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U. S. DEPARTMENT OF LABOR  
Employment Standards Administration  
Washington, D. C. 20210

As a result of labor standards investigations for compliance with the Walsh-Healey Public Contracts Act, our Regional Offices have recently brought to our attention the fact that secondary contracts, and in some cases, prime contracts, in the form of Purchase Notice Agreements calling for the furnishing and delivery of nonperishable subsistence items entered into by various components of the Department of Defense with wholesale food distributors, do not contain either directly, or indirectly by reference, the stipulations and representations required by section 1 of the Walsh-Healey Public Contracts Act.

With respect to prime contracts which do not contain the required stipulations, we are enclosing as examples copies of the contract documents (Exhibits 1 and 2). Regarding the secondary contracts under which the wholesaler furnishes, i.e. delivers, products to military commissaries pursuant to agreements with the Government prime contractor and orders issued by local commissary officials, we are enclosing copies of sample agreements between the prime and secondary contractors and purchase orders issued by the military pursuant thereto (Exhibits 3-11). While the above documents relate to our findings with respect to one firm, our understanding is that the noninclusion of the required stipulations is a widespread practice.

As you are aware, it has been the consistent position of the Department of Labor that delivery of goods constitutes the "furnishing" of goods within the meaning of the act, and that secondary contractors engaged in the transportation or delivery on behalf of the prime contractor of the products called for by a covered Government contract are deemed to be "substitute contractors" and subject to the act.

Although it also has been our position that prime contractors are liable for the violative breaches of the act committed by their covered substitute contractors, and we could proceed with enforcement action

Accordingly, we are requesting your assistance in seeing that all necessary steps are taken to insure that prime contractors include the required stipulations in their agreements with their covered secondary contractors and further, that the appropriate procurement officials of your Department see that such stipulations are included in all prime contracts issued by them and in the individual purchase orders issued pursuant to all covered Blanket Purchase Notice Agreements covered by the act. Such action on your part will eliminate what appears to be substantial confusion in the industry as to the application of the act and will insure that the employees performing on such contracts will receive the labor standards benefits to which they are entitled by law.

Our staff will be pleased to discuss this matter with you further and assist in any way we can in resolving any problems in this area.

Sincerely,

Ben P. Robertson  
Acting Administrator  
Wage and Hour Division

Enclosures