DBRA-80

July 16, 1981

This is in reply to your letter requesting our opinion on the acceptability of certain deductions for fringe benefits under section 3.6 of Regulations, 29 CFR Part 3, being made by the above-referenced subcontractor.

First, there appears to be some confusion with regard to differentiating between the terms "deductions" and "contributions" for fringe benefit purposes The regulations of the Department of Labor clearly distinguish between "payroll deductions" for fringe benefit plans and "contributions" to fringe benefit plans. Among the requirements concerning payroll deductions for bona fide benefits are that such deductions must be "voluntarily consented to be the employee in writing and in advance of the period in which the work is to be done *** or provided for in a bona fide collective bargaining agreement between the contractor or subcontractor and representative of its employees: (29 CFR Section 3.5(d).) However, there are no such requirements for employer "contributions" to bona fide fringe benefit plans (29 CFR Part 5.)

Our review of the record as submitted indicates that the subcontractor's fringe benefit program, (except for certain employees who elected family hospitalization coverage), is funded by employer "contributions." Accordingly, the Copeland Act pertains to deductions from employee's wages and therefore, concerns employee contributions to fringe benefit plans. There is no Davis-Bacon Act or Copeland Act prohibition against a contractor requiring all employees to participate in a plan funded solely by employer contributions, as in the instant case. However, before a deduction for the family hospitalization coverage, noted above, can be made from the employees' pay, such deduction must be consented to by the employee. See Section 3.5(d) of Regulations, 29 CFR Part 5.

With respect to the fringe benefit requirements of the Davis-Bacon Act, in situations where an employer is making contributions to a bona fide fringe benefit plan, the Act does not require that the employee receive any benefits from the plan. Accordingly, an employer's contribution on behalf of an employee to a bona fide fringe benefit plan is creditable toward meeting the employer's Davis-Bacon prevailing wage obligation even though the employee may not receive an actual corresponding benefit. If the plan is bona fide, contributions made to the plan on behalf of an employee are creditable against the prevailing wage due an employee unless the employee on whose behalf contributions are made does not have a right to receive the benefit once he or she meets the plan's eligibility (waiting period) and vesting requirements.

As the record indicates, we have reviewed the prototype of the pension plan to which this subcontractor is contributing and we can find no reason to interpose any objections to the manner in which the subcontractor administers this fringe benefit program.

Sincerely,

Sylvester L. Green
Director, Division of Government
Contract Enforcement