

U.S. Department of Labor

Employment Standards Administration
Wage and Hour Division
Washington, D.C. 20210



APR 16 1999

Mr. Robert W. DeGrasse, Jr.
Director
Office of Worker and Community Transition
WT-1
U.S. Department of Energy
Washington, D.C. 20585

Dear Mr. DeGrasse:

Re: Project No. W-211
Hanford Site, Richland, Washington

As a result of information received from the Hanford Atomic Metal Trades Council, we have learned that while the referenced project, to store and treat radioactive waste, includes the Davis-Bacon Act (DBA) for the construction portion of the project, it does not contain the requirements of the McNamara-O'Hara Service Contract Act (SCA) for the non-construction components of the project.

As you know, SCA applies to Government contracts in excess of \$2,500, the principle purpose of which is to furnish services through the use of service employees. The DBA applies to every contract in excess of \$2,000 for the construction, alteration, and/or repair of public buildings or public works. Pursuant to section 4.116(c)(2) of Regulations, 29 CFR Part 4, the provisions of both SCA and DBA are applicable to contracts involving construction and service work where such contracts are principally for services and where the contract contains specific requirements for substantial amounts of construction work, or it is ascertainable at the contract date that a substantial amount of construction work will be necessary for the performance of the contract and where such construction work is physically and functionally separate from and, as a practical matter, is capable of being performed on a segregated basis from the other work required by the contract.

In this instance, SCA was properly included in the prime contract, under which Project No. W-211 is being performed, because the principle purpose of the prime contract is for services. The SCA provisions apparently were not included in Project No. W-211

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because that project principally calls for construction work subject to DBA. The SCA principal purpose test, however, applies on a prime contract basis, and its requirements apply to any service work performed under the prime service contract, regardless of whether such services are performed under subcontracts or projects under the prime contract.

The purpose of Project W-211 is to provide systems for retrieval of radioactive wastes from ten double-shell tanks. The job summary for this project calls for:

- 1) Design, furnish and install five 770 sq. ft. metal buildings;
- 2) Excavate for five foundations, floor slabs, and other specified equipment;
- 3) Install a mini power center and underground duct bank to ICE building, including all accessories;
- 4) Install indoor and outdoor lighting;
- 5) Install HVAC systems;
- 6) Install fire protections sprinklers and alarm systems;
- 7) Perform high-voltage hot tie-in.

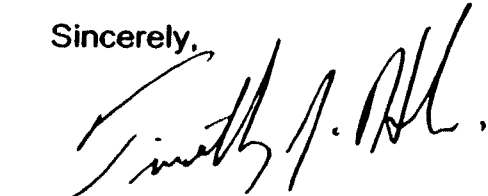
All of the above specifications would be construction work subject to DBA. The project further requires under in-farm work activities:

- 1) Remove and dispose to burial existing contaminated equipment and components;
- 2) Install two 300 hp mixer pumps in each tank;
- 3) Install one 60 hp transfer pump and attendant system in each tank;
- 4) Install temperature probe and attendant cabling in each tank;
- 5) Install TV camera, mast assembly, purge system, attendant cables, and hoses in each tank;
- 6) Hookup 20 jumpers per tank for moving liquid;
- 7) Excavate a 100-foot trench to install water piping;
- 8) Remove old 5' x 8' concrete pit covers and pour six new 5' x 10' concrete pit cover blocks;
- 9) Install disconnect switches, distribution panel boards, manual transfer switches, auxiliary devices, grounding equipment, etc.;
- 10) Install new power supply, control and instrumentation cables, and 500 feet of conduit;
- 11) Install main feeder cables from the high-voltage switchgear to the ICE building;
- 12) Install retrieval control system.

Of the in-farm work activities, at least items 1 - 6 would be service activities subject to SCA. Accordingly, please see that all necessary steps are taken in accordance with 29 CFR 4.5(c) to retroactively include in Project No. W-211 the applicable SCA wage

determination so that the affected employees may receive the benefits to which they are entitled under law. Please inform us of your actions in this matter as soon as possible.

Sincerely,

A handwritten signature in black ink, appearing to read "Timothy J. Helm", written in a cursive style.

Timothy J. Helm, Acting
Office of Enforcement Policy
Government Contracts Team

cc: Daniel M. Katz