

STATE OF TENNESSEE
OFFICE OF THE
ATTORNEY GENERAL
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February 12, 2007

Opinion No. 07-15

Prevailing Wage Rates in State Construction Contracts.

QUESTION

If a state construction contract is let for bids in 2006 and the construction project is not scheduled to start until August, 2007, should the December 1, 2004, or the November 29, 2006, schedule of wages be attached to and made a part of the specifications for the work, printed on the bidding blanks, and made a part of the contract?

OPINION

Under the circumstances you have outlined, the December 1, 2004, prevailing wages rates should be made a part of the contract.

ANALYSIS

In your letter requesting the opinion of this Office, you provide the following background for your inquiry:

Under the Prevailing Wage Act of 1975 (“Act”), it is the duty of the Prevailing Wage Commission to determine the prevailing wage rates that should be paid to workers on state construction projects. Tenn. Code Ann. § 12-4-405(4) provides in pertinent part that “the Commission shall determine the prevailing wage . . . biennially for building construction from the documentation certified to the Commission . . .” Prevailing Wage Commission Rule 0800-3-2-.03 regarding effective dates provides in pertinent part that “. . . The building wage rate promulgated by the Commission will be effective from the first day of January after the building rate is set and will remain in effect for two (2) years ending on December 31 of the second year.”

On December 1, 2004, the Commission set the prevailing wage rates for workers employed by building contractors. The effective dates for those rates were from January 1, 2005 to December 31, 2006. On November 29, 2006, the Commission also set the final prevailing wage rates for workers employed by building

contractors. The effective dates for those rates are from January 1, 2007, to December 31, 2008.

The Act also mandates that before advertising for bids or entering into any contract for a state construction project that every state agency under whose jurisdiction such work is to be performed shall ascertain from the Commission the prevailing wage rates for workers. A schedule of wages must be attached to and made a part of the specifications for the work, printed on the bidding blanks, and made a part of every contract for the construction of any state construction project. Tenn. Code Ann. § 4-4-407.

State agencies have received from the Commission the December 1, 2004 and November 29, 2006 final prevailing wage rates for workers employed by building contractors.

The answer to your inquiry appears to be found in Rule 0800-3-2-.04 of the Prevailing Wage Commission Rules, which states as follows:

The bid specifications issued by the contracting agency for a state construction project shall include the prevailing wage rates that are in effect on the date the bid is advertised. The same rates that are contained in the bid specifications shall be made a part of the contract awarded pursuant to the bid. (Emphasis added).

Bids are advertised to the public as one of the first steps in public contracting. Advertising a bid to the public generally means that information is made available to the public regarding the proposed project, commencing the time during which members of the construction community may submit bids to perform the work encompassed in the project. At a predetermined date, the bids are opened and the contract is “let,” or awarded, to one bidder. Subsequent to the award, a contract is executed by the parties, after which the construction project may commence.

Accordingly, under the circumstances you describe, and in accordance with Rule 0800-3-2-.04, the prevailing wage rates that were in effect on the date the bid was advertised, in 2006, should be incorporated into both the bid specifications and the construction contract itself.

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