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UNITED STATES GOVERNMENT

Memorandum # 51

TO : Earl Street, Regional Attorney
Dallas, Texas

DATE: June 24, 1963

FROM : E. Irving Manger
Associate Administrator

SUBJECT: Brown & Root, Inc.
Lake Pearl Sand & Gravel Company, Inc.
La-Tex Marine Services, Inc.
and Others
Contract No. DA-16-047-CIVENG-60-41
Louisiana
File Nos. E-61-132, E-63-305 & 306

Reference is made to your recent memorandum and to the report furnished by the Corps of Engineers, U. S. Army, regarding the application of the Davis-Bacon Act, the Eight Hour Laws and the labor standards provisions of the captioned contract to work performed at certain "off-site" facilities in the general area of the covered construction project. Specifically, you request our ruling as to whether the furnishing of sand and gravel, here involved, is the work of a subcontractor or a materialman. If the latter, these activities would not be subject to the labor standards provisions applicable to the project work.

From the record furnished, it appears that on August 10, 1959, the Corps of Engineers awarded to Brown & Root, Inc., a contract for the construction of "Old River Lock" in Pointe Coupee Parish, Louisiana. Brown & Root, in turn, entered into an arrangement with Lake Pearl Sand & Gravel Company, Inc., on October 5, 1959, whereby the latter firm agreed to furnish the sand and gravel as required for concrete items under the prime contract.

Ultimately, the materials thus furnished by Lake Pearl were obtained from three sources. Sand was produced by Central Sand & Gravel Company, Inc., at its plant, known as "Paradise Pit", and was thence trucked, by Coco Brothers, Inc., to the construction site for stockpiling. Gifford-Hill and Company, Inc., produced the fine aggregate (3/4") at its Turkey Creek plant. This material was also transported by Coco Brothers to the project site for stockpiling. The work performed by these recognized producers of sand and gravel at these two facilities, which previously served and continued to serve the general public, is clearly the work of materialmen and is not, therefore, covered by the labor standards provisions applicable to the project work.

Lastly, the coarse aggregate (1 1/2") required by the prime contract was produced at the so-called Stephens-Big Rock Pit by Central Sand & Gravel Company, Inc., for the Big Rock Corporation and later by Big Rock, itself,

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under arrangements with Lake Pearl. The pit, which is located some 65 miles from the lock under construction, was obtained by Central on June 30, 1959. On that date, Stephens Gravel Company, Inc., assigned to Central its leases, under which it occupied the premises comprising the pit, and conveyed to that firm, the buildings, vehicles, tools and equipment situated thereon, for which the assignee agreed to pay the sum of \$125,000.00, in addition to operational royalties. A note evidencing this indebtedness was secured by a mortgage on the property thus conveyed. The record indicates further that the Big Rock Corporation assumed Central's rights and obligations under this conveyance when it took over the operations at the pit.

Sales to the public from this facility apparently continued following acquisition of the pit by Central and by Big Rock. While it appears that such sales were substantially curtailed once these producers began furnishing materials for the covered work, this merely evidences the production demands made upon a materials supplier and is not inconsistent with our finding that the activities of these two firms at the Stephens-Big Rock Pit constitute those of a materialman.

Deliveries from this facility to the project site continued through the spring of 1960 without apparent difficulty, but by July of that year it appeared that Lake Pearl had trouble fulfilling its purchase order requirements with Brown & Root. The latter firm, being advised of arrears on the mortgage payments and fearing the collapse of this activity and the consequent interruption in the flow of aggregate to the lock, called the parties together. On July 2, 1960, they entered into an agreement under which Big Rock dedicated its facilities and equipment to the furnishing of aggregate for this project, at a guaranteed rate of production. Moreover, Brown & Root obtained the right to supplement this "off-site" work or take it over completely, with its own forces or with those of others, if performance continued in an unsatisfactory manner.

The parties performed under this agreement until the middle of July when Big Rock ceased production at the pit. As a result, Brown & Root negotiated the additional agreements of August 3, 1960. Under their terms, Lake Pearl subleased and arranged to operate the Stephens-Big Rock Pit, having agreed to pay rent to Big Rock and royalties to Stephens. Brown & Root, in turn, advanced to Lake Pearl approximately

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\$24,000.00 which was thereupon paid to Stephens to cover arrears in mortgage payments on the pit, vehicles and equipment. Accordingly, Lake Pearl agreed that it would place, at the pit, supervisors who were satisfactory to the prime contractor. All parties agreed that should Lake Pearl default in their obligations, Brown & Root, or its designee, would have the right to operate the pit for the period of time necessary to fulfill the requirements of the original purchase order.

It appears that on November 2, 1960, in accordance with the provisions of the July and August agreements, Brown & Root removed Lake Pearl and placed La-Tex Marine Services, Inc., its subsidiary, in complete control of the Stephens-Big Rock Pit, to produce the remaining coarse aggregate requirements for the covered project. La-Tex, in turn, engaged various independent trucking firms, including Coco Brothers, Inc., on a day-to-day basis to haul material from this pit to the construction site. This operation by La-Tex lasted approximately three months, having terminated on February 15, 1961, when the Corps of Engineers granted Brown & Root permission to change sources of supply. We are further advised that the prime contract was completed in December of 1962.

The agreements of July 2, 1960, and August 3, 1960, do not appear to alter the performance required of Lake Pearl under the purchase order of October 5, 1959. They merely reaffirmed those original obligations (Brown & Root, Inc. v. Richard Coco, et. al., W. D. La., Civil Action No. 8166, Interpleader Phase -- Gifford-Hill v. Brown & Root, Inc., et. al., October 11, 1962). Accordingly, that firm's performance as a materialman continued unchanged.

It appears, moreover, that La-Tex undertook the production of aggregate at the Stephens-Big Rock Pit, until an alternate source of materials could be obtained, only after all reasonable alternatives were exhausted and then only to the extent deemed necessary to assure fulfillment of the terms set forth in the original purchase order of October 5, 1959. Under such circumstances, these interim activities of La-Tex are not deemed sufficient to constitute the work of a subcontractor. Accordingly, the individuals employed by La-Tex at the Stephens-Big Rock Pit are not covered by the contract labor standards provisions applicable to the project work.

Since these provisions do not apply to the work performed at the "off-site" facilities here involved, they are considered inapplicable, as well, to the activities of the independent trucking firms engaged in the transportation of materials from these facilities to the construction site (Opinion of the Solicitor, DB-22, March 12, 1962).

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Your copy of the Corps of Engineers report is returned, as requested. Kindly advise us when action, consistent with this opinion, has been taken.

Attachments