

DBRA-22

February 4, 1983

We apologize for the delay in responding to your request for a ruling in accordance with section 5.12 of Regulations, 29 CFR Part 5, Subtitle A, as to whether the Heavy Construction (excluding Water and Sewer Lines) wage rate schedules included in the specifications of the above-referenced contracts are properly applicable to the water and sewer line work.

According to the information submitted, Contract No. *** provides for the construction of an at-grade track bed, a tie-breaker train control station, and partial demolition and renovation of an existing warehouse. Also involved is the support and maintenance of sewer and water facilities, the installation of various sizes of asbestos cement pipe, reinforced concrete pipe, manholes, drainage gates and catch basins. Contract No. *** includes a yard operations building, a traction power substation and train control building, an access bridge, car cleaning platforms, 3400 linear feet of storm sewers, 3200 feet of water lines, and finish work. This contract also requires the support and maintenance of sewer and water facilities, the installation of various sizes of asbestos cement and reinforced concrete pipe and manholes. The wage decision in both Contract No. *** and Contract No. *** was Decision No. *** for "Heavy Construction (excluding Water and Sewer Lines)". Although not at issue, Contract No. *** also included Decision No. *** for "... Building Construction."

*** a subcontractor performing the water and sewer work under each contract, is asserting that the wage decision in the contracts is not applicable to the water and sewer activities required by the contracts. In this regard, the contractor is claiming that, since the Wage Decision is entitled "Heavy Construction (excluding Water and Sewer Lines)," any activities involving water and sewer work is specifically excluded from that schedule. The contractor states further that, since it did not have to pay the wage rates in Decision No. ***, a wage schedule should be issued reflecting the wage rates the firm is paying workmen. It is your agency's opinion that the overall character of the work on these contracts is heavy construction, rather than water and sewer, and that the rates in Decision No. *** are applicable.

The Davis-Bacon Act requires the Secretary of Labor to determine the prevailing wage rates for corresponding classes of laborers and mechanics on projects in the area which are of a "character similar" to the proposed contract work. For wage determination purposes construction projects are generally classified as either "building", "heavy", "highway" or "residential." Multiple schedules are issued or found appropriate only when items of work of a different character are sufficiently substantial to warrant a separate schedule. (See All Agency Memoranda Nos. 130 and 131, copies enclosed.) With respect to the referenced contracts, the water and sewer activities were only incidental to the overall character of the projects. According to the information furnished by your agency, on Contract No. *** only 18.3 percent (\$600,000) of the total cost (\$3,274,043.50) was for water and sewer activities and Contract No. *** the water and sewer activities were only valued at 12.04 percent (\$565,677) of the contract price (\$4,697,877.) Therefore, we agree with your agency's opinion that the heavy schedule in the contract specifications is applicable to the water and sewer work.

We would also like to mention that according to information subsequently furnished by your agency, the subcontractor did not raise the question of which rates would be applicable to the sewer activities until after bid opening. In fact, on Contract No. *** the subcontractor did not dispute the application of the heavy rates until after contract award. It is the Department's position that the appropriate time for raising and resolving questions regarding the application of prevailing wage rates is prior to bid award. This position was recently upheld by the Department's Wage Appeals Board in the case of G.A. & F.C. Wagman, Inc (WAB Case No. 82-2.)

The foregoing constitutes a final ruling under section 5.12 of the Regulations, 29 CFR Part 5. However, 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 should be so advised.

Sincerely,

Dorothy P. Come
Assistant Administrator