DBRA-39

February 8, 1980

This is in reference to your letter requesting a ruling in accordance with section 5.12 of Regulations, 29 CFR Part 5, Subtitle A, as to coverage of certain work performed on the contract by employees of the above referenced subcontractor.

It is the contracting officer's contention that the drilling of "Pilot Holes" by CTL as prescribed in Paragraph 3.2 - Pilot Holes on page 2B-3 of the contract is covered by the labor standards provisions of the contract because it is an integral part of the construction process. In addition, the contracting officer points out that CTL acknowledged that the required labor standards provisions had been incorporated in the subcontract by executing Form DD 1566, Statement and Acknowledgment.

The contractor, through his attorney, contends that the work in question is not covered by the labor standard provisions of the Davis-Bacon Act. This conclusion is based on an opinion letter DB-40, issued by former Solicitor of Labor Charles Donahue dated June 25, 1963.

The contractor's attorney relies on two distinctions made in that opinion letter. First, that the Pilot Holes are not a "public work", and second, the drilling is not an integral part of the actual construction process. He further concludes, that since the work is not covered, the statement signed by his client would be void.

As we understand the situation, the contract specifications (see page 2B-3, 3.2 Pilot Holes) call for the construction of a relief well system at Clendening Lake, Stillwater, Ohio. The specifications of the contract require, among other things, the drilling of "Pilot Holes". Such "Pilot Holes" must be drilled before any relief well drilling is initiated. It is also indicated that "the information from the first six pilot holes shall be used as a basis for ordering well screens, riser pipe, and filter pack material for the first six wells."

Although the pilot holes may not be viewed in and of themselves as a "public work" they are, in the instant case, directly related and incidental to, and an integral part of the actual construction of a "public work", i.e. the "relief wells", which could not be constructed according to the specifications of the contract without the pilot holes. See, e.g., paragraphs 3.2 (concerning the drilling of sample pilot holes to be used as a basis for ordering materials for the wells); 3.7 (the drilling of pilot holes "to further develop and refine the tentative design"); and 7.2 (concerning the drilling of pilot holes at each proposed relief well). In view of the fact that the pilot holes are an integral part of the project, the subcontractor must comply with the labor standards provisions of the Davis-Bacon Act and the Contract Work Hours and Safety Standards Act.
This decision constitutes a final ruling under section 5.12 of the Regulations, 29 CFR Part 5. However, you are advised that in accordance with Section 7.9 of the Regulations, 29 CFR Part 7, Subtitle A, the contractor may file a petition for review of this ruling with the Wage Appeals Board and the contractor's attorney should be so advised. Such petitions for review must be filed within a reasonable period of time (60 days).

We note for your information that the costs incurred by the contractor for the Christmas party, gifts, Christmas bonuses, and large summer picnic are not creditable towards meeting the contractor's fringe benefit obligations under the Davis-Bacon Act.

Sincerely,

Dorothy P. Come
Assistant Administrator