

## **DBRA-31**

September 25, 1980

We apologize for the delay in responding to your request for information on the action your agency should take when a contractor fails to submit certified payroll records as required by section 3.4(a) of the Regulations, 29 CFR Part 3, which are applicable to Federally-funded or assisted construction projects.

The Department does not feel that contractors should be allowed to become delinquent with respect to their obligation to submit payroll records. The primary purpose for the submission of payrolls is to insure that the laborers and mechanics performing on the project are receiving the prevailing wage rates stipulated in the contract. We urge all contracting agencies to continue to follow-up with contractors which have not submitted payrolls within the "seven days after the regular date of the payroll period".

The timely submission, as well as the prompt review of the payrolls by the responsible agency not only benefits the workers but also contractors which may have misunderstood the application of the prevailing wage rates and, as a result, may incur a significant back wage liability. As discussed below, agencies do have the authority to withhold contract payments from contractors for failure to submit payrolls in a timely manner.

In accordance with section 5.5(a)(2) of Regulations, 29 CFR Part 5, which also apply to Federally-funded or assisted construction projects, the contracting authority "may withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics ...". In the absence of the certified payrolls, there is no evidence that the laborers and mechanics have received any payment and it is appropriate to withhold funds. In this regard, there is generally a greater incentive for contractors' to come into compliance and to submit the certified payrolls within the required time when an agency withholds funds from the regular progress payments due on the contract than from the retainage.

Section 5.5 of Regulations, Part 5 contains the labor standards provisions which are to be inserted in all contracts. In addition to section 3.4(a) of Regulations, 29 CFR Part 3, section 5.5 (a)(3)(ii) of Regulations, Part 5, requires contractors to "submit weekly a copy of all payrolls" to the agency. Furthermore, section 5.5(a)(5) requires contractors to comply with Regulations, 29 CFR Part 3, and section 5.5(a)(7) provides that a "breach of clauses (1) through (6) [of section 5.5 (a)] may be grounds for termination of the contract, and for debarment as provided in 29 CFR 5.6".

We would also like to point out that section 5.9 of Regulations provides that in the event of failure or refusal of the contractor or any subcontractor to comply with labor standards stipulations required by the regulations contained in this part and the applicable statutes listed in section 5.1, the Federal agency shall take such action as may be necessary to cause the suspension of the payment, advance or guarantee of funds until such time as the violations are

discontinued or until sufficient funds are withheld to compensate employees for the wages to which they are entitled and to cover any liquidated damages which may be due.

We hope that the above information is helpful. For your convenience, we are enclosing copies of our Regulations, 29 CFR Parts 3 and 5. If, after your review of the Regulations and our letter, you have any further questions, please do not hesitate to contact us.

Sincerely,

Dorothy P. Come  
Assistant Administrator