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U. S. DEPARTMENT OF LABOR

OFFICE OF THE SOLICITOR

WASHINGTON 25

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MEMORANDUM # 28

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

FROM: James M. Miller
Assistant Solicitor

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

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Mr. Manger, Mr. Saylor, Mr. Gregory, D-Bact, 8th Low

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U. S. DEPARTMENT OF LABOR

OFFICE OF THE SOLICITOR

WASHINGTON 25

September 13, 1961

Mr. E. Irving Manger
Assistant to the General Counsel
Labor Relations Branch
Office of Chief of Engineers
Department of the Army
Washington 25, D. C.

Re: E-62-295 & 296
Oklahoma

Dear Mr. Manger:

This is in further reference to our conference of August 28, 1961, relative to the applicability and enforcement of the contract labor standards provisions to truck owner-operators engaged in hauling activities on Corps of Engineers' construction-type contracts subject to the Davis-Bacon and related Acts. Our conference followed the August 22nd and 23rd investigation and evaluation of this overall problem made jointly by you and representatives of your Tulsa District and of our Coordination of Enforcement Branch, in connection with work being performed under Corps' contracts at Eufala Dam and along the Arkansas River, in Oklahoma.

Corps of Engineers representatives charged with assuring contract labor standards compliance have encountered serious problems in their efforts to determine whether these owner-operators have been properly paid in accordance with the computation procedures previously explained in rulings and interpretations issued by this Department. Despite preconstruction conferences and on-site interviews and investigations, serious doubts have arisen as to compliance, especially since it has been established that generally the owner-operators seek and usually work under payment arrangements rooted in a unit price basis, for example, so much per cubic yard of material hauled, rather than on the basis of an actual truck or equipment rental rate plus the appropriate driver's (or operator's) rate. Moreover, although weekly certified payrolls may be submitted pursuant to contract requirements, substantial difficulties have arisen with respect to securing adequate data on rental arrangements in order to determine whether the contract minimum rates have been in fact paid.

Because of these and other related considerations, we have thoroughly reviewed our position with respect to owner-operators of trucks and similar construction equipment and have reached the conclusion that, as a matter of administrative policy, the provisions of the Davis-Bacon and related Acts will not be applied to bona fide owner-operators of trucks or other similar construction equipment who are independent contractors, until such time as it may appear to be practical to devise workable and easily enforceable procedures for obtaining compliance with respect to such owner-operators. The certified payrolls including the names of such bona fide owner-operators need not show hours worked nor rates allegedly paid, but only the notation "Owner-Operator".

In view of the general interest in this area on the part of all contracting agencies and other interested parties, this decision is being made available to the public, with copies being distributed to all Federal contracting agencies, contractor associations, and employee representative organizations.

Yours sincerely,

/s/ Charles Donahue
Solicitor of Labor