

U.S. Department of Labor

Employment Standards Administration
Wage and Hour Division
Washington, D.C. 20210



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MEMORANDUM NO. 190

TO: ALL CONTRACTING AGENCIES OF THE FEDERAL
GOVERNMENT AND CONTRACTING AGENCIES OF
THE DISTRICT OF COLUMBIA

FROM: *John R. Fraser*
JOHN R. FRASER
Acting Administrator

SUBJECT: Application of Labor Standards to Demolition Contracts

This memorandum is intended to clarify the proper application of labor standards statutes – specifically the Davis-Bacon Act (DBA) and the McNamara O'Hara Service Contract Act (SCA) – to contracts for dismantling or demolition of public buildings or public works. Over the years, the Department of Labor has issued numerous opinion letters and has provided guidance to contracting agencies on this subject in prior All Agency Memoranda (AAM); however, the Department continues to receive questions regarding the proper application of DBA and SCA to demolition contracts.

The DBA applies to contracts for the construction, alteration, and/or repair, including painting and decorating, of a public building or a public work. The SCA applies to contracts for the principal purpose of furnishing services through the use of service employees. Section 7(1) of SCA specifically excludes from coverage under SCA any contract for construction, alteration, and/or repair of a public building or a public work. Thus, if a demolition contract is subject to DBA, then SCA does not apply; however, if the demolition contract is not subject to DBA, then SCA would apply to that contract.

In determining whether a demolition contract is subject to DBA, it is necessary to look at the entire scope of that contract as well as other contracts that might be part of the same overall project. Based on a decision by the Attorney General

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(38 Op. Atty. Gen. 229), demolition alone is not necessarily considered to be "construction, alteration, and/or repair of a public building or a public work." However, if subsequent construction at the site is planned as part of the same contract or if subsequent construction is contemplated as part of a future construction project, then the demolition work is considered to be part of the overall construction project and DBA is applicable to the construction contract.

In some cases, the nature of the demolition or removal work alone might be considered construction activity covered by DBA. For example, removal of asbestos from a facility that will not be demolished is considered to be an alteration or repair of the facility even though the asbestos may not be replaced with nonhazardous insulation material (see AAM No. 153). In addition, certain hazardous waste removal contracts that involve substantial earth moving to remove contaminated soil and recontour the surface may also be considered construction contracts subject to DBA (see AAM No. 187).

If, after considering all of the facts, it is determined that DBA does not apply to the demolition contract, then SCA would apply. However, because the nature of the demolition work does not change, the Department of Labor has determined that the prevailing rate for such work under either DBA or SCA should be the same. Thus, when demolition work is performed as part of an SCA contract, the Department of Labor utilizes the prevailing rates established under DBA as the basis for the wage determination issued under SCA for that contract. This wage determination approach and methodology was challenged and upheld by the Board of Service Contract Appeals in Case No. 86-SCA-WD-1. Because standard SCA wage determinations are not used for demolition contracts subject to SCA, it is important that contracting agencies clearly identify the service as demolition when requesting SCA wage determinations for such contracts.

If a contracting agency has any question regarding coverage under DBA or SCA for demolition and removal contracts – especially contracts for the removal of hazardous materials – they should contact the Wage and Hour Division, Government Contracts Enforcement Team at 202-219-7541 or write to the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210.