

U.S. DEPARTMENT OF LABOR
WORKPLACE STANDARDS ADMINISTRATION
WASHINGTON, D.C. 20210



February 25, 1971

MEMORANDUM #91

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

SUBJECT: SUSPENSION OF PROVISIONS FOR PAYMENT OF WAGES ON CONSTRUCTION
PROJECTS PURSUANT TO WAGE DETERMINATIONS OF THE SECRETARY OF
LABOR UNDER THE DAVIS-BACON ACT

The purpose of this memorandum is to provide you with initial information on the President's suspension of the provisions of the Davis-Bacon Act. Further information will be provided as it becomes available.

By proclamation of the President on February 23, 1971, there are suspended --

"as to all contracts entered into on or subsequent to the date of this proclamation and until otherwise provided the provisions of the Davis-Bacon Act of March 3, 1931, as amended, and the provisions of all other acts providing for the payment of wages, which provisions are dependent upon determinations by the Secretary of Labor under the Davis-Bacon Act"

Also suspended as to all such contracts until otherwise provided are --

"the provisions of any Executive Order, proclamation, rule, regulation or other directive providing for the payment of wages, which provisions are dependent upon determinations by the Secretary of Labor under the Davis-Bacon Act"

The suspension of these Davis-Bacon wage requirements is pursuant to the authority given the President by section 6 of the Davis-Bacon Act (40 U.S.C. 276a-5). It does not affect existing contracts containing provisions for payment of wage rates determined by the Secretary of Labor under the Davis-Bacon Act. The determined rates apply to such contracts. Provisions of the Act and regulations for enforcement of the contract requirements continue to apply to such contracts. The application to contracts entered into on or after February 23, 1971, of regulations governing the making or use of wage determinations issued by the Secretary of Labor under the Davis-Bacon Act is suspended by the President's proclamation. Agencies should not request wage determinations for contracts to be awarded. The Department of Labor is not making such determinations and will not respond to pending requests therefor. There will be appropriate announcement made in the Federal Register with respect to the suspension of the Department of Labor's regulations for the making and use of wage determinations in accordance with the President's proclamation. Revisions in other regulations such as the Federal Procurement Regulations and the Armed Services Procurement Regulations, although not required, may be helpful to reduce confusion.

Agencies may encounter some problems in applying the Davis-Bacon suspension proclamation to contracts contemplated but not yet entered into. The suspension must be made effective as to such contracts. The following situations are typical:

- (a) Invitations for bids not sent out -- deletion of Davis-Bacon provisions should be made.
- (b) Invitations for bids sent out but time is available to amend -- appropriate steps to amend by deletion of Davis-Bacon requirements should be taken.
- (c) Invitations for bids sent out but insufficient time remaining to amend (includes situations where bids are in and opened or unopened up to time of award) -- whatever action is necessary and appropriate to prevent inclusion in the contract of Davis-Bacon provisions should be taken: one possibility is a readvertising for bids.
- (d) In the case of negotiated contracts, necessary and appropriate action should be taken to assure the noninclusion of Davis-Bacon provisions when the contract is entered into.

As indicated above, further information will be sent to you on this subject as it becomes available. In the meantime, you may address questions to this office.

Robert D. Moran

Robert D. Moran
Administrator