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From: Spencer C. Demetros *SCD*
General Counsel, DLI

Re: Public Housing Authorities/Prevailing Wage

Date: May 31, 1995

This memorandum responds to your inquiry concerning whether the Massachusetts prevailing wage requirements, as prescribed in Mass. Gen. Laws ch. 149, §§ 26 and 27, are applicable to the Cathedral Development/Phase II Modernization Project (the "Cathedral Project") which is currently being undertaken as a public housing project by the Boston Housing Authority. As you informed me, ninety percent of the project is being funded by the U.S. Department of Housing and Urban Development ("HUD") (approximately \$9,000,000) and the remaining ten percent (approximately \$1,000,000) is being funded by the Commonwealth under the State Aid For Federal Public Housing Modernization program.

In the past, the Department of Labor and Industries (the "Department") had required that the State prevailing wage rates be paid to employees of persons contracting to perform work on public housing projects whenever State monies were being used to fund all or any portion of the project. There was no exception for partially State-funded projects on which federal funds were also being used and the federal prevailing wage rates were required. As you know, it was the Department's position that, in those cases, the higher of the two rates had to be paid.

However, it has recently been brought to my attention that a HUD regulation, HUD Public Housing Development Rule, 24 CFR ch. IX § 941.503(d), establishes that prevailing wage rates determined under State law shall be inapplicable to public housing authority projects assisted by HUD under the U.S. Housing

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Act of 1937 (hereinafter referred to as "HUD assisted public housing projects") whenever the State rate is higher than the federal prevailing wage rate. The preamble to the regulation makes clear that the regulation is intended to apply even to those projects which are partially funded with State monies. 53 Fed. Reg. 30,212 (1988).

Nothing in the above-referenced regulation prohibits States from requiring that public housing authorities request State prevailing wage sheets and include them with invitations for bids. In addition, the regulation does not preclude enforcement of State rates which are less than, or equal to, the corresponding federal prevailing wage rate.

Therefore, with respect to the Cathedral Project -- and for all other HUD assisted housing projects in the future -- your office should require the public housing authority to request rates from the Department and include them with invitations for bids along with the following statement:

Pursuant to HUD Public Housing Development Rule, 24 CFR ch. IX § 941.503(d), whenever any prevailing wage rate determined under Massachusetts law exceeds the corresponding federally determined wage rate on this project, the Massachusetts rate is inapplicable to the contract and shall not be enforced against the contractor or any subcontractor with respect to employees engaged under the contract.

In addition, any contract executed by a public housing authority for development of a HUD assisted public housing project shall contain the above-referenced statement.

If you have any questions regarding this matter, do not hesitate to call me.

cc: Christine E. Morris, DLI Commissioner
Terence P. McCourt, Deputy Secretary of Labor