

DBRA-37

August 10, 1978

This is in reply to your letter of August 2, 1978 regarding the application of the Walsh-Healey Public Contracts Act (PCA) and the Contract Work Hours and Safety Standards Act (CWHSSA) to your firm's government contracts for the supply of office furniture. Copies of these statutes are enclosed for your information.

The CWHSSA applies to contracts for construction (in excess of \$2,000), services, supplies, or other subject matter (in excess of \$2,500) which may require or involve the employment of laborers or mechanics. Section 103(b) of the CWHSSA exempts from its provisions any work required to be done in accordance with the provisions of the PCA. Thus, contracts awarded to your firm for the supply of office furniture which are subject to the PCA would be wholly exempt from the provisions of the CWHSSA if such contracts involved no installation work or only an incidental amount of such work. However, contracts of this type which require more than an incidental amount of installation work may be subject to the CWHSSA, as well as the Davis-Bacon Act or the Service Contract Act, in addition to the PCA. For example, a contract for the furnishing of permanent shelving which also calls for the shelving to be attached to a structure may be subject to the CWHSSA and the Davis-Bacon Act as well as the PCA, while a contract for the furnishing of new draperies for a government building which also requires the installation of the draperies may be subject to the CWHSSA and the Service Contract Act in addition to the PCA. Of course, the question of which government contract labor standards laws apply to a given contract depends on all of the facts in each particular case.

The overtime provisions of the PCA are set forth in section 50-201.103 of 41 CFR 50. As to the differences in the overtime compensation provisions of the CWHSSA and the PCA, we note that while both Acts require the payment of overtime compensation at one and one-half times the basic rate of pay for all hours worked in excess of eight in a day or forty in a work week, whichever constitutes the greater number of overtime hours, there are two significant differences between the CWHSSA and the PCA in the application of this requirement:

- 1) The overtime provisions of the CWHSSA apply to laborers and mechanics performing on the contract, while the overtime provisions of the PCA apply to employees engaged in or connected with the manufacture, fabrication, assembling, handling, supervision, or shipment of materials, supplies, articles, or equipment used in the performance of the contract.
- 2) Under the CWHSSA, only the time spent on covered contract work must be counted in determining whether overtime compensation is due, provided the employer has effectively segregated the non covered work, while the overtime provisions of the PCA apply on the basis of all hours worked in the work week on both contract and non-contract work if an employee spends any part of the work week performing on a covered contract.

We trust that the foregoing constitutes a satisfactory response to your inquiry. However, if you desire additional information, please do not hesitate to contact us.

Sincerely,

Dorothy P. Come
Assistant Administrator

NOTE 1: PCA and CWHSSA no longer require payment of overtime for work over 8 hours per day.

NOTE 2: This letter pre-dates the 1983 SCA regulatory amendments which redefined principal purpose.