



In the Matter of:

RAYTHEON SYSTEMS COMPANY
(formerly Hughes Technical Services),
Prime Contractor and Cubic Corporation,
Subcontractor,

ARB CASE NO. 98-157

DATE: December 17, 1999

Re: Contract No. N613339-94-C-0027,
Ft. Irwin, California

Appearances:

For the Petitioners:

Gregory D. Wolflick, Esq.,
Glendale, California

For the Respondent:

Steven J. Mandel, Esq., Douglas J. Davidson, Esq., Ford F. Newman, Esq.,
U.S. Department of Labor, Washington, DC

For Intervenor Voice and Video Control and Editing Center DOL Committee:

Marcus Bunnett,
Barstow, California

ORDER TO SUPPLEMENT RECORD

This case arises under the McNamara-O'Hara Service Contract Act of 1965, as amended, 41 U.S.C. §§351-358 (1994), and implementing regulations at 29 C.F.R. Part 4 (1999). Raytheon Systems Company and Cubic Corporation petition for review of administrative action by the Acting Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor (Administrator). The Administrator denied the Petitioners' request for reconsideration of a conformance action adding the classifications of Audio Visual Specialist I, II and III to a procurement contract at the National Training Center, Ft. Irwin, San Bernardino County, California (Contract No. N61339-94-C-0027).

In his Opposition to the Petition for Review, the Administrator states that the conformed wage rates for the classifications were determined by (1) establishing the corresponding Federal Grade Equivalencies (FGEs) for the classifications and (2) averaging the rates of classifications with equivalent FGEs within an occupational category of the wage determination containing comparable positions. The Petitioners complain that they have been denied adequate process in part because the Administrator failed to disclose the calculations which resulted in the conformed wage rates.

We agree with the Petitioners that the record contains no evidence establishing the specific means used to derive the conformed rates. The Administrator has not explained, in any detail, the process which resulted in adopting FGEs of GS-7, GS-9 and GS-11 or the process used to achieve the averaging result. The record is silent, for example, as to the performance assessments used to determine the FGEs or which classifications were averaged to determine wage rates for the Audio Visual Specialist II and III classifications. Indeed, on the present record we are unable to determine whether the two-step procedure described generally in the Administrator's ruling actually was employed in conforming the rates or, if employed, whether it was employed correctly. The Division has represented that it employed a certain procedure in the conformance process. If the Petitioners are to have a meaningful opportunity to challenge the conformance results, the Administrator must submit evidence substantiating that procedure and its application.

This case has been pending before the Board for a significant time, and the Board is well aware of the need to reach a decision in this matter expeditiously. However, it is essential that the record before us be complete, so that we can assess the Administrator's determination and the Petitioners' appeal fairly. Accordingly, we permit the Administrator a period of 20 days to supplement the record with evidence of specific procedures used and their application in this matter. The Petitioners and other interested parties may file a response of no more than 15 pages in length within 15 days of their receipt of the Administrator's submission. Any response will be limited to the following issues: whether as the result of the Administrator's submissions the Petitioners have received adequate process; and whether the Administrator's use of the proffered methodology is consistent with the statute and regulations, and is reasonable. Requests for enlargements of time to meet filing schedules will be strongly disfavored.

SO ORDERED.

PAUL GREENBERG

Chair

E. COOPER BROWN

Member

CYNTHIA L. ATTWOOD

Member