



**NOV 03 2010**

Ms. Farwa Naqvi  
Chief, Engineering Branch  
Broadband Division  
U.S. Department of Agriculture  
Rural Development/Rural Utilities Service  
1400 Independence Avenue, S.W.  
Washington, D.C. 20250

Dear Ms Naqvi:

This is in response to your inquiry regarding applicability of Davis-Bacon labor standards to certain “make-ready work” required under pole attachment agreements whereby utility pole owners license (or otherwise permit) other companies to lease space on their utility poles for the purpose of installing additional utility system lines to provide their respective utility services to customers in an area. In certain situations involving “make ready work” the pole owners may perform to enable their poles to accommodate aerial lines and associated equipment a separate broadband company will install to provide broadband service. This is the case, particularly in rural areas, where broadband service is being established with federal funding provided by U.S. Department of Agriculture, Rural Development, Rural Utilities Service.

Associated with the construction of broadband facilities funded by an American Recovery and Reinvestment Act of 2009 (ARRA) appropriation to which the Davis-Bacon provision in ARRA Division A, section 1606 applies, broadband companies establishing service in many areas have entered into and/or will enter into pole attachment agreements with owners of utility poles (sometimes referred to as licensing agreements). Under such agreements, the owners of existing utility poles that already carry the pole owners’ (and sometimes also other users’) aerial utility lines, may license or otherwise permit applicants to install their own utility lines to transmit and/or distribute service – for purposes of this discussion broadband service – into areas where pole owners can accommodate the additional utility lines. The agreements spell out the terms and conditions under which other companies may install their facilities on the owners’ utility poles. The agreements state the rights and obligations of the parties to the agreements. We have been advised that under such agreements, the pole owners generally are responsible for certain preliminary activities referred to as “make-ready work.”

Available information indicates that, in order to ensure the capacity and readiness of their poles to carry the facilities of a separate utility service provider, under the terms of pole attachment agreements; the utility pole owners, who license (or otherwise grant a right) to

other companies to utilize its poles, conduct “make ready work” and similar activities to ensure appropriate placement and later maintenance of other users’ (licensees’) lines and equipment. In relation to an applicant user’s initial installation of its facilities, the utility pole owner typically conducts:

- o Pre-construction engineering and “ride-outs” to inspect the poles,
- o Pole analysis to determine the capacity of the poles to accommodate applicants who wish to use the poles,
- o Possibly moving existing lines (or requiring another user to make adjustments in the placement of its lines) and/or replacing some poles, as necessary, to accommodate the applicant’s lines safely and in accordance with regulatory requirements, and
- o Post-construction ride-outs to ensure that the licensee’s installation of new lines and related equipment conforms to applicable requirements such as safety considerations and regulatory requirements.

Insofar as the pole owner’s “make ready work” under the terms of an established pole attachment agreement may involve some incidental construction activities necessary to enable its poles to accommodate another user’s lines and related equipment, such activities are incidental to the leasing of space on the owner’s utility poles that have as their primary purpose carrying the utility lines of the utility pole owner (who may be required by regulatory authorities to lease space on their utility poles to other users). Of particular relevance, the agreements are term agreements, some with terms of up to 30 years, that govern the ongoing use of the owner’s poles subsequent to the initial attachment of the user facilities and require periodic rental or similar use fees.

Although the pole owner’s “make ready work” may involve some incidental construction activities necessary to ensure the capacity of their poles to accommodate and carry the broadband user’s facilities, such pole attachment agreements are not deemed to be subcontracts entered into by a broadband company for construction work on a project with ARRA funding under the USDA/RUS broadband initiatives program, provided that the construction activity by the owner of the utility poles is minimal and benefits the multiple users of the poles (for example, by ensuring the continuity and non-interference of the additional system with previously established utility systems also carried by the same poles). However, if, for example, the utility pole owner conducts (or contracts for) extensive replacement or upgrade of its facilities, at the expense of the broadband company in order to serve the needs of the company establishing new broadband service in an area, and involving a substantial amount of construction work by laborers and mechanics, we have concluded that the agreement allowing or requiring the pole owner to perform such work would constitute a construction subcontract to which the Davis-Bacon labor standards under the USDA/RUS grant would apply.

This matter is subject to further review if any interested party should wish to present additional information for reconsideration. Any request for further consideration of this matter should be accompanied with appropriate supporting documentation and must be sent to Timothy Helm, Branch Chief, Government Contracts Enforcement, Division of Enforcement Policy and Procedures, Wage and Hour Division, 200 Constitution Avenue, Room S3006 N.W., Washington, D.C. 20210.

Sincerely,



*for* Timothy J. Helm  
Chief, Branch of Government Contracts Enforcement  
Division of Enforcement Policy and Procedures