

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



APR 30 1971

OFFICE OF THE ADMINISTRATOR

MEMORANDUM #95

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


SUBJECT: MAINTENANCE PAINTING CONTRACTS--APPLICATION OF DAVIS-BACON ACT

ATTACHMENTS: 1. Copy of Comptroller General's Decision B-171088, dated April 9, 1971

2. Copy of letter, dated May 4, 1970, signed by Associate Solicitor Nystrom, U.S. Department of Labor

The attached Comptroller General's Decision B-171088 arose out of a question as to whether the Service Contract Act or the Davis-Bacon Act applies to contracts for painting mail boxes - the usual pick up letter boxes located on the streets at various convenient points in larger towns and in metropolitan areas. The Comptroller General held that such maintenance painting contracts in excess of \$2,000 are subject to the Davis-Bacon Act. It is clear from the decision that the Davis-Bacon Act is equally applicable to other similar painting contracts performed in connection with regular maintenance.

The attached copy of a letter may be helpful in distinguishing between maintenance painting contracts subject to the Davis-Bacon Act and contracts for overall maintenance of housing units (which involve some touch-up painting) subject to the Service Contract Act.


Horace E. Menasco
Administrator



ASSISTANT COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-171088

APR 9 - 1971

Dear Mr. Postmaster General:

Reference is made to letter of October 20, 1970, from the General Counsel requesting our views on the applicability of the Davis-Bacon Act, 40 U.S.C. 276(a) (Davis-Bacon) to contracts for the repainting of letter boxes. Our views are desired because of the varying positions which have been stated by the General Counsel, Post Office Department, and the Office of the Solicitor, Department of Labor.

It is reported that the work involved consists of the usual activities in connection with repainting of equipment that has been exposed to the elements, including surface preparation, primer application and final painting. The boxes are painted at their stationary positions rather than carried to a shop for this purpose. The work is stated to be regular, continuous and recurring and is performed in accordance with the Department's Letter Box Maintenance Handbook. The handbook specifies that the repainting frequency cycle should be every 36 months with provision for variation because of different climatic conditions. As a result of this continuing maintenance program we are advised that the life of this equipment can be extended for decades.

The current difference of opinion arises because the Director, Division of Wage Determinations, Department of Labor, advised the Postmaster, Milwaukee, Wisconsin, in response to that official's notice of intent to make a service contract, that the Davis-Bacon Act rather than the Service Contract Act applied to the contract in issue for the painting of mailboxes. In this connection Post Office cites the current enforcement of the Service Contract Act by Labor in contracts for this work under essentially identical circumstances, together with its general practice in this area, as raising substantial questions as to the propriety of now disturbing the established method of contracting subject to the Service Contract Act.

The Davis-Bacon Act provides, in pertinent part, that:

"* * * The advertised specifications for every contract in excess of \$2,000 * * * for construction, alteration and/or repair, including painting and decorating, of public buildings or public works of the United States * * * and which requires or involves the employment of mechanics and/or laborers shall contain a provision stating the minimum wages to be paid various classes of laborers and mechanics which shall be based upon the wages that will be determined by the Secretary of Labor to be prevailing for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the city, town, village, or other civil subdivision of the State in which the work is to be performed * * * and every contract based upon these specifications shall contain a stipulation that the contractor or his subcontractors shall pay all mechanics and laborers employed directly upon the site of the work * * * the full amounts accrued at time of payment, computed at wage rates not less than those stated in the advertised specifications * * *."

While numerous arguments have been advanced by your Department and by the Department of Labor as to why the Davis-Bacon Act should, and should not, be applied to contracts of the type here involved, it is our opinion that only two basic questions are presented. First, whether only such painting contracts as may complement the construction, alteration or repair of a public building or a public work are subject to the Davis-Bacon Act. Second, whether mailboxes, while secured at assigned street locations, can properly be considered as public works.

As enacted, the Davis-Bacon Act did not include a reference to painting and decorating of public buildings or works. In fact, in our decision A-37862, dated August 7, 1931, 11 Comp. Gen. 57,

we held that the act was limited to the employment of laborers or mechanics in the construction, alteration, and/or repair of public buildings as provided in the act, and therefore was not applicable to the painting of an existing public building. The act as amended August 30, 1935, 49 Stat. 1011, contained certain changes among which were those to include public works and the painting and decorating of public buildings and works within the coverage of the act. The purpose of these changes is explained in the following manner at page 2 of Senate Report No. 1155, 74th Congress:

"The principal substantive changes which this bill proposes to make in the present statute are contained in section 1. A brief summary of these proposals follows:

"(a) The application of the Davis-Bacon Act is extended so as to cover public works as well as public buildings and so as to include all contracts in excess of \$2,000. The present act covers only contracts for public buildings in excess of \$5,000.

"(b) The definition of construction, alteration, and repair is amended so as to include contracts for painting and decorating. The purpose of this language was to fill a conspicuous gap in the present statute which has been construed as not applying to contracts for the painting of existing buildings. (See 11 Comp. Gen. 57.) * * *

From the above we are persuaded that all contracts in excess of \$2,000 for painting of a public building or public work, whether performed in conjunction with the original construction or as regular maintenance, is subject to the Davis-Bacon Act.

The remaining criterion for determining applicability of the act to the contract here involved is whether the contract essentially or substantially contemplates the performance of work described by the enumerated items on the objects or for the purpose stated, i.e., whether the subject is "public work."

With respect to whether the mailboxes in question are public works, the definitions supplied by Labor's regulation at 29 CFR 5.2(f) provide that the terms "building" or "work" include without limitation buildings, structures and improvements of all types, such as bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, canals, dredging, shoring, rehabilitation and reactivation of plants, scaffolding, drilling, blasting, excavating, clearing, and landscaping. These illustrations appear to contemplate that the term "public work" should encompass any Government-owned facility necessary for carrying on community life and to cover any article or structure which is placed, either permanently or temporarily, at a particular location to serve a public purpose. We find no reason to disagree with this concept, and any attempt to further distinguish between manufactured and constructed items in these circumstances (as contended by your General Counsel) would therefore be unwarranted, since it is our opinion that a manufactured object may, upon being installed at a specific location for a public use or purpose, become a public work.

In view of the foregoing, we must conclude that the provisions of the Davis-Bacon Act are applicable to the contract described in your General Counsel's letter.

Sincerely yours,
Lawrence J. Powers

For the Comptroller General
of the United States

The Honorable
The Postmaster General

(C O P Y)

May 4, 1970

This is in further reference to your recent telegram concerning the applicability of the Davis-Bacon Act to painting work on the proposed project . . . for maintenance of family housing units

The report mentioned in our letter of April 18, 1970, from the Department of the Air Force has now been received. It indicates that the contract in question is for routine maintenance of family housing. It requires that, among other things, the contractor repair appliances, replace broken tiles, replace window panes, replace damaged sidewalks, remove snow and ice, and perform minor touch-up painting; all on an as-needed basis

On the basis of the facts . . . we agree with the Department of the Air Force that the provisions of the Service Contract Act rather than the Davis-Bacon Act are applicable to the contract work.

Sincerely,

/s/

Harold C. Nystrom
Associate Solicitor
Division of General Legal Services