

U.S. DEPARTMENT OF LABOR

OFFICE OF THE SECRETARY

WASHINGTON

April 6, 1971

MEMORANDUM #93

TO: All Government Contracting Agencies of the Federal Government and the District of Columbia

SUBJECT: REVOCATION OF THE PROCLAMATION OF FEBRUARY 23, 1971 SUSPENDING PROVISIONS FOR PAYMENT OF WAGES ON CONSTRUCTION PROJECTS PURSUANT TO WAGE DETERMINATIONS OF THE SECRETARY OF LABOR UNDER THE DAVIS-BACON ACT; AND ESTABLISHMENT OF A WAGE AND PRICE STABILIZATION MECHANISM FOR THE CONSTRUCTION INDUSTRY

The purpose of this memorandum is to provide you with initial information on the subject action taken by the President on March 29, 1971. Further information will be provided as it becomes available.

REVOCATION OF DAVIS-BACON SUSPENSION

By proclamation of the President on March 29, 1971, Proclamation 4031 of February 23, 1971 is revoked--

"as to all construction contracts for which solicitations for bids on proposals are issued after the date of this Proclamation, whether direct federal construction or federally assisted construction subject to the previous Proclamation No. 4031."

WAGE AND PRICE STABILIZATION IN CONSTRUCTION: EXECUTIVE ORDER

By Executive Order 11588, on March 29, 1971, the President established a wage and price stabilization mechanism for the construction industry.

Among other things, the Order (1) establishes a tripartite Industry Stabilization Committee composed of 12 members appointed by the Secretary of Labor (4 each from labor unions, contractors' associations, and the public sector) to review wage and salary increases in collective bargaining agreements; (2) provides that associations of contractors and national and international unions shall jointly establish craft dispute

boards composed of labor and management representatives to determine whether wages and salaries are acceptable in accordance with criteria contained in the Order; and (3) establishes an interagency committee composed of agency representatives designated by the Secretary of HUD to develop criteria for the determination of the acceptable prices in construction contracts, as well as criteria for acceptable compensation.

The wage and price stabilization mechanism is established pursuant to the authority vested in the President by the Economic Stabilization Act, as amended.

REINSTATEMENT OF DAVIS-BACON PROVISIONS

Under Proclamation 4040 of March 29, 1971, revoking the Davis-Bacon suspension imposed by Proclamation 4031 of February 23, 1971, federal wage payment requirements dependent on wage determinations of the Secretary of Labor are once again made applicable to -

- (1) Solicitations (issued after March 29, 1971) for bids or proposals on federal or federally assisted construction of a character subject to the previous suspension; and
- (2) All contracts for such construction entered into pursuant to such bids.
- (3) Subcontracts, of whatever tier, under such contracts.

By its terms, Proclamation 4040 does not specifically require changes in pending procurement actions or contract procedures with respect thereto which were initiated prior to the revocation of the suspension. It is recognized that some contracts may have actually been let during the period of suspension. The Proclamation is prospective in its application, however, and in no way does it prevent any resolicitation otherwise authorized of bids or proposals after such date, in which event the Davis-Bacon requirements will become applicable to the procurement if it is of a character to which they would otherwise apply, and the contract entered into as a result of the solicitation will not be affected by the previous suspension.

Contracts entered into without Davis-Bacon provisions during the period between February 23, and March 29, 1971, inclusive, remain free of such provisions and the same is true of subcontracts thereunder, irrespective of the date they are entered into or the period in which their performance occurs.

Where bids or proposals for contract work were solicited subject to Davis-Bacon provisions prior to Proclamation 4031 suspending such provisions with respect to "contracts entered into" on or after February 23, 1971, and no further action has been taken and no contract entered into pursuant to such solicitation between February 23 and March 29, 1971, inclusive, it would appear that no contract or solicitation therefor became subject to the suspension proclamation before the revocation by Proclamation 4040 and that the additional effort and expense of issuing a resolicitation after March 29, 1971 would not be required as a result solely of the two proclamations. So long as the wage determination on the basis of which the solicitation was made remains in effect, a contract subject to its provisions may be entered into as it would have been if there had been no suspension during the intervening period.

The reinstatement of Davis-Bacon provisions under Proclamation 4040 should accordingly avoid, or at least minimize, most of the problems resulting from interrupting the procurement process once it has begun, which were faced by contracting officers under Proclamation 4031.

WAGE DETERMINATIONS AND REQUIREMENTS

Regulations of the Department of Labor (29 CFR Parts 1, 5; see also 36 F.R. 304-308) governing requests for wage determinations, use of wage determinations, contract clauses, and their enforcement have been reinstated (36 F.R. 6427). Area and general wage determinations outstanding on the date of the suspension have had their expiration dates extended until such time as new determinations to replace them can be made, and such determinations may be used (36 F.R. 6467). Requests for project wage determinations will be received and handled pursuant to the previously established procedures. Contracting agencies are reminded of the requirements of 29 CFR 5.3(a)(3) to submit pertinent wage information and are urged to provide recommendations as to wages which are prevailing for each classification of laborer and mechanic to be employed on the proposed contract. It is further requested, to assist in reducing delays in responding to requests, that requests for wage determinations be submitted with a self-addressed envelope that may be used to transmit the wage determination to the office or person responsible for its use. Every effort will be made to respond to requests for wage determinations expeditiously and, wherever possible, the effective date of existing wage determinations will be extended on an individual basis in accordance with the provisions of 29 CFR 5.4(a) in order to avoid delays in responding to the large number of requests anticipated during the next month.

STABILIZATION ACTIONS UNDER THE EXECUTIVE ORDER

Appropriate regulations will be issued in the near future dealing with the operations of the Industry Stabilization Committee, Craft Disputes Boards, and the Department of Labor under Executive Order 11588.

Section 5(c) of the Order provides for making public the determinations of the Committee and the Boards with respect to the acceptability of wage and salary increases by craft and area. It is contemplated that notices of certifications by the Secretary of Labor of increases determined to be unacceptable will be published in the Federal Register in order to assure the broadest possible publication.

Section 5(b) of the Order directs the heads of all Federal departments, and agencies, in order "to assure that unacceptable wage rates" are not utilized in Federal or Federally assisted construction, to review--

1. Plans for construction and assistance for construction in localities where wage or salary increases have been certified by the Secretary of Labor as unacceptable; and
2. Current and prospective Federal and federally assisted construction in the areas affected by such certification

to determine whether such plans can be approved or continued and such contracts awarded or continued.

These reviews of plans and of current and prospective contracts are necessary under the Order in every instance when wage and salary increases have been certified by the Secretary of Labor as unacceptable. Suggested guidelines for carrying out the directive in section 5(b) will be developed.

Section 5(a) of the Order requires that a wage or salary increase "in excess of that found to be acceptable" shall, in making wage determinations, not be taken into consideration--

- (1) By the Secretary of Labor in making such determinations in accordance with the Davis-Bacon Act;
- (2) By the States in making similar determinations under State statutes.

Federal agencies providing federal funding or assistance to contracts in the States to which such State statutes may apply should advise the State agencies with whom they deal of the requirement in paragraph (2), above, keep the Secretary of Labor informed concerning the application of this requirement by the States, and assume responsibility for enforcement actions available under the statutes which they administer, in accordance with the provisions of Reorganization Plan No. 14 of 1950 and regulations of the Secretary of Labor.

As indicated above, further information will be sent to you on these subjects as it becomes available. In the meantime, questions as to application of the Proclamation and Davis-Bacon requirements may be addressed to the Workplace Standards Administration, and questions as to the application of the Executive Order may be addressed to this Office.



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Under Secretary of Labor