

U.S. Department of Labor

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



JUN 29 2006

Joseph R. Biden, III, Esq.
Bifferato Gentilotti & Biden
1308 Delaware Avenue
Wilmington, Delaware 19806

Dear Mr. Biden:

This is in further response to your inquiry regarding the "Petition for Review," you filed on September 15, 2004, with the Department of Labor's Administrative Review Board (ARB) on behalf of Laborers' International Union of North America, Eastern Region, and Laborers' Local 199 (LIUNA). On January 12, 2005, the ARB remanded the case to the Wage and Hour Division for issuance of a final ruling (see ARB Case No. 04-179).

At issue is the applicability of Davis-Bacon prevailing wage labor standards to a federally assisted construction project in Wilmington, Delaware. This project involves the rehabilitation of 180 Single Room Occupancy (SRO) units in the Central YMCA in Wilmington, Delaware. The City of Wilmington has allocated \$150,000 to the project from funds provided by the U.S. Department of Housing and Urban Development (HUD) under the HOME Investment Partnerships Act, 42 U.S.C. § 12721, *et seq.* (HOME Act). Although HUD had determined that the Davis-Bacon labor standards are not applicable to this project, you challenged HUD's determination on the ground that the "Agreement for the Use of HOME Investment Partnerships Program Funds" (Agreement) between the City and the YMCA mandates the use of Davis-Bacon prevailing wage standards for "any contract 'for construction of affordable housing with 12 or more units' that uses HOME funds."

Under the applicable provisions of the HOME Act and relevant HUD regulations, the Davis-Bacon labor standards apply to any contract that includes a total of 12 or more HOME assisted units. See 42 U.S.C. § 12836(a); 24 C.F.R. § 92.354(a)(2). If a contract involves fewer than 12 HOME-assisted units, there is no requirement that Davis-Bacon labor standards are to be applied. This is so even where a mixed-use project involves both HOME-assisted and other units. HUD has issued guidance on this matter in Letter No. LR 96-02, which addresses the "Application of Federal Labor Standards to HOME Projects" and Notice CPD 98-2, which deals with allocation of costs and identification of HOME assisted units in multi-unit projects. (Copies of these two documents are enclosed.) This HUD guidance is supported by legislative history in the Senate Report regarding what was initially proposed as a "Housing Opportunity Partnership" (HOP) program, which became the core of what was enacted into law in the HOME program). See S. Rpt. No. 101-316 (June 8, 1990, p. 80-81). In relevant part, Notice CPD 98-2 states:

The HOME Program distinguishes between those units in a project that have been assisted with HOME funds and those that have not. HOME funds may be invested in a mixed-income project to assist only a portion of the units in a project.

The Agreement itself specifically provides:

Every contract for the construction (either rehabilitation or new construction) of housing that includes 12 or more units assisted with HOME funds, must contain a provision requiring the payment of not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 USC §§ 276a to 276a-5), to all laborers and mechanics employed in the development of any part of the building.

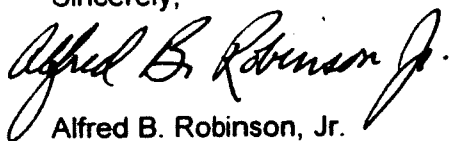
Agreement, p. 10, section X(1) (emphasis added). You also cite this paragraph in support of your contention that the Davis-Bacon prevailing wage labor standards are applicable to the Wilmington YMCA project. However, the stated coverage limitation is applicable in this instance and significant to a determination in this matter.

As discussed in a November 8, 2004, letter from Robert L. Weir, Wilmington's Housing Director, Department of Real Estate and Housing, to Debra A. Bensala, HUD Regional Labor Relations Officer, the City of Wilmington initially determined that 6 of the 180 units would be designated as HOME-assisted units. Subsequently, the City's compliance officer determined that the number of HOME-assisted units needed to be increased in order to not exceed the actual per-unit development cost, and she recommended increasing to 11 the number of HOME-assisted units in the project. This change provided an additional risk-reducing benefit by lowering the applicable minimum "affordability period" from 10 years to 5 years, in accordance with the grant agreement (see Agreement, p. 6 (B) and (C)).

Accordingly, in light of the fact that there are fewer than 12 HOME-assisted units in this project, the application of Davis-Bacon labor standards to the contract for rehabilitation of the 180 SRO units in the Central YMCA in Wilmington, Delaware is not required. Therefore, we hereby affirm HUD's interpretation that the Davis-Bacon labor standards are not required for this project.

This letter constitutes a final ruling under 29 C.F.R. § 5.13. A petition for review may be filed with this Department's Administrative Review Board pursuant to Regulations, 29 C.F.R. Part 7. Any such petition should be filed within thirty days of the date of this letter and forwarded to: Executive Director, Administrative Review Board, 200 Constitution Avenue, N.W., Room S4309, Washington, D.C. 20210.

Sincerely,



Alfred B. Robinson, Jr.
Acting Administrator

cc: Mr. Edward L. Johnson

Enclosures: (HUD Letter No. LR 96-02 and Notice CPD 98-2)