

DECISION



R. J. Michman, Attorney
**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

7980

FILE: B-191820

DATE: October 11, 1978

MATTER OF: Angelo Doveri Sons' Co.

DIGEST:

Protest against Department of Labor's use of Burns, Oregon, rather than John Day in its wage determination may not be considered by GAO since correctness of wage determination made by Department of Labor is not subject to review by GAO. Contractor requested change from Department of Labor and was denied.

Angelo Doveri Sons' Co. (Doveri) was awarded U.S. Department of Agriculture Forest Service Contract No. 006376C for the construction of a by-pass road in the Malheur National Forest, Oregon.

Doveri requests that the contract be reformed so that John Day, Oregon, instead of Burns, Oregon, can be designated as the labor source for the contract. Doveri states as its reasons for the requested change that: (1) the geography of the state is such that to reach the construction project from Burns, it is necessary to drive 98 miles and traverse two mountain passes; (2) there is a sufficient supply of construction labor in John Day, only 28 road miles away; (3) the use of Burns as a labor source imposes an unjustifiable added cost to the completion of the contract because it will require the payment of travel never made. Doveri states that it was aware of the geographical location of the two cities at the time of bidding and used John Day as the logical local labor market. Doveri advised the contracting officer of its use of John Day as a labor source at the prejob conference prior to the start of actual construction. Doveri has submitted a certified copy of its work sheet as evidence that it used John Day in computing its labor cost.

The contracting officer recommends that Doveri's request be granted based primarily on the fact that the contractor is paying wage rates based on Burns for laborers and mechanics hired in John Day, which in effect, requires payment for travel that is not performed.

Wage Determination Decision No. OR77-5033 was incorporated into the solicitation during the bidding period by Amendment No. 1. The amendment was acknowledged by the contractor with

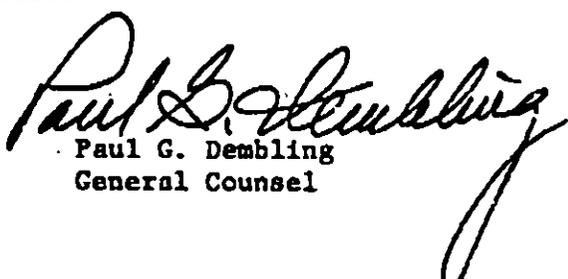
his bid and incorporated into the contract. The Wage Determination listed basic hourly rates for the state of Oregon and in addition contained a zone wage scale applicable from Burns. John Day was not listed.

Although the contracting officer states that the contractor's request is tantamount to a claim of mistake in bid disclosed after award, we note that no mistake is either alleged or shown. Thus, the claim is in effect a protest of the use by the Department of Labor of Burns rather than John Day in its schedule of wage rates.

In regard to this matter, the courts have held that the correctness of a prevailing wage determination made by the Secretary of Labor is not subject to judicial review. See United States v. Binghamton Construction Co., 347 U.S. 171 (1954); and Nello L. Teer Co. v. United States, 348 F.2d 533 (Ct. Cl. 1965). We have construed the former decision as precluding this Office from reviewing the correctness of a wage determination in situations such as we have in the present case. Associated General Contractors of America, Inc., Arkansas Chapter, B-190775, January 17, 1978, 78-1 CPD 40.

Dovari has availed itself of its right to challenge a Department of Labor wage determination under the provisions of 29 C.F.R., part 7 (1976), and was denied by letter of August 10, 1978.

In these circumstances, we are unable to take any action in connection with this protest.


Paul G. Dembling
General Counsel