

DBRA-54

November 1, 1977

This is in reply to your letter of August 8, 1977 to our ... Regional Office concerning the applicability of the Davis-Bacon Act labor standards provisions to truck owner-operators.

As we understand the hypothetical situation set forth in your letter, a general contractor (designated as AB, a joint venture) has subcontracted with a partnership (T) to deliver materials to the site and to shuttle materials on the site.

Although truck drivers are laborers and mechanics within the meaning of the Davis-Bacon Act, and the Contract Work Hours and Safety Standards Act, as a matter of administrative policy, the provisions of these Acts are not applied to truck owner-operators who are bona fide independent contractors. In connection with the foregoing, we are enclosing a copy of IB-9 which set forth the Department's position in this matter.

In reply to your particular questions, assuming that the members of the partnership (T) are bona fide independent truck owner-operators, it would only be necessary for both T and AB to show on their certified payrolls the names of the members and the notation "owner-operator." However, if the members of the partnership are not bona fide independent owner-operators, the names of such individuals as well as all other information required by section 5.5(a)(3) of Regulations, 29 CFR Part 5, copy enclosed, must be shown on the general contractor's certified payrolls and they must be paid the applicable prevailing wage rates.

With regard to the truck owner-operators whom the partnership (T) engages to perform hauling work, these individuals may be shown on the partnership's certified payrolls with the notation "owner-operator," if they are bona fide independent contractors. If not, the information required by section 5.5(a)(3) must be shown on T's payrolls and they must be paid the applicable prevailing wage rate. In either case, they need not be carried on the general contractor's own payrolls.

In accordance with section 5.5(a) of the Regulations, it is the general contractor's responsibility to insure compliance with the applicable labor standards requirements, including the proper submission of certified payrolls for the project. There are no remedies available to a general contractor under the applicable Regulations as such to enforce compliance, however, assistance may be sought from the contracting agency. Furthermore, if the final payment has not been made to the subcontractors, and if your client has inserted the proper labor standards clauses in his subcontract agreements, we assume he may withhold payments to the subcontractor until he has met all of the terms and conditions of his contract, which would include the submission of certified payrolls.

With respect to your statement concerning the interstate delivery of materials, we would like to point out in closing that there is no exception or exemption under the Davis-Bacon Act for the interstate delivery of materials. However, interstate transportation by a common carrier under

published tariffs over regularly scheduled routes would not be subject to the Act. Coverage could only be determined after a careful examination of the facts.

Sincerely,

Ray J. Dolan
Assistant Administrator