

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

March 25, 1964

MEMORANDUM # 57

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

FROM : E. Irving Manger *EM*
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-41

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U.S. DEPARTMENT OF LABOR

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131-1(2)

March 3, 1964

AIR MAIL - SPECIAL DELIVERY

Mr. Paul L. Styles
Labor Relations Director
National Aeronautics and Space
Administration
George C. Marshall Space Flight
Center
Huntsville, Alabama

Dear Mr. Styles:

This will confirm my recent telegram indicating that the Davis-Bacon Act applies to the installation of certain shop and laboratory equipment under Contract NAS 9-1505 with Lockheed Aircraft Service Company at the Manned Spacecraft Center, Houston, Texas. The contract was awarded on May 10, 1963, and estimated to be in the amount of \$247,500. The present estimate of the contract amount to \$396,000.

The contract calls for services, supplies, and materials necessary to perform preventive and reparative maintenance with incidental services; such as, maintaining service history, refurbishing, setting in place, making power connections, and running performance checks for designated equipment. Ninety-five percent of the equipment is now used by NASA in other locations. The equipment is of the following types: (1) test and evaluation, (2) photographic, (3) fabrication shop, (4) model shop, (5) laboratory, and (6) machine shop.

Questions have arisen as to the application of the Davis-Bacon Act to the making of power, gas, water, and similar connections, and to leveling, tie-down, and reassembly work. Your agency estimates the labor costs for this work to be from \$9,881 to \$12,537, or between 2.3 percent and 3.1 percent of the total contract amount. It is our understanding that the installation work is to be performed during the construction process, and that it is to be performed in from twenty to twenty-five buildings.

In "mixed" contract situations such as this, if more than an incidental amount of construction is called for by the contract, the Davis-Bacon Act applies to such construction. Accordingly, two issues are presented. First, is "construction" involved, and second, if so, is there "more than an incidental amount" of construction.

An application of the Davis-Bacon Act approved by this Department for use by the Atomic Energy Commission which is published at 41 CFR 9-12.5005-2 (g)(1), appears to settle the issue of whether the work involved constitutes "construction" under the Act. The pertinent paragraph reads as follows:

(g) Installation, rearrangement or adjustment of equipment.***

(1) During construction. In the construction of a new facility whether it is a production plant, a laboratory, or supporting facilities, such as shops and warehouses an integral part of a construction project is the installation of equipment (including mechanical equipment, building services, instruments, etc.) which permits the facility to be utilized for the purpose for which it was intended. Normally, the initial installation, arrangement, adjustment, balancing, calibration and checking of such equipment is a logical part of the construction contract(s) for completion of the facility and, whether or not included within the scope of such contract(s), is covered.

As to the second issue of whether or not "more than an incidental" amount of construction is entailed, there is nothing to suggest from the presentation which has been made that the installation of the equipment will be accomplished by work which is simple in character, which involves no engineering operations, and which can be completed in a relatively brief time. Cf. Letter of Solicitor, to Chief of Air Force Contract Management Division, dated April 16, 1962 (DB-23). Indeed, it seems fair to infer from all the facts and circumstances which have been presented that the converse will be so. We therefore conclude that there is "more than an incidental" amount of construction involved.

Yours sincerely,

Charles Donahue
Solicitor of Labor