

U.S. Department of Labor

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



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MEMORANDUM NO. 157

TO: ALL GOVERNMENT CONTRACTING AGENCIES OF THE FEDERAL GOVERNMENT AND THE DISTRICT OF COLUMBIA

FROM: *Karen R. Keesling*
KAREN R. KEESLING
Acting Administrator

SUBJECT: Application of Davis-Bacon Wage Determinations to Contracts with Option Clauses

This memorandum clarifies the application of Davis-Bacon wage determinations to federally-funded and assisted construction contracts that contain option clauses, and to federal service contracts which have a substantial and segregable amount of construction work that require the application of the Davis-Bacon Act and which also contain option clauses. Some contracting agencies have not been incorporating a new or current Davis-Bacon wage determination in these contracts at the time an option is exercised. To ensure consistency, we are providing the following guidance on this subject.

The Davis-Bacon Act applies to "every contract in excess of \$2,000, to which the United States or the District of Columbia is a party, for the construction, alteration, and/or repair, including painting and decorating, of public buildings or public works." (Emphasis added.)

Multi-year construction contracts that contain option provisions by which a contracting agency may unilaterally extend the term of the contract require inclusion of a current wage determination at the time the option is exercised. This requirement is consistent with the purpose of the Davis-Bacon Act to ensure that employees be paid prevailing wages, and the McNamara-O'Hara Service Contract Act (SCA) regulations governing option periods under that statute. As explained in section 4.145(a) of Regulations, 29 CFR Part 4, the exercise of such an option requires a contractor to perform work for a period of time for which it would not have been obligated -- and for which the government would not have been required to pay -- under the terms of the original contract if the option had not been exercised. Thus, once the option on a contract is exercised, the additional period of performance becomes a new contract.

Accordingly, every federally-funded or assisted multi-year construction contract in excess of \$2,000 that contains a provision to extend an existing contract -- pursuant to an option clause or otherwise -- so that the construction is performed over an extended period of time (as opposed to situations where a contractor is given additional time to complete its original contract commitment), must include a current Davis-Bacon wage determination. Similarly, just as a current SCA wage determination must be incorporated at the exercise of an option in an SCA contract, if an option in the SCA contract calls for substantial and segregable construction work, then a current Davis-Bacon wage determination must also be incorporated at the exercise of the option.