dlg L Book

U. S. DEPARTMENT OF LABOR

OFFICE OF THE SOLICITOR

WASHINGTON 25

NOV - 8 1961

MEMORANDUM # 29

TO: AGENCIES ADMINISTERING STATUTES REFERRED TO IN 29 CFR, SUBTITLE A, PART 5.

FROM: James M. Miller
Assistant Solicitor

SUBJECT: Opinions on application of the Davis-Bacon and related Acts.

Enclosed with previous covering memoranda, copies of opinions on the application of the Davis-Bacon and related Acts were furnished you for information and guidance in your enforcement programs under those Acts.

We are now enclosing a copy of a recent opinion on this same general subject, which we are sure will be of further interest and assistance to you.

Enclosure

Manger c D.B. Act c
Saylor c Divs + Dists
Gregory c
Taylor c

DB-13

P. 132(c)
10b

U.S. DEPARTMENT OF LABOR

OFFICE OF THE SOLICITOR

WASHINGTON 25

NOV 6 1961

Rear Admiral R. L. Moore, Jr.
Acting Chief of Bureau
Bureau of Ships
Department of the Navy
Washington 25, D. C.

Re: Your file 12720
Ser 720-1083
Philco Corporation
Contract NObsr-80904
Federal Electric Corporation
Contract NObsr-80908
San Diego, California
Our files: E-61-595-613 & 614

Dear Admiral Moore:

This is with reference to your letter and enclosure of May 31, 1961 regarding the application of the Davis-Bacon Act to work performed by the Philco Corporation, and by the Federal Electric Corporation, on the above identified contracts. These were awarded by the Resident Industrial Manager, USN Repair Facility, San Diego, California.

You indicate that, in your opinion, the work involved in these contracts does not constitute construction, and, with the exception of three holes in a concrete wall for water pipe, electrical conduit, and sheet metal duct, merely involved the assembly and installation of equipment in buildings already constructed. You further indicate that, in your opinion, both contracts were properly determined not to be subject to the provisions of the Davis-Bacon Act.

From the description of work set forth in the attachments to your letter, it appears that all major items of equipment were furnished by the Government. It further appears that

the labor costs involved on each of the contracts exceeded $2,000. We understand that these contracts were competitively bid by several qualified contractors who normally bid and perform similar work in the San Diego area.

It is true that, unless a substantial amount of construction is involved, installation work, as such, is not normally considered to be within the coverage of the Davis-Bacon Act. Moreover, the $2,000 monetary requirement of the Davis Bacon Act is not regarded as the only test of coverage in the case of supply and installation contracts. In the case of the instant contracts, however, the cost of the construction activity not only exceeded the monetary standard of the Davis-Bacon Act, but, in fact, constituted the major cost of the contract, as shown by the breakdown of estimated labor and material cost which you submitted. Such contracts must be considered to require substantial construction activity.

The background data on Contract NObsr-80904 contains the following description of work:

> "The work involved in this contract covered the installation of Government-furnished AN/SQS-23 sonar gear at the Anti-Submarine Warfare School, San Diego, California. The installation included approximately 35 units of equipment, a grounding system, a water cooling system for 3 amplifiers, the running of primary power from a building distribution box through existing ducts to the units, the installation of a 400-cycle motor generator, including cover panel and wiring and the putting in place of approximately 235 different cables, spread over 4 rooms, and included the lugging and soldering of approximately 4000 leads. A subcontract covered the fabrication of three motor mounts and a metal cable cover."

Contract N00ar-30908 is described as follows:

> "The work involved in this contract covered the installation of two Government-furnished AN/FPN-36 Quadradars at the U. S. Naval Air Station, Miramar, San Diego, California. The installations included the running of telephone-type and coaxial cables, ringing out and tagging all pairs of the multiconductors, installing a junction box and connections, installing Government-furnished line amplifiers with mounting brackets and ducting, installing Government-furnished ground rods, fabricating and installing two dollies for indicators and making other related electrical and electronic connections."

After examining the above descriptions of work and the monetary value of the contracts, it is our position that the work contained in both of the subject contracts is construction activity subject to the provisions of the Davis-Bacon Act.

It is appreciated by this Office that retroactive corrective action on the instant contracts is not feasible at this time. However, since the Davis-Bacon Act provides that the advertised specifications of every contract to which the Act applies, as well as the contract itself, shall contain certain provisions set forth in that Act, I respectfully call this matter to your attention so that the provisions of the Davis-Bacon Act will be included in any future contracts for similar work which may be awarded by your agency.

Very truly yours,

Charles Donahue
Solicitor of Labor