

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



March 11, 1971

MEMORANDUM # 92

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

Memorandum #91 provided initial information on the President's proclamation of February 23, 1971, which applied to all contracts entered into on and after that date. This memorandum provides additional information and interpretations of general interest.

A. Effect of Suspension of Davis-Bacon Act and Related Statutes on the Application of State "Davis-Bacon" Laws to Federally Assisted Construction Projects Subject to the Suspension.

It is the view of the Department of Labor that the action of the President invoking the suspension provisions does preclude a State from imposing its own "Davis-Bacon" type requirements on construction otherwise subject to the Davis-Bacon Act or to a Davis-Bacon extension statute. Any other conclusion would subvert the purpose of the suspension provision. If the States had the power locally to undo what the President has found necessary in the national interest, then the suspension provision would be rendered impotent. Such a result, in our opinion, would be illogical and irreconcilable with the Federal law. The Attorney General's Office concurs in this view.

Where, pursuant to the President's proclamation, Federal Davis-Bacon wage requirements have been made inapplicable to contracts for work on a Federally-assisted project and subcontracts thereunder (see B(2), below), it is the responsibility of the agency providing Federal assistance for the project to take appropriate steps to ensure that no non-Federal "Davis-Bacon" type requirements are substituted for the suspended Federal requirements or otherwise included in construction contracts as a result of action taken under color of State or local law. While the nature of the action required of the Federal agency in such a case may vary with the circumstances and the applicable statutes and regulations, it should be understood that the President's proclamation does not contemplate Federal assistance to any contract work for which Davis-Bacon wage requirements

have been suspended, unless the contractors for such work are completely relieved of the obligation to observe such requirements and are not obligated to comply with any other requirements of like import or effect. If any resistance to this position is encountered, please feel free to contact this office or the Solicitor of Labor for assistance.

Memoranda conveying this opinion have been sent to the General Counsels of all Agencies and to the Attorneys General of all of the States.

B. Contracts affected by the suspension.

The suspension applies to those contracts "entered into" with a contractor on or after February 23, 1971 for the performance of work on a project subject to the provisions of the Davis-Bacon Act or to provisions of another Federal statute pursuant to which the contractor and his subcontractors would be required, in the absence of the suspension, to pay workmen on the project wage rates not less than those determined by the Secretary of Labor in accordance with the Davis-Bacon Act. Accordingly, -

- (1) Where an agency of the Federal Government or the District of Columbia enters directly into a contract for work on the project, the suspension applies to all work by the contractor or by any subcontractors on the project if the prime contract is entered into by the agency on or after February 23, 1971. If the prime contract was entered into prior to that date, the suspension is applicable neither to the original prime contract nor to subcontracts thereunder awarded after such date; however, amendments to such existing contracts involving new work outside the scope of the existing contract are, if made on or after February 23, 1971, subject to the suspension and should contain provisions making the Davis-Bacon Act requirements inapplicable to the new work.
- (2) Where the contract for work on the project is not entered into directly by a Federal agency or the District of Columbia, but is entered into by some other agency or sponsor pursuant to a Federal statute providing for financial assistance to the project and also providing, except as affected by the suspension, for payment of wage rates to workmen on the project which are not less than those determined by the Secretary of Labor in accordance with the Davis-Bacon Act, the suspension applies to the sponsoring agency's contract with the project contractor and to subcontracts thereunder if such contract with the project contractor is entered into on or after February 23, 1971, but not to such a project contract or subcontracts thereunder if the project contract was entered into prior to such date.

With respect to project contracts entered into by the sponsoring agency on or after February 23, 1971, any prior arrangements made by a Federal agency, subject to Davis-Bacon Act provisions, for financial assistance to the proposed project are subject to the suspension provisions of such Act and are subject to appropriate revisions in conformity with the President's proclamation at the instance of the Federal agency.

- (3) Whether procurement procedures prior to February 23, 1971 have progressed to a point where a contract for work on a project has been "entered into" prior to that date is a question that can be answered only upon consideration of all the pertinent facts in each case and will, in general, be for determination by the responsible agency in accordance with applicable procedures.

C. Revision of Regulations

The Federal Register for Wednesday, March 3, 1971, contained revisions to Title 29, Code of Federal Regulations, which implement the President's proclamation by making it plain that for contracts entered into on and after February 23, 1971:

- (1) The provisions of Part 1 of Title 29 CFR are suspended until further notice;
- (2) The application to such contracts of specified portions of Part 5 with respect to contract stipulations, enforcement, and reports to the Secretary of Labor regarding compliance with the Davis-Bacon Act are suspended until further notice. The suspensions do not apply to the stipulations concerning the Copeland Act or the Contract Work Hours and Safety Standards Act nor do they apply to any contracts entered into prior to February 23, 1971.



Robert D. Moran
Administrator