

7-31-2013

Leasing ALERT!!! Davis Bacon Act and Leasing

Our current policy requires that Contracting Officers include the "Labor Standards" paragraph in lease procurements when the delivery schedules are long enough to permit satisfaction of the lease requirements through construction of a building. In addition, lease contracting officers are required to include a copy (as an attachment to the RLP) of the appropriate Department of Labor wage determination for the applicable geographical area in a lease procurement which include the "Labor Standards" paragraph.

We have been asked whether GSA is required to keep the "Labor Standards" paragraph and wage determinations (and keep them up-to-date) in the lease procurement even when GSA does not receive any lease construction offers at the due date for initial offers. In such situations, if the GSA Form 3516 contains the standard language in GSAM 552.270-1(c)(2)(i) that states that the Government will not consider offers received after the due date for initial offers, GSA lease contracting officers may amend the draft Lease to delete the "Labor Standards" paragraph and are not required to update the wage determinations. However, in such situations, if the GSA Form 3516 contains the alternate language from 552.270-1(c)(2)(i) that allows the Government to consider offers received up to the due date for final proposal revisions, GSA must keep the "Labor Standards" paragraph in the draft lease and continue to update the wage determinations.

Also, as a reminder, if a change occurs to the wage determination after the receipt of Final Proposal Revisions but prior to lease award, GSA is required to reopen negotiations to allow the offeror to revise its price. For changes to the wage determination after lease award, the Civilian Board of Contract Appeals has held that modifications to the wage rates are not required to be implemented into existing contracts post award except where a mistake has been made, e.g., not incorporating one at all, or inserting the wrong determination.

We intend to update the Leasing Desk Guide in the near future to reflect this clarification.

If you have any questions, please call me at 202-501-2454.

Thank you.

John D. Thomas

Director, Center for Lease Policy