



A PilieroMazza Update for Federal Contractors and Commercial Businesses

What to Expect When You Are Expecting a Price Adjustment: The ABCs and CBAs of Increased Labor Rates

By Sarah Nash



The Agency accepted your bid and you have begun performance on the contract. You invested countless hours and dollars into providing the perfect, winning bid. But then the unthinkable happens, several months into performance, the DOL advises you that you have been underpaying workers in violation of the SCA. It turns out that the SCA was not properly incorporated into your initial contract, but the Government has now corrected the error through a contract modification. You now owe your employees backpay and will incur significant unanticipated costs to complete contract performance.

Unfortunately, this situation is not uncommon. Whether a prevailing wage law is inadvertently omitted from a contract or the costs of complying with the prevailing wage law increase for some other reason, contractors can seek reimbursement from their contracting officer. This article addresses best practices in submitting price adjustment requests so that contractors can position themselves for prompt payment.

The SCA, along with the DBA, set minimum wage rates for federal contracts in the service and construction industries. Both acts require that prime contractors and subcontractors pay workers on such contracts not less than the wages and benefits included on the applicable wage determination, or in the case where workers have a collective bargaining agreement (CBA) in place, no less than the amount paid under the CBA by a predecessor contractor. However, as illustrated above, sometimes the appropriate prevailing wage law is left out of the solicitation or contract, the wrong wage determination

is included, or the wage determination or CBA rates are increased. In any of these scenarios, the contract should be modified by the contracting officer to include the correct prevailing rates and, when that happens, the contractor is required to ensure that the construction or service employees working on the contract are paid the newly applicable rates.

Whatever the reason for the increase in labor rates, the important thing to remember is that the cost of these incidents need not necessarily be borne by the contractor. The price adjustment clauses of the Federal Acquisition Regulations (which are automatically incorporated into a contract alongside the prevailing wage laws) provide contractors working on firm-fixed price and labor-hour contracts with an avenue whereby they can request that the government “adjust” the price of a contract in order to make up for increased wages and benefits. If all requisite conditions are present, the government is contractually required to pay for the increased costs.

There are several important things to remember when leading up to and requesting a price adjustment:

1. Think carefully before including escalation due to labor costs when bidding on a DBA or SCA contract. Including escalation will prevent you from taking advantage of a price adjustments clause.
2. A price adjustment is based on the difference between what the contractor actually paid its employees before the change, and what the contractor is now required to pay employees as a result of the change. It is not based on the previous wage determination rates. Contractors need to keep this in mind when making increases to employee pay before the contract is modified to

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include new rates. If you provide increases earlier, you risk footing the bill.

3. A request for price adjustment must include supporting documentation (such as payroll data) showing the amounts that have already been paid and the amounts that will be paid to employees as a result of change in the contract.
4. A request for adjustment may include costs as a result of changes in social security, unemployment taxes, and workers' compensation insurance, but not changes to general and administrative costs or profit.
5. Price adjustments also include costs due to increased fringe benefit costs, such as health and welfare, vacation, holidays, and sick days. They do not, however, include costs that reimburse employees, such as for travel expenses, uniform allowances, or per diem rates – such costs are considered business expenses, not wages or fringe benefits.

Contractors should pay close attention to applicable wage determinations at every phase of a contract. This means being mindful of references in a solicitation to a prevailing wage law and whether there is an associated wage determination as well as whether any wage determination changes have been incorporated into the contract. When drafting a request for a price adjustment, make it as clear and concise as possible. Contracting officers are only human after all, and the easier for them to understand what is being asked of them, the easier it will be to process your request efficiently.

At the end of the day, it is the contractor's responsibility to request a price adjustment and a failure to do so – or for that matter, to do so but without success – does not eliminate the responsibility to properly compensate employees. This makes it critically important to pay close attention to how your price adjustment request is submitted to a contracting officer. Should your request be denied and you cannot resolve the government's concerns, you may need to file a claim to recover the funds owed to you.

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