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MEMORANDUM OF LAW

DATE: April 10, 2006

TO: Ernie Linares, Community and Economic Development Deputy Director

FROM: City Attorney

SUBJECT: Applicability of Federal Prevailing Wage Laws to CDBG-Funded Tree Planting Projects

INTRODUCTION

Several organizations, which can be categorized as non-profit, not-for-profit, or service-oriented, contract with the City of San Diego [City] to plant trees on public property throughout the city. In large part, the tree planting activity is in accordance with the Community Forest Initiative, which the City embarked on in 2002 with the goal of planting 5,000 trees per year for the next twenty years on public property, primarily street rights-of-way. *See* http://www.sandiego.gov/philanthropycenter/opportunities/cfab.shtml (visited Dec. 15, 2005). The tree planting activity is funded in part with federal assistance from the Community Development Block Grant [CDBG] program. People for Trees and Urban Corps are two organizations that have contracted with the City to plant trees, utilizing volunteer workers to perform the physical labor of planting trees. For fiscal year 2005, Urban Corps received $200,000 in CDBG funds and People for Trees received $46,851. This memorandum of law addresses the question of whether organizations who contract with the City to plant trees, such as Urban Corps and People for Trees, are required under federal law to pay their workers (whether they are volunteer or paid employees) prevailing wages.

QUESTIONS PRESENTED

Is the tree planting work that the City contracts for with organizations such as People for Trees and Urban Corps, and which is supported by federal CDBG funds, subject to federal prevailing wage laws?

SHORT ANSWER

No. The tree planting that People for Trees and Urban Corps contract with the City to perform is not subject to federal prevailing wage laws. The activity of planting trees is not covered by the provisions of the Davis-Bacon Act because the activity would not be considered a "public work" or "construction." Additionally, the prevailing wage requirements of other federal labor laws similar to the Davis-Bacon Act also would not cover the planting trees at issue. Consequently, the workers (both paid and volunteer) that Urban Corps and People for Trees employ to plant trees are not required to be paid prevailing wages under federal law.

ANALYSIS

I. Background

In general, federal law requires that laborers performing construction work on federally-funded public works projects be paid "prevailing wages." The primary federal law is the Davis-Bacon Act [DBA], 40 U.S.C. §§ 3141–3144, 3146, 3147 (2005). There are, however, numerous other federal laws pertaining to prevailing wages. For example, there are the Davis-Bacon Related Acts [DBRA], which are listed in 29 C.F.R. § 5.1.(a) (2005) and so named because they incorporate the DBA's prevailing wage requirement (or a variation thereof). *See* U.S. Dep't of Labor, *Field Operations Handbook*, § 15a02 (June 29, 1990) [Handbook]; U.S. Dep't of Labor, *Prevailing Wage Resource Book*, 4 (Nov. 2002) [Resource Book]. The Fair Labor Standards Act of 1938, 29 U.S.C. §§ 201–219 (2005), and the Walsh-Healey Public Contracts Act, 41 U.S.C. §§ 35–45 (2005), are two other examples of statutes requiring payment of prevailing wages.

The DBA arose from an effort to protect local contractors and their workers from non-local contractors who were able to under-bid on projects by using cheaper, imported labor.

> In the words of Representative Bacon, the Act was intended to combat the practice of "certain itinerant, irresponsible contractors, with itinerant, cheap, bootleg labor, [who] have been going around throughout the country 'picking' off a contract here and a contract there." The purpose of the bill was "simply to give local labor and the local contractor a fair opportunity to participate in this building program."

Universities Research Ass'n, Inc. v. Coutu, 450 U.S. 754, 774 (1981)(citing 74 Cong.Rec. 6510 (1931)). Elaborating, Representative Bacon stated:

> If the local contractor is successful in obtaining the bid, it means that local labor will be employed, because that local contractor is

> going to continue in business in that community after the work is done. If an outside contractor gets the contract, and there is no discrimination against the honest contractor, it means that he will have to pay the prevailing wages, just like the local contractor.

Id. at n.25.

The DBA's prevailing wage requirement is set forth in 40 U.S.C. section 3142:

> [E]very contract in excess of $2,000, to which the Federal Government or the District of Columbia is a party, for construction, alteration, or repair . . . of public buildings and public works . . . and which requires or involves the employment of mechanics or laborers shall contain a provision stating the minimum wages to be paid various classes of laborers and mechanics.

By its terms, the DBA applies only to public works contracts to which the federal government is a party, *i.e*., the federal government must directly enter into the contract. *See also* Resource Book, 2, 4. However, certain statutes, namely, the DBRA, make prevailing wage requirements applicable to public works contracts where the federal government's involvement is as a source of funds but the government does not directly enter into the contract. *See id.* at 4. The issue addressed in this memorandum concerns such a situation because the statute in question is a DBRA and the federal government is not a party to the contracts for tree planting but is only providing funding for that activity.

II. Prevailing wages with respect to CDBG-funded projects

The tree planting at issue is supported with federal CDBG funds. Those funds are distributed in accordance with the CDBG program, which is governed by the Housing and Community Development Act of 1974 [HCDA], codified at 42 U.S.C. §§ 5301–5321 (2005), and implemented by the regulations contained in 24 C.F.R. part 570 (2005). Section 5310(a) of Title 42 of the United States Code (also referred to as Section 110(a) of the HCDA) requires payment of prevailing wages on works or activities receiving CDBG funding:

> All laborers and mechanics employed by contractors or subcontractors in the performance of construction work financed in whole or in part with assistance received under this chapter shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with sections 3141 to 3144, 3146, 3147 of Title 40 . . . .

This requirement that prevailing wages be paid on CDBG-funded public works projects is reiterated in 24 C.F.R. § 570.603(a) (2005): "Section 110(a) of the [HCDA] contains labor standards that apply to nonvolunteer labor financed in whole or in part with assistance received under the [HCDA]. . . ."

Both 42 U.S.C. § 5310(a) and 24 C.F.R. § 570.603(a) (2005) require that prevailing wages be paid to nonvolunteer labor used on "construction work" that is funded by CDBG monies. This requirement is to be fulfilled "in accordance with the Davis-Bacon Act." 42 U.S.C. § 5310(a). By the very terms of 42 U.S.C. § 5310(a), the requirement to pay prevailing wages does not apply unless the CDBG funds are being used for "construction work." *See* 42 U.S.C. § 5310(a)("All laborers and mechanics employed . . . in the performance of *construction work* financed . . . with assistance received under this chapter shall be paid [prevailing] wages")(emphasis added). This qualification is important because several different types of activities are eligible for CDBG funding, not all of which involve "construction work." *See* 24 C.F.R. § 570.201 (2005).[1] Accordingly, if the tree planting activity that organizations such as People for Trees and Urban Corps perform for the City with CDBG funds is not "construction work," then their laborers who plant the trees are not required to be paid prevailing wages.

"Construction work" is not defined in either the HCDA or 24 C.F.R. part 570. The term "construction," however, is defined in Title 29, part 5 of the Code of Federal Regulations [Title 29, part 5][2]:

> The terms construction, prosecution, completion, or repair mean the following:
>
> > (1) All types of work done on a particular building or work at the site thereof, including work at a facility which is deemed a part of the site of the work within the meaning of paragraph (l) of this section by laborers and mechanics employed by a construction contractor or construction subcontractor . . . , including without limitation—

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[1] Some of those activities do not involve any physical labor and thus, no laborers are needed or would be used. Examples of such activities include: (1) acquisition of real property (24 C.F.R. § 570.201(a) (2005)); (2) relocation assistance for individuals and businesses (24 C.F.R. § 570.201(i) (2005)); (3) payments for losses of rental income (24 C.F.R. § 570.201(j) (2005)); and (4) assistance to facilitate economic development, such as by providing credit, and business support services (24 C.F.R. § 570.201(o)(1) (2005)).

[2] 29 C.F.R. § 5.1(a) (2005) provides: "The regulations contained in this part are promulgated . . . in order to coordinate the administration and enforcement of the labor standards provisions of each of the following acts." Section 5.1(a) then lists the specific acts to which it applies; the HCDA is included at number 46.

> (i) Altering, remodeling, installation (where appropriate) on the site of the work of items fabricated off-site;
>
> (ii) Painting and decorating;
>
> (iii) Manufacturing or furnishing of materials, articles, supplies or equipment on the site of the building or work . . . ;
>
> (iv)(A) Transportation between the site of the work within the meaning of paragraph (l)(1) of this section and a facility which is dedicated to the construction of the building or work and deemed a part of the site of the work within the meaning of paragraph (l)(2) of this section; and (B) Transportation of portion(s) of the building or work between a site where a significant portion of such building or work is constructed, which is a part of the site of the work within the meaning of paragraph (l)(1) of this section, and the physical place or places where the building or work will remain.
>
> (2) Except as provided in paragraph (j)(1)(iv)(A) of this section, the transportation of materials or supplies to or from the site of the work by employees of the construction contractor or a construction subcontractor is not "construction, prosecution, completion, or repair.

29 C.F.R. § 5.2(j) (2005).

Section 5.2(j) defines "construction" in reference to other terms that are defined in the other subdivisions of 29 C.F.R. § 5.2: "construction" means "all types of work done on a particular *building* or *work* at the site thereof, including work at a facility which is deemed a part of the *site of the work*," and that the types of work include, but are not limited to, "altering, remodeling, installation," "painting and decorating," "manufacturing or furnishing of materials," and "transportation." *Id.*(emphasis added). As a plain reading of this definition of "construction" indicates, before one can consider the issue of whether a particular kind of work or activity (*e.g.*, tree planting) falls under the definition of "construction" (*i.e.*, "all types of work done on a particular building or work"), it must be a component of the activity being done in connection with a particular "building" or "work." Without the requisite "building" or "work," the physical activity, labor, or task being performed does not qualify as "construction" under the DBA or DBRA and therefore the prevailing wage requirements of those statutes are inapplicable.

"Building" and "work" are defined in 29 C.F.R. section 5.2(i) (2005):

> The terms building or work generally include construction activity as distinguished from manufacturing, furnishing of materials, or servicing and maintenance work. The terms include without

> limitation, buildings, structures, and improvements of all types, such as bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, canals, dredging, shoring, rehabilitation and reactivation of plants, scaffolding, drilling, blasting, excavating, clearing, and landscaping. The manufacture or furnishing of materials, articles, supplies or equipment . . . is not a building or work within the meaning of the regulations in this part unless conducted in connection with and at the site of such a building or work as is described in the foregoing sentence . . . .

The fact that having a building or work is a necessary condition for considering whether an activity is tantamount to construction is also indicated by the language of the DBA's prevailing wage provision: ". . . every contract in excess of $2,000 . . . for construction, alteration, or repair, including painting and decorating, *of public buildings and public works* . . . which requires or involves the employment of mechanics or laborers shall contain a provision stating the minimum wages to be paid various classes of laborers and mechanics." 40 U.S.C. § 3142 (emphasis added). If the construction, alteration, or repair is not being performed on a *public building* or *public work*, then the DBA does not apply. Accordingly, unless tree planting is a part of or performed in connection with a "building" or "work," the prevailing wage requirements of neither the DBA nor DBRA apply.

According to the definition of 29 C.F.R. section 5.2(i), building or work in general includes construction activity, the examples of which are listed. Excluded from the definition are manufacturing, furnishing materials, servicing, and maintenance work unless they are conducted in connection with and at the site of a building or work.[3] Therefore, in order for manufacturing, furnishing of materials, servicing, or maintenance work to be included within a "building" or "work," there must be a preexisting "building" or "work," that is, there must be some other construction activity to which the manufacturing, *etc.*, is connected.

With two exceptions, the items listed in 29 C.F.R. § 5.2(i) (2005) fall into two categories: (1) structures, specifically those which are typically considered to be public infrastructure projects, such as bridges, dams, sewers, heavy generators, piers, jetties, and canals; and (2)

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[3] The apparent contradiction between the definition of "building or work" in 29 C.F.R. § 5.2(i) (2005) which excludes the "manufacture or furnishing of materials" unless under certain conditions, and the definition of "construction, prosecution, completion, or repair" in 29 C.F.R. § 5.2(j) (2005), which includes "manufacturing or furnishing of materials," disappears when one considers that in both definitions the manufacturing or furnishing of materials is included only when it is performed "on the site of the work." "Site of the work" is a concept used to set a geographical limitation on the activity that is subject to the DBA or DBRA. *See* 29 C.F.R. § 5.2(l) (2005).

activities that are connected with, and almost prerequisite to, building the aforementioned structures or improvements: *e.g.,* dredging, shoring, scaffolding, drilling, blasting, excavating, and clearing. The two activities that do not fall into either of these categories are landscaping, and plant rehabilitation and reactivation.

III. The tree planting work at issue is not subject to federal prevailing wage law

As discussed above, in order for an activity, such as planting trees, to be subject to the prevailing wage requirement of the DBA or DBRA, the activity must be done in connection with a "building" or "work". (For the sake of this discussion, it is assumed that the other elements that would bring an activity within the coverage of federal prevailing wage laws, such as the existence of a federal contract, federal funding, requisite contract value, *etc*., are met.) Accordingly, the first step in determining whether the tree planting work conducted by People for Trees and Urban Corps is subject to prevailing wages is to determine whether it is being done in connection with a "building" or "work." There is no such building or work with respect to the tree planting at issue because the work that People for Trees and Urban Corps contract with the City to perform is to plant trees in various areas throughout the city and that work is without any connection to, or is not as part of, construction of a larger facility, structure, or public improvement. Rather, that tree planting activity stands alone and is the whole work or activity; there is no additional work component or phase. Because there is no underlying building or work, the tree planting at issue is not covered under the prevailing wage provisions of the DBA or DBRA.

Moreover, the planting of trees does not itself qualify as the requisite "building" or "work." First, tree planting is not a building in the common sense meaning of the term. Second, tree planting is not listed as one of the activities in 29 C.F.R. § 5.2(i) (2005). Tree planting is not like any of the structures or improvements listed in 29 C.F.R. § 5.2(i) (2005), nor is it connected to or practically a prerequisite to the construction of any of those structures or improvements. Tree planting is also not plant rehabilitation or reactivation. Landscaping is the only listed activity that could plausibly encompass tree planting. However, as will be demonstrated, the type of landscaping referenced in 29 C.F.R. § 5.2(i) and envisioned by the DBA and DBRA is qualitatively different from the tree planting at issue.

"Landscaping," as the term is used in 29 C.F.R. § 5.2(i) (2005) is not defined in either the DBA or its implementing regulations, Title 29, part 5. Guidance to the meaning of "landscaping" is found, however, in two resource books or manuals used by the United States Department of Labor's [DOL] staff in administering federal wage and labor laws like the DBA. These resources are instructive in that they reflect how the federal agencies charged with administering the federal statutes interpret the application of those statutes. The first of these is the Handbook, *supra*, which the DOL's Employment Standards Administration, Wage and Hour Division describes as "an operations manual" that provides Wage and Hour Division staff with "interpretations of statutory provisions, procedures for conducting investigations, and general administrative guidance." http://www.dol.gov/esa/whd/FOH/index.htm (visited Dec. 15, 2005). The second resource is the Resource Book, *supra*.

In addition to providing guidance on interpreting the provisions of federal prevailing wage law, the Handbook and the Resource Book are helpful in providing an indication of how the DOL would decide the issue of whether a particular activity is covered under the DBA. In subchapter 15d of the Handbook, "Interpretations – Applications of DBRA to Types of Work and Contracts," one of the types of work or contracts mentioned is landscape contracting. Section 15d04(a) of that subchapter states:

> Landscaping *performed in conjunction* with new construction or renovation work subject to DBRA is covered. In addition, *elaborate landscaping activities standing alone* such as substantial earth moving and rearrangement of the terrain, e.g., strip mine reclamation, *may* constitute construction within the meaning of the [DBA], without any requirement that it be related to other construction work (Reg 5.2(i)). *Landscaping which is not covered by the [DBA] is work to which the [McNamara-O'Hara Service Contract Act of 1965 (SCA)] may be applicable.* (*See* Reg 4.116)

(Emphasis added.)

The foregoing passage indicates that contracts to perform landscaping work are conclusively included within the scope of the DBA and DBRA, but only when that landscaping is performed in conjunction with or as part of construction that is subject to the DBRA. While certain kinds of landscaping work that are unrelated to or performed apart from construction *may* constitute "construction" as defined under the DBA and therefore be covered, that landscaping would have to be elaborate, akin to substantial earth moving. Lastly, the foregoing passage indicates that there are types and kinds of landscaping that are not covered by the DBA, but that according to 29 C.F.R. § 4.116 (2005), such landscaping may be covered by the SCA.

The Resource Book reaches a conclusion similar to the Handbook with respect to landscaping, stating that landscaping work is subject to the DBA when it is part of construction activity that is independently subject to the DBA. The section entitled "Distinguishing DBA and SCA" states in pertinent part:

> Landscaping performed *in conjunction* with new construction or renovation work subject to DBA is also covered by the DBA. *Other landscaping, e.g., planting trees and flowers*, mowing, or seeding, is SCA work.
>
> *Elaborate landscaping, substantial earth moving*, and reclamation of the type associated with hazardous waste cleanup contracts are subject to DBA.

Resource Book, 23 (emphasis added). Not only does this passage state that elaborate landscaping is subject to the DBA while other landscaping is work covered by the SCA, but the passage also specifies planting trees as an example of SCA work.

The SCA, codified at 41 U.S.C. § 351–358 (2005), promulgates labor standards similar to those in the DBA and DBRA, including the requirement to pay prevailing wages on federal government contracts. *See* 41 U.S.C. § 351. However, the distinction is that the SCA pertains to service contracts while the DBA and DBRA apply to construction contracts.[4] The SCA provides in pertinent part:

> Every contract . . . entered into by the United States . . . in excess of $2,500, . . . the principal purpose of which is to furnish services in the United States through the use of service employees, shall contain . . . [a] provision specifying the minimum monetary wages to be paid the various classes of service employees in the performance of the contract . . . as determined by the Secretary . . . in accordance with prevailing rates for such employees . . . .

41 U.S.C. § 351(a)(1). Like the DBA, the SCA only applies to contracts into which the federal government has directly entered; federally "assisted" contracts are excluded from its provisions. 29 C.F.R. § 4.134(a)(2005).[5]

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[4] Senate Report No. 89-798, as reprinted in 1965 U.S.C.C.A.N. 3737 states in part:

The purpose of this bill is to provide labor standards for the protection of employees of contractors and subcontractors furnishing services to or performing maintenance service for Federal agencies. The service contract is the only remaining category of Federal contracts to which no labor standards protection applies. Federal construction contracts require compliance with labor standards under the Davis-Bacon Act and related statutes.

[5] 29 C.F.R. § 4.134(a) (2005) provides:

Contracts entered into by agencies other than those of the Federal Government or the District of Columbia as described in Sec. Sec. 4.107–4.108 are not within the purview of the Act. . . . Similarly, it does not cover service contracts entered into by agencies of States or local public bodies, not acting as agents for or on behalf of the United States . . . , even though Federal financial assistance may be provided for such contracts under Federal law or the terms and conditions specified in Federal law may govern the award and operation of the contract.

Examples of typical service contracts covered by the SCA are the following: security and guard services, janitorial services, cafeteria and food service, grounds maintenance, data processing, electronic equipment maintenance and operation, support services at government installations, drafting and illustrating, and warehousing. *See* 29 C.F.R. § 4.130 (2005). Contracts and work that are specifically exempted from the SCA's coverage include "any contract of the United States or District of Columbia for construction, alteration and/or repair, including painting and decorating of public buildings or public works." 41 U.S.C. § 356. Section 4.116(a) of Title 29 of the Code of Federal Regulations elaborates:

> This language corresponds to the language used in the [DBA] to describe its coverage. The legislative history of the [SCA] indicates that the purpose of the provision is to avoid overlapping coverage of the two acts by excluding from the application of the [SCA] those contracts of which the [DBA] is applicable and in the performance of which the labor standards of that Act are intended to govern the compensation payable to the employees of contractors and subcontractors on the work.

(Citations omitted.)

When the activity of planting trees has come up for consideration by the government agencies that are charged with applying and interpreting the SCA and the DBA, those agencies have issued administrative decisions and opinion letters that are consistent with and corroborate the Handbook's and the Resource Book's determination that tree planting is an activity more likely covered by the SCA than the DBA. Research of the applicable administrative legal authorities has turned up four opinions and decisions [collectively "decisions"] indicating that planting trees is activity that is covered by the SCA. The issue of whether the activity of tree planting is covered by the DBA versus the SCA is not directly considered by these decisions. Moreover, the specific question of whether prevailing wages were required did not arise in any of the decisions. Instead, the decisions concerned other aspects of the SCA, such as whether a decision to debar the contractor should be upheld. Nevertheless, the decisions are significant because the unchallenged underlying presumption in all four decisions is that tree planting is an activity covered under the SCA.

The first decision is a letter from the U.S. Comptroller General to Mr. Verbon D. Walker of the Bureau of Land Management, Department of the Interior, regarding a contract for "planting seedling trees in the cyclone area in Lawrence County, South Dakota," for the amount of $1,920, and with the federal government providing the seedlings. 1964 WL 2206 (Comp. Gen.). In describing the contract, the Comptroller General stated, "[i]n view of the *type of contract and amount involved* it was administratively determined that neither the Miller Act, 40 U.S.C. § 270a–270d, nor the Davis-Bacon Act, 40 U.S.C. § 276a were for application." *Id.* (emphasis added). The version of the Miller Act in effect at the time, 1964, essentially required that the contractor, prior to the award of any federal contracts in excess of $2,000 for the

construction, alteration, or repair of any public building or public work of the United States, furnish payment and performance bonds.[6] This contract would not have been covered by the DBA or Miller Act simply by virtue of being below the $2,000 threshold for either Act, but the Comptroller General also wrote that another agency had determined that the contract was not covered by the DBA or Miller Act for the separate reason that it was not the *type* of contract to be covered by those statutes.

The second decision, In the Matter of Rob Sweat and Associates, BSCA Nos. SCA-1387 and SCA-1388 (September 26, 1991), arose from a matter before the Board of Service Contract Appeals [LBSCA], where the issue was whether the two contractors' names should be removed from the list of ineligible bidders. *See* 1991 WL 733671 (LBSCA). At issue were three service contracts with the United States Department of Agriculture, Forest Service. Two were for hand planting of tree seedlings on government property: $29,365.99 to plant 542 acres and $11,295 for 228 acres. *Id*., and at n. 4. The third contract was for "mechanical site preparation of 344 acres of land (bulldozing, drum chopping, etc.)." *Id*.

The third decision, In the Matter of Northwest Forest Workers Ass'n Eugene, Oregon, Case No. 85-SCA-[WD]-10 (October 10, 1985), involved a petition by a trade association of contractors who performed tree planting, tree trimming, and related services for private companies and the government requesting reconsideration of wage determinations for forestry and land management services. 1991 WL 733671 (LBSCA). This matter was heard before the LBSCA because the applicable law was the SCA, not the DBA.

The fourth decision, In the Matter of: Hugo Reforestation, Inc., ARB Case No. 99-003, (April 30, 2001) 2001 WL 487727 (DOL Adm. Rev. Bd.) (April 30, 2001), arose from a proceeding before the DOL's Administrative Review Board, where the contractor appealed his debarment by the Administrative Law Judge. The underlying contract was in the amount of $188,135 for "tree plantation brushing" and "conifer/hardwood spacing" on land operated by the Bureau of Land Management. *See id.* The Administrative Review Board noted in its decision, "[i]t is undisputed that the contract was subject to both the SCA and CWHSSA [Contract Work Hours and Safety Standards Act]." *Id.*

All four of these decisions concerned contracts for tree planting services. In none of them was the fact that those contracts were subject to the SCA in dispute. The contracts involved in these four decisions are similar to the work called for in the tree planting contracts People for Trees and Urban Corps enter into with the City. Thus, these decisions support the conclusion that the tree planting work at issue is a service activity that is more appropriately covered under the SCA than the DBA. The SCA does not apply to the tree planting work at issue, however, because the federal government is not a party to those contracts. Accordingly, because neither the DBA (or DBRA for that matter) nor the SCA apply to the tree planting work at issue, there is no requirement to pay prevailing wages under federal law.

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[6] A 1978 amendment to the Miller Act increased the threshold for the contract value amount $25,000, which was then eliminated entirely by a 1994 amendment.

CONCLUSION

The work of planting trees in which organizations such as People for Trees and Urban Corps enter into contracts with the City is an activity that is not covered under the DBA or the DBRA. The tree planting activity does not meet the definitions of "construction," "building," or "work" under the DBA, DBRA, or its implementing regulations. Rather, based upon the DOL's interpretation of the SCA and agency decisions and opinion letters regarding the SCA, tree planting is a service activity. The SCA's prevailing wage requirement does not apply to the tree planting activity at issue because even though the tree planting contracts receive federal funding assistance through the CDBG program, the necessary condition that the federal government be a party to the contracts is not present. Therefore, the work People for Trees and Urban Corps perform in planting trees is not required to be paid prevailing wages under federal law.

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By
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JAJ:cla
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cc: Luis Generoso, Water Resources Manager