 1274 (Fed. Cir. 1991).

Under the SCA, and later the SCLS, contractors are "obligated to pay their service workers the prevailing wage rates as set forth either in a wage determination issued by the [DOL] or in an applicable collective bargaining agreement." *SecTek, Inc. v. National Archives & Records Administration*, CBCA 5036, 17-1 BCA ¶ 36,735, at 178,904 (citing *Lear Siegler Services, Inc. v. Rumsfeld*, 457 F.3d 1262, 1266 (Fed. Cir. 2006) (referencing the SCA)). In pertinent part, FAR 52.222-41(b) provides:

> (b) Applicability. This contract is subject to the following provisions and to all other applicable provisions of 41 U.S.C. chapter 67, Service Contract Labor Standards, and regulations of the Secretary of Labor (29 CFR part 4). This clause does not apply to contracts or subcontracts administratively exempted by the Secretary of Labor or exempted by 41 U.S.C. 6702, as interpreted in subpart C of 29 CFR part 4.

48 CFR 52.222-41(b).

DOL issues wage determinations for different, specific geographical areas. The applicable DOL prevailing wage determination, DOL Revision 17, which covers Montgomery County, Maryland, was attached to the contract and set the hourly rate for janitors at $15.40 per hour.

In the event that the prevailing wage rate or collective bargaining wage rates "are subject to an increase during a period of contract performance, FAR clause 52.222-43, Fair Labor Standards Act and Service Contract Labor Standards, Price Adjustment (Multiple Year and Option Contracts), comes into play, entitling the contractor to a price increase in the option years if a new wage determination causes the contractor to pay increased wages or benefits." *SecTek, Inc.*, 17-1 BCA at 178,904 (citing *Lear Siegler*, 457 F.3d at 1266).

Whether a local state or county wage rate should prevail over a DOL wage determination appears to be a case of first impression for this Board. There are several reasons why we conclude the DOL's Revision 17 to be the applicable wage determination here. First, the DOL wage determination was attached to the contract, and FAR 52.222-41(b) and 52.222-43(d) specify that DOL wage determinations apply. *See Call Henry, Inc. v. United States*, 855 F.3d 1348, 1351 (Fed. Cir. 2017) ("For multi-year and option

contracts . . . the applicable SCA Price Adjustment Clause is FAR 52.222-43."). Second, longstanding and often quoted case law provides that "a contractor is entitled to a price adjustment to reflect increased labor costs associated with complying with an increase in the FLSA minimum wage rate, DOL prevailing wage rate, or the predecessor contract's collective bargaining agreement." *Id.*; *see Parsons Government Services*, ASBCA 61630, 20-1 BCA ¶ 37,655, at 182,816 ("The SCA Price Adjustment Clause mandates contractor compliance with the DOL wage determination in effect at specific points in a contract's life, such as the anniversary date of a multiple year contract or the beginning of each option period.").

Contract price adjustments—to account for changes to wages—only allow for adjustments in three specific instances: 1) where there is a change to the wages and/or benefits in the applicable DOL prevailing wage determination; 2) where there is an increased or decreased wage determination otherwise applied to the contract by operation of law; or 3) where the FLSA is amended after contract award to increase the FLSA minimum wage. FAR 52.222-43(d).

Reading the contract as a whole, it is clear that the contract before us is subject to the FLSA and SCLS. The SCLS and FLSA, and the related regulations in the contract, do not address state or county minimum wages such as Montgomery County's 2017 minimum wage increase. The Government's obligation to make a contract price adjustment to account for changes to wages is limited to the situations detailed in FAR 52.222-43. GSA argues that, "[w]hile Didlake may have obligations independent of the terms of its contract with GSA to pay different wages—such as local minimum wages—its entitlement to a contract price adjustment is not coterminous with what it might be obligated to pay its employees."

In support of compensating Didlake for paying the higher county wage, Didlake references section C.2.0, within the "Objectives and Scope" section, which requires the contractor to perform "work . . . in accordance with all Federal, State and local standards." Similarly, section C.18 of the contract, titled "Federal Requirements," emphasizes the contractor's obligation to abide by all "Federal, State and local laws, regulations, and codes: including any supplements or revisions as specified in the table below." This section lists numerous federal, industry, and local regulatory standards for areas ranging from energy efficiency to occupational safety.

The "Objectives and Scope" and "Federal Requirements" sections of the contract are part of the larger section C, titled "Description/Specification/Statement of Work." As this title suggests, section C and its subordinate sections describe the work to be performed under the contract as well as the specifications or standards for that work. However, section C does not mention wages or wage determinations (either DOL or local). Didlake's interpretation of section C to justify a price adjustment is not harmonious with the wage-specific clauses in the contract or a reading of the contract as a whole. Applying Didlake's interpretation of

section C would, thus, render meaningless the clauses in the contract that specifically address wages and wage determinations.

Didlake's obligation to abide by the county minimum wage—or any number of other Federal, State, or local requirements—exists by virtue of its choice to conduct business in a particular field of business and in geographic areas subject to a local minimum wage. However, the terms of the GSA contract itself limits Didlake to a different wage standard altogether, the applicable DOL prevailing wage determination incorporated into the contract. Ordinarily, the prevailing DOL wages are higher than any of the other wage rates by which a contractor may be independently required to abide, but the terms of the contract are clear: Didlake is contractually required to pay wages set forth in DOL Revision 17 but, under the terms of the contract, is not entitled to a price adjustment for paying the higher Montgomery County wages. FAR 52.222-43, which was included in the contract, reaffirms the applicability of the DOL wage rates and addresses the details of the payments.

Decision

The appeals are **DENIED**.

Patricia J. Sheridan
PATRICIA J. SHERIDAN
Board Judge

I concur:

Kyle Chadwick
KYLE CHADWICK
Board Judge