

U.S. DEPARTMENT OF LABOR
OFFICE OF THE SOLICITOR
WASHINGTON 20210

July 29, 1966

MEMORANDUM #69

TO : AGENCIES ADMINISTERING STATUTES REFERRED TO IN 29 CFR, SUB-TITLE A, PART 5

FROM: E. Irving Manger
Associate Administrator

RE : Physical Inclusion of Contract Labor Standards Stipulations in Subcontracts

This supersedes our May 13, 1958 memorandum to agencies administering statutes referred to in 29 CFR, Subtitle A, Part 5.

In the processing of labor standards enforcement cases, it has come to our attention that in many instances, the contract provisions specified in Section 5.5(a)(6) of Regulations, Part 5 (29 CFR, Subtitle A), are not being physically included in all subcontracts as required by the Regulations. The failure to include the labor standards provisions in subcontracts has resulted in serious and costly violations on the part of many subcontractors. Further, the Comptroller General has recently ruled that it is not proper to impose sanctions against a subcontractor in those cases where the subcontractor is not fully informed of his obligations to his employees by having the labor standards provisions incorporated in his subcontract.

Accordingly, we wish to remind all Contracting Agencies that Section 5.5(a)(6) requires the contract stipulations cited therein to be physically included in all subcontracts. All agencies are requested to take appropriate measures to assure strict compliance with this requirement on the part of their contract administration personnel. In this connection, it is earnestly suggested that the contractual requirement be explained in detail during preconstruction conferences and in preconstruction letters issued to prospective contractors. Incorporation by reference does not constitute compliance with the Regulations. However, contractors who subcontract by means of purchase orders or other informal type contract forms will be considered in compliance with Section 5.5(a)(6) provided they attach copies of the appropriate labor standards clauses to the subcontract form and

provided also that the subcontractor acknowledges receipt of the labor standards clauses in writing to the contractor awarding the subcontract.

In our opinion, the failure of the prime contractor or a subcontractor to incorporate the labor standards provisions in its subcontracts may, under certain circumstances, be a serious violation of the contract requirements which would warrant the imposition of sanctions under either the Davis-Bacon Act or our Regulations.

Therefore, in those cases where a subcontractor is in violation of the labor standards, the investigation report should include a copy of the subcontract agreement. In those instances where the labor standards provisions are not incorporated in the subcontract, the investigation should develop the reasons for such omission. Careful consideration should be given to the reasons for failing to include the labor standards provisions in the subcontract and your report should include a recommendation as to whether such omission warrants the imposition of sanctions against the contractor.