

## **DBRA-7**

March 30, 1979

This is in reply to your letter requesting our decision, pursuant to Regulations, 29 CFR Part 5, section 5.12, as to whether building rates or highway rates are applicable to certain portions of the above-captioned contract.

The prime contractor and the subcontractor are contending that the construction of the curb and gutter work, storm sewers, tennis, and basketball courts should be subject to highway rates rather than building rates. The contractors have computed a total of \$3,864.38 which they are claiming should be repaid to them as the result of your agency's enforcement of building rates.

It is your position that building rates should apply to all portions of the project, since only building rates were included in the contract.

However, the wage determination issued by the Department of Labor contained the building wage rates and incorporated the highway rates by reference. Wage Decision \*\*\* specifically indicated that the contract work was both highway and building construction, and in addition to enclosing the building wage rate schedule, directed the agency to "use the area determination issued for this area - Highway Construction".

Under the established procedures, which apparently were not understood by the Bureau, it is incumbent upon the contracting agency to obtain the wage determination currently in effect for highway construction from the Federal Register and to incorporate both the building schedule attached to Decision No \*\*\* and the appropriate highway schedule (Decision No. \*\*, 40 FR 12041, March 14, 1975, together with Modification No. 1, 40 FR 19326, May 2, 1975) in the bid and contract specifications.

In this case, because the contracting agency inadvertently failed to obtain the highway schedule from the Federal Register, as required by the wage determination, the contract did not contain a valid wage determination and the contract should be amended accordingly. See, for example, the attached decision of the Comptroller General on \*\*. In any event, since Decision No. \*\* itself stated that the contract was both building and highway construction and advised that the area decision for highway rates should be used, the contractor was on notice that highway rates applied and enforcement action should not have been taken.

If your agency wishes clarification regarding use of project and area wage determinations, we would be glad to meet with you and discuss this matter further. Enclosed for your information are All Agency Memoranda Nos. 130 and 131, which provide guidance concerning application of multiple wage rate schedules.

Sincerely,

Dorothy P. Come  
Assistant Administrator