DBRA-98

February 10, 1982

This is in further reference to your correspondence regarding the crediting of fringe benefit costs and apprenticeship training costs against the prevailing wage obligations of a contractor under the Davis-Bacon labor standards provisions.

You are correct in your understanding that a contractor or subcontractor performing work subject to a Davis-Bacon wage decision may discharge his minimum wage obligations for both straight-time wages and fringe benefits by paying cash or making contributions, or incurring costs or by any combination thereof for "bona fide" fringe benefits which meet the requirements of section 1(b)(2) of the Davis-Bacon Act and the standards set forth in Regulations 29 CFR Part 5, Subpart B. Thus, the example given on page 2 of your November 25, 1981, letter is correct.

We would, however, like to clarify one point concerning the payment of fringe benefits for overtime worked. Again, you are correct in your understanding that contributions or costs for fringe benefits may be excluded in computing an employee's regular or basic rate upon which overtime is computed, so long as the exclusions do not reduce the regular or basic rate below the basic hourly rate contained in the applicable wage determination. See section 5.32 of Regulations 29 CFR Part 5, which illustrates the above principles. Those provisions, however, do not exclude the payment of fringe benefits for overtime hours worked as such.

In this regard, the Davis-Bacon Act requires contractors or subcontractors performing work on a covered contract to pay "All mechanics and laborers employed directly upon the site of work, unconditionally and not less often than once a week … the full amount accrued at time of payment", computed at wage rates determined by the Secretary of Labor to be prevailing for corresponding classes of employees engaged in similar work in the locality.

Section 1(b) of the Act, as amended July 2, 1964, defines the term "wage rates" to include the basic hourly rate of pay and the amount of "(A) the rate of contribution irrevocably made by a contractor or subcontractor to a trustee or to a third person pursuant to a fund, plan, or program; and (B) the rate of cost to the contractor or subcontractor which may be reasonably anticipated in providing benefits to laborers and mechanics pursuant to an enforceable commitment to carry out a financially responsible plan or program which was communicated in writing to the laborers and mechanics affected, . . ." Therefore, since the Davis-Bacon Act requires the payment of the prevailing wage rate (i.e., basic rate and fringe benefits) for time spent on the site of work, fringe benefits must be paid for all hours worked, including overtime hours as well as straight-time hours. The fact that the Congress included in the 1964 Amendment specific language allowing the exclusion of fringe benefit payments from the computation of the basic or regular rate on which the time and one-half overtime premium is computed is further evidence that it intended that fringe benefit payments, like all other components of wages, must be paid for all hours worked.

Finally, it is the Department's position that where the prevailing wage provisions of the Davis-Bacon Act do not apply the contractor may pay the wage rate specified in the apprenticeship agreement. However, where the Davis-Bacon prevailing wage provisions do apply and the wage rate issued thereunder are higher than those contained in the agreement, the contractor must pay the higher wage rates in the decision. Therefore, in cases where the Davis-Bacon rates are higher than the agreement rates, the percentage of the basic hourly rate to which the apprentice is entitled should be computed against the applicable journeyman's basic rate found in the decision.

We trust the foregoing answers your questions.

Sincerely,

Sylvester L. Green
Director, Division of Government
Contract Enforcement