

## DBRA-32

August 16, 1984

This is in reference to June 27 and July 9 correspondence from \*\*\*, requesting a labor standards investigation of \*\*\*, requesting referenced contract for design, fabrication, and installation of two thirty-four (34) meter azimuth-elevation antennas.

\*\*\* letter indicates that this matter was referred to the Department of Labor since it was \*\*\* preliminary finding that the Walsh-Healey Public Contracts Act rather than the Davis-Bacon Act applies to the portion of the work at issue. Based on the information provided, however, it is our position that the work in question is subject to the Davis-Bacon Act. Since the Davis-Bacon requirements were included in the contract for application "to construction work performed in the United States," ... should take appropriate action in accordance with its responsibilities under Reorganization Plan No. 14 to enforce the Davis-Bacon Act (DBA) and Contract Work Hours and Safety Standards Act (CWHSSA).

As you know, the Davis-Bacon Act applies to Federal contracts in excess of \$2,000 for the construction, alteration, and/or repair of a public building or a public work. Section 5.2(1) of Regulations, 29 CFR Part 5, provides some examples of the types of structures which fall within the meaning of the terms "building" or "work." While antennas are not specifically included in this listing, there should be little doubt that a ten-story antenna falls within the meaning of the term "work."

Furthermore, as discussed in a recent telephone conversation between \*\*\* of our respective offices, even if the Walsh-Healey Public Contracts Act (PCA) were considered applicable to the overall design and fabrication of the antenna, the Davis-Bacon Act would still be applicable to the erection and construction of the antenna. As explained in Section 6(b) of Rulings and Interpretations No. 3, if a supply contract involves more than an incidental amount of erection or installation work, the Davis-Bacon Act would apply to the erection and installation. Examples of such contracts are those for the manufacture or furnishing and installation of elevators or of generators requiring prepared foundations or housing. It is important to note that DBA applies to all of the installation work in these examples and not just to the prepared foundation and housing work.

The contract in question not only involves more than an incidental amount of erection, but also includes installation of reinforced concrete foundation with a minimum 50-year maintenance free life expectancy. While the information submitted indicates that concrete foundation work was done in compliance with the requirements of DBA, it appears that there are substantial DBA and CWHSSA violations on the rest of the erection and installation work. In this regard, we agree with your agency's position that the \*\*\* and other employees working on the erection and installation of the antenna are not independent contractors.

In view of the foregoing, the Walsh-Healey Act does not apply to the erection and installation of the antenna, and we have no basis to initiate enforcement action under PCA. The work in question, however, is subject to DBA/CWHSSA, and \*\*\* should take appropriate action to

enforce both DBA and CWHSSA on this contract. Please let us know if we can be of any assistance with respect to your DBA/CWHSSA enforcement action.

Sincerely,

William M. Otter  
Administrator