

DBRA-89

April 24, 1978

This is with reference to your letter of March 23, 1978 and subsequent meeting on April 10 with members of our staff and counsel regarding the applicability of the Davis-Bacon Act to the construction of the subject projects. The question arises because the vocational center will be partially funded through the Vocational Education Act (P.L. 94-482) and subject to the Davis-Bacon Act prevailing wage standards, whereas the adjoining high school will be built solely with County funds not otherwise subject to Davis-Bacon requirements. The total cost of both buildings is estimated to be \$12 million, of which \$1.3 million in Federal funds are to be provided for the vocational center. You request our opinion under 29 CFR 5.12 as to whether the Davis-Bacon prevailing wage requirements would be applicable to both projects by virtue of the sharing of certain facilities and their contemporaneous construction.

You have indicated that you are in the process of designing the two adjoining structures and, as suggested above, it is planned that some of the facilities will be shared for economy reasons, such as the site work, central mechanical equipment, access roads, and parking lots. You further indicate that common contract documents for the two projects will be issued for bids with one set of plans and one set of specifications. The vocational center would be set out distinctly in the drawings so that the scope of the center is clearly defined on the floor plans and site plans. On the side where the buildings will join there will be separate fire walls so that the two buildings could stand alone except for the corridor and mechanical connections. The bid solicitations will indicate that the vocational center is subject to the requirements of the Davis-Bacon Act and that the academic area is not. Separate proposals would be received for the vocational center and for the academic area. It is possible that low bids for the two parts will come from different general contractors.

Under the circumstances which you have described the construction of the adjoining academic high school would not be subject to the Davis-Bacon Act prevailing wage standards notwithstanding that the two buildings may be built contemporaneously. The provisions of that Act apply only where there is a direct Federal contract for construction or where its provisions have been expressly extended by statute. Under the circumstances here the prevailing wage standards (20 U.S.C. 1232b) have been extended only to the construction project assisted by the Vocational Education Act, Pub. L. 94-482. Since the purpose of that Act is to assist in vocational centers only, rather than academic schools, the construction work on the adjoining academic high school project, to the extent that it can be segregated from work on the vocational center, is not subject to the Davis-Bacon requirements.

Based on your assurances that such segregation of the work on the two projects is both feasible and intended, there is no basis for requiring the payment of Davis-Bacon prevailing wage rates on the academic high school project. However, these rates must be paid on any facilities, such as the mechanical room, which will be shared by both projects.

We appreciate the opportunity to review this matter with you.

Sincerely,

Dorothy P. Come
Acting Assistant Administrator