U.S. Department of Labor

Employment Standards Administration
Wage and Hour Division
Washington, D.C. 20210

SEP 2 2 2005

MEMORANDUM NO. 199

TO: ALL CONTRACTING AGENCIES OF THE FEDERAL GOVERNMENT AND THE DISTRICT OF COLUMBIA

FROM: ALFRED B. ROBINSON, Jr.
Deputy Administrator

SUBJECT: Suspension of the Davis-Bacon Act and the Related Acts in Louisiana, Mississippi, Alabama, and Florida

On September 8, 2005, President Bush signed a proclamation suspending the Davis-Bacon Act in the areas seriously affected by the devastation resulting from Hurricane Katrina. The suspension proclamation, which can be accessed through the White House Web site at http://www.whitehouse.gov/news/releases/2005/09/20050908-5.html, was issued pursuant to section 6 of the Davis-Bacon Act, 40 U.S.C. 3141 *et seq.*, and also applies to various related acts as well as any executive order, proclamation, rule, regulation, or other directive requiring Davis-Bacon wage determinations.

This suspension covers all parishes in the State of Louisiana, all counties in the State of Mississippi, the counties of Baldwin, Choctaw, Clarke, Mobile, Sumter and Washington in the State of Alabama, and the counties of Broward, Miami-Dade, and Monroe in the State of Florida. In the event that a single contract/project requires construction work in areas covered by the suspension as well as other areas not covered by the suspension, the Davis-Bacon provisions must be applied to the work performed outside of the suspended area(s).

The suspension applies to all contracts entered into on or after September 8, 2005, and will remain in force until otherwise provided. Therefore, as of September 8, 2005, agencies should not request wage determinations or obtain Davis-Bacon wage determinations from www.wdol.gov for contracts to be performed exclusively in the suspended areas.

In the case of projects assisted under the National Housing Act, the applicable date is the beginning of construction or the initial endorsement of the mortgage, whichever occurs first. Thus, if either construction began or the initial endorsement occurred before September 8, 2005, the Davis-Bacon labor standards provisions would be applicable to the project. In the case of projects to receive housing assistance payments under section 8 of the U.S. Housing Act of 1937, the applicable date is the beginning of construction or the execution of the

agreement to enter into a housing assistance payments contract. Thus, if either of these two events occurred before September 8, 2005, the Davis-Bacon provisions would apply to the project. With respect to projects undertaken pursuant to the U.S. Housing Act of 1937 and the Native American Housing Assistance and Self Determination Act of 1996, where there is no contract award, the applicable date is the start of construction.

Contracts awarded before September 8, 2005, are not impacted by this suspension, and the determined rates apply to all covered work performed on such contracts. Thus, subcontractors to such prime contracts are subject to Davis-Bacon provisions irrespective of the date of the subcontract. The provisions of the Davis-Bacon and related Acts and the regulations for enforcement of the contract requirements, including the conformance provisions for adding additional classifications and wage rates, continue to apply to such contracts.

Pursuant to the Department of Labor Regulations, 29 C.F.R. Part 3, and the delegations of authority, Secretary's Order 4-2001 and Employment Standards Order No. 2001-01, contractors on contracts for which the President's proclamation suspended the Davis-Bacon and related Acts provisions are exempt from the regulatory requirement in section 3.3(b) to submit a weekly statement with respect to the payment of the wages (i.e., the Copeland Act certified payroll reporting requirements in 40 U.S.C. 3145). The Anti-Kickback provisions of the Copeland Act contained in 18 U.S.C. 874 and the regulations governing payroll deductions in 29 C.F.R. Part 3 will continue to apply.

Agencies should remind their contractors that the recordkeeping requirements of the Fair Labor Standards Act (FLSA) will apply to any employer covered by that Act. The FLSA requires that the records include certain identifying information about the employee and data about the hours worked and the wages earned.

The Contract Work Hours and Safety Standards Act (CWHSSA) overtime provisions apply to contracts in excess of $100,000 that may require or involve the employment of laborers and mechanics, including guards and watchmen (1) upon a public work of the United States, or any territory, or of the District of Columbia; (2) to other such contracts to which the United States or any agency or instrumentality thereof, any territory or the District of Columbia is a party; or (3) to contracts for work financed in whole or in part by loans or grants from, or loans insured or guaranteed by, the United States or any agency or instrumentality thereof, under statutes of the United States providing wage standards for such work. The application of CWHSSA does not depend on the application of the Davis-Bacon Act. Therefore, the Department has determined that CWHSSA continues to apply to contracts in excess of $100,000 in the same manner as before the suspension of the Davis-Bacon and related Act provisions. The overtime requirements of the FLSA also continue to apply. Similar to CWHSSA, the FLSA requires the payment of no less than time and one-half a non-exempt employee's regular rate of pay for hours worked over 40 in a workweek.

Pursuant to Department of Labor Regulations, 29 C.F.R. Part 5, section 5.5 (a), the contracting officer is required to insert in full in any covered solicitation or contract for

construction the clauses listed in section 5.5. See also Federal Acquisition Regulations at 48 C.F.R. 22.407. Section 5.5(a) of 29 C.F.R. Part 5 permits modification of the contract clauses to meet the particular needs of an agency, provided that such modifications are first approved by the Department of Labor. Therefore, with respect to those contracts affected by the Presidential suspension of the Davis-Bacon and related Acts, the Department hereby allows the omission of the labor standards clauses from the affected contracts with the exception of certain clauses listed below that are necessary to enforce the provisions of the Copeland Act and CWHSSA.

29 C.F.R. Part 5, section 5.5(a)(2) *Withholding.*

29 C.F.R. Part 5, section 5.5(a)(5) *Compliance with Copeland Act requirements.* modified as follows:

(5) *Compliance with Copeland Act requirements.* The contractor shall comply with the requirements of 29 C.F.R. Part 3 which, **with the exception of 29 C.F.R. Part 3, section 3.3**, are incorporated by reference in this contract.

29 C.F.R. Part 5, section 5.5(a)(6) *Subcontracts.* modified as follows:

(6) *Subcontracts*. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 C.F.R. Part 5.5(a) **as applied herein** and such other clauses as the (write in the name of the Federal agency) may by appropriate instruction require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all **applicable** contract clauses in 29 C.F.R. 5.5.

29 C.F.R. Part 5, section 5.5(a)(7) *Contract termination: debarment.*
29 C.F.R. Part 5, section 5.5(a)(8) *Compliance with Davis-Bacon and Related Act requirements.*
29 C.F.R. Part 5, section 5.5(a)(9) *Disputes concerning labor standards.*
29 C.F.R. Part 5, section 5.5(a)(10) *Certification of eligibility.*
29 C.F.R. Part 5, sections 5.5(b) *Contract Work Hours and Safety Standards Act* and 5.5(c) in their entirety.

We recommend that the corresponding clauses of the Federal Acquisition Regulations be omitted or incorporated accordingly.

Questions regarding the implementation of the suspension proclamation should be directed to William Gross at (202) 693-0569.