

## **DBRA-29**

March 3, 1976

This is in reference to your request for a ruling pursuant to Regulations, 29 CFR Part 5.12 as to the applicability of the Davis-Bacon Act to an employee who performed concrete and soil tester's work for the \*\*\*.

Based on the information which has been submitted, the employee was engaged by the contractor to perform soil sampling and testing activities as specified in the Quality Control Provision of the contracts. In this regard, the contractor was required to test the soil and concrete samples in accordance with ASTM Standards to determine moisture density, inplace density, gradation, and the liquid limit and plasticity index of select subgrade material. In general, the employee was required to go out to various sites on the projects to dig up soil by using compaction hammers, sieves, shovels, spoons, and mullets. The amount of the material extracted from the location varied depending on the requirements of the individual tests; however, it was often necessary for the employee to dig up as much as 75 to 100 pounds of dirt. The dirt was then loaded and transported in buckets or bags to the laboratory which was located in the contractor's yard on the job site.

Although in most instances the testing and analyzing of the samples was done at the laboratory, for at least one test, the concrete slump test, all the work involved was accomplished in the field, not in the laboratory. According to the affidavit of the Civil Engineering Technician, the employee spent approximately 40 percent of his time digging up dirt and taking concrete samples and loading and transporting this material to the laboratory. Of the remaining time, the employee spent approximately 45 percent of his time performing testing activities in the lab and 15 percent of the time filling out soil data reports. This allocation of time is consistent with the employee's breakdown as well as the Time and Motion Study for Soil Tester prepared by your agency.

In this situation, the question of coverage would appear to involve two basic issues. First, does the work performed by this employee constitute construction, alteration, and/or repair? Second, is the individual employed in the work of a laborer or mechanic within the meaning of the Davis-Bacon Act?

Since the soil testing activity is performed during actual construction on the project site and is required by the contract specifications, such work would be deemed construction work within the meaning of the Act.

With regard to the duties performed by this employee, it is clear from the information submitted that the primary duties of this employee when working in the field constituted manual labor, such as digging up dirt, taking concrete samples, and loading and transporting the equipment and samples. He was therefore a "laborer or mechanic" within the meaning of the Davis-Bacon Act for the time so employed. Because his duties in the field are clearly more skilled than those of a "laborer" and were a part of the soil testing activity, "soil tester" appears to be the applicable

classification. The time spent in the laboratories appears to be primarily of a technical nature rather than manual labor, and therefore the employee would not be covered by the Act for the time so employed.

Sincerely,

Ray J. Dolan  
Assistant Administrator