Memo 18

U. S. DEPARTMENT OF LABOR
OFFICE OF THE SOLICITOR
WASHINGTON 25

September 27, 1960

Mr. M. F. Gonzalez, Vice-President
Contract Relations
Smith Construction Company
P. O. Drawer 1831
Pensacola, Florida

Re: Contract NBy-25387
Whiting Field
Milton, Florida
Our files E-61-171, 172 & 275

Dear Mr. Gonzalez:

This is in reply to your letter and enclosures of August 5, 1960, transmitted to us under a cover letter of August 9, 1960, from Mr. W. J. Noonan, Jr., Vice-President of the Noonan Construction Company, Inc., the prime contractor under which your firm is performing as a subcontractor on the above Navy contract. This will also supplement the conference you attended at this Office on August 30, 1960, with representatives of our Coordination of Enforcement Branch, regarding the applicability of the contract labor standards provisions to certain work being performed in connection with the subject contract.

The contract involved, as described in your correspondence, covers the construction of a runway and aircraft parking apron. Section 2 of the specifications contains language describing the work to be done under "Clearing, Grubbing and Removal Work". Subparagraph 2.3 of this Section is quoted by you as follows:

"2.3 Disposal of Cleared and Grubbed Material. All timber from which saw logs, pulpwood, posts, poles, ties, or cordwood can be produced, will become the property of the Contractor and shall be removed from the site prior to the completion of the work."

The preamble to the heavy and highway construction schedule of wage rates contained in the contract sets forth that this schedule of wages is applicable only to the construction of the aprons, runways, taxiways and roads (including all site preparation) as well as drainage, lighting and grassing directly connected with the aforementioned aprons, runways, taxiways and roads.

The first phase of construction under the contract has been described as clearing and grubbing. Incidental to the clearing and grubbing is the disposal of a substantial amount of merchantable timber mentioned above. While the removal of the tree stumps and the disposal of the tree tops and the rubbish in connection with the clearing and grubbing phase of the contract work is performed directly by employees of subcontractor Smith, the harvesting of the pulpwood (i.e. the cutting, collecting and hauling away) is done by employees of the Estes Forest Products Corporation, under a contract between the latter firm and Smith.

Shortly after the commencement of work by the Estes firm, the Navy representative on the job apparently notified you that Estes was a subcontractor under Contract NBy-25387 and that the pulpwood harvesters on the site were laborers and mechanics within the meaning of the Davis-Bacon Act and the contract labor standards provisions. You have asked us to review this matter and issue a formal ruling therein. In the meantime, it appears that the prime contractor and the Contracting Officer have agreed to suspend further action in this matter pending our review, with the understanding that, should this Department confirm the decision of the Navy representative as to coverage of the Estes employees, restitution will be made in conformity with the minimum wage requirements of the contract.

We have reviewed this matter in the light of our February 11, 1957, decision addressed to the Department of the Air Froce regarding the applicability of the Davis-Bacon Act to work performed by employees of a pulpwood broker to whom your firm had sold all the pulpwood to be cleared under Contract AF 08(803)-2596 at Eglin Air Force Base, Florida. In that decision (copy enclosed), we said:

"The work to be performed under contract included the clearing of timber. This clearing work necessarily included the cutting and removal of timber from the project site. The cutting and removal of timber from the project site was a contract requirement and an obligation of the prime contractor. Regulations, Part 5, (29 CFR, Subtitle A) of the Department of Labor, Section 5.2(f) (copy enclosed) defines the term "work" to include "clearing". Since the cutting and removal of timber was required by the specifications of the contract, laborers and mechanics employed in the performance of that work were within the coverage of the Davis-Bacon Act, as amended, and the Eight Hour Laws. The fact that the contractor sold the pulpwood as standing timber instead of cutting and hauling it to the mill with his own employees did not remove the work from the coverage of the Davis-Bacon Act and the Eight Hour Laws."

Also enclosed are excerpts from a decision of May 7, 1954, rendered by this Department under similar circumstances, and holding that the removal of all timber, marketable and unmarketable, was a contract requirement calling for coverage under the contract labor standards provisions of the workers performing such activity.

We see no basis for altering our coverage views as expressed in Section 5.2(f) of Regulations, Part 5, and as further set forth in the rulings above cited, among others. Accordingly, we confirm the decision of the Navy under the subject contract.

Copies of this letter and enclosures have been furnished the Noonan Construction Company, the Bureau of Yards and Docks, Department of the Navy, the Corps of Engineers and the Department of the Air Force, in view of their concern in this subject as mentioned in your correspondence.

Very truly yours,

Harold C. Nystrom
Acting Solicitor of Labor

Enclosures