

U.S. DEPARTMENT OF LABOR

OFFICE OF THE SOLICITOR

WASHINGTON 25

July 29, 1963

MEMORANDUM # 54

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

FROM : E. Irving Manger *EIM*
Associate Administrator

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

DB-39

U.S. DEPARTMENT OF LABOR

OFFICE OF THE SOLICITOR

WASHINGTON 25

111a(1.1)

June 26, 1963

Mr. Rex M. Whitton
Federal Highway Administrator
Bureau of Public Roads
Department of Commerce
Washington 25, D. C.

Dear Mr. Whitton:

This is with further reference to my letter of February 15, 1963, and to subsequent conferences between representatives of our respective staffs regarding the applicability of the Davis-Bacon Act requirements to demolition work and, more especially, to demolition work which may be related to the initial construction of the Interstate highway system.

We have reviewed the proposed amendment to your Labor Compliance Manual, Federal-Aid Construction, (copy enclosed), and find that it is in accordance with our views on the issues here involved.

With the exception of demolition work performed under Urban Renewal projects authorized pursuant to the Housing Act of 1949, as amended, it has been our position that demolition, standing alone, is not subject to the prevailing wage requirements of the Davis-Bacon and related Acts. For example, the demolition of a building because such structure is no longer needed would not in itself be deemed a covered construction activity; however, where this existing building is being demolished as a phase of a covered construction project, the demolition would be deemed covered.

Applying the above principles to demolition work performed as part of the initial construction of a project under the Interstate highway program, it is our view that such demolition would be subject to the prevailing wage requirements of Section 113, Title 23, United States Code. The term "initial construction", as here used with respect to demolition work, encompasses all demolition operations carried on relative to Interstate highway programs for which a claim for Federal participation in the cost thereof has been or will be made by the State highway department. In such situations, the minimum wages for the classifications of

Mr. Rex M. Whitton

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work to be performed, as determined by the Secretary of Labor, would be applicable to the demolition operations.

It is our understanding that, in submitting requests for wage determinations, you will indicate on the Form DB-11(a) those contracts which will involve demolition. In that way, this Department will be in a position to include in its wage determinations classifications and rates for the demolition work which, depending on the practice in the areas under consideration, may or may not be the same as the classifications and wage rates recognized for building, heavy, or highway work in those areas.

We appreciate very much the continued cooperation received from you and your staff in these matters of mutual interest and importance.

Yours sincerely,

Charles Donahue
Solicitor of Labor

Enclosure

D-2-IV.3 Demolition Projects:

- (a) General: The Solicitor of Labor has ruled that demolition, standing alone, is not subject to the prevailing wage requirements of the Davis-Bacon and related acts; for example, the demolition of a temporary building because it is no longer needed would not be covered except in the case where it is being demolished as a phase of construction. It is well established that demolition work becomes a phase of construction, subject to the prevailing wage requirements, where the purpose of this activity is to clear the land and thereby facilitate the orderly and timely progress of a construction project.

Demolition work performed as part of the initial construction of a project is clearly covered by the Davis-Bacon and related acts. The term "initial construction," as used relative to demolition work, encompasses all demolition operations carried on relative to Interstate highway programs for which a claim for Federal participation in the cost thereof, has been or will be made by the State highway department. In such situations, the minimum wages for the classifications of work to be carried out, as determined by the Secretary of Labor, are applicable to the demolition operations.

- (b) Purpose of the Contract: In general, contracts for demolition, destruction, and/or removal of buildings, etc., from highway right-of-way in connection with the initial construction of an Interstate project must contain a prevailing wage determination of the Secretary of Labor pursuant to Section 113 of Title 23, United States Code. The fact that the demolition phase of construction is separate in point of time from the other planned construction operations or under a separate contract does not affect this requirement. Further, the fact that, because of the value of the salvageable materials available, the contractor pays the State for the privilege of accomplishing the demolition work, in return for title to all of the salvageable

D-2-IV.3 Continued

material, does not eliminate the necessity for obtaining, and enforcing the prevailing wage determinations with respect to such work.

(c) Nature of Transaction:

1. When (in the State's agreement for the purchase of the land) the property owner, as part of the consideration for the transfer of title to the land involved, retains title to the home and improvements, with the right to remove same from the right-of-way, prevailing wage determinations would not apply to work undertaken by the property owner, either personally or by contract, subsequently let by the property owner to effect the removal of the improvements reserved to the property owner as an element of the consideration for the State's acquisition of legal title to the right-of-way. Likewise the activities of the State, or of a State contractor, in relocating structures for the benefit of the grantor pursuant to the right-of-way agreement, do not constitute construction within the meaning of Section 101, Title 23, United States Code.
2. State Contracts for Demolition or Removal Subsequent to Acquisition of Title to Right-of-way: When the State takes title to the improvements and thereafter deals with them separately as State property, work done in connection with the removal or demolition of such improvements is considered "construction" within the contemplation of the Davis-Bacon Act and related acts, whether it is accomplished by bids for the demolition work, or contracts of sale, requiring removal of the improvements. The

D-2-IV.3 Continued

laborers and mechanics employed in connection with such work are covered by the prevailing wage requirements of those acts.

3. When the State, or government, takes title to the land including all improvements, timber, orchards, crops, etc., and does not dispose of such severable property by separate contract,
 - (a) Any work performed by the construction contractors, or subcontractors, with their own forces for the purpose of removal, demolition, destruction or salvage of such severable assets is construction within the meaning of the prevailing wage requirements.
 - (b) If the construction contractor or subcontractor disposes of such severable assets by sale in place, with an obligation on the purchaser to remove the severable property from the right-of-way, such demolition and removal operation constitutes construction. All activities which are performed by such purchaser after removal from the right-of-way are not construction inasmuch as such activities are not governed or required by the construction contract.
 - (c) When the construction contractor or subcontractor accomplishes the demolition and sells the severed materials to purchasers who take delivery on the project site, the demolition is covered but the loading and removal by the purchaser is not covered. This is similar to the situation where the contractor sells a piece of construction equipment at the site of

D-2-IV.3 Continued

the project with the responsibility being on the purchaser to load and remove the piece of equipment involved in the sale transaction.

- (d) Activities Engaged in by Demolition Contractors on Project Site Apart from and/or in addition to Demolition Work: The Solicitor of Labor has ruled that where covered demolition contractors (see above) are permitted to engage in activities on the project site that are peculiar to their business of salvaging materials, and that are apart from and in addition to those activities necessary to demolition and clearing of the site, such additional activity does not constitute covered work, subject to the prevailing wage requirements. For example, where a demolition contractor used the project site to clean brick salvaged from the demolition, for commercial resale in his normal used materials business, it was held that the cleaning of brick was not a requirement of the demolition work, and the brick cleaners were not covered by the prevailing wage requirements.