

SCA-78

November 27, 1991

This is in reply to your letter requesting reconsideration and clarification of All Agency Memorandum (AAM) No. 153 concerning the application of the Davis-Bacon Act (DBA) to contracts for asbestos and/or paint removal.

As you know, DBA applies to Federally-financed contracts in excess of \$2,000 for the construction, alteration, and/or repair, including painting and decorating, of a public building or a public work. A contract calling for the removal of asbestos or paint from a public building or a public work would clearly alter such building or work; thus, such contract, pursuant to the statutory language, would be subject to DBA. That position is so noted in AAM No. 153, citing similar examples of DBA covered alteration work.

In response to the first question in your initial submittal, asbestos or paint removal performed as a prelude to or in conjunction with a contract for the demolition of a public building or a public work would be subject to the McNamara-O'Hara Service Contract Act (SCA) if subsequent construction on the site is not contemplated (29 CFR 4.131(f)). In this regard we have adhered to a longstanding opinion of the Attorney General that contracts for demolition without subsequent construction are not subject to DBA (38 Op.Atty.Gen. 229). This opinion, however, only applies to contracts for demolition.

Application of DBA in your second and third questions would depend on the principal purpose of the prime contract. As noted in 29 CFR 4.116(c) (2), the provisions of DBA and SCA generally apply to contracts involving construction and service work where such contracts are principally for services. DBA applies to such service contracts when the contract contains specific requirements for substantial amounts of alteration work that is physically or functionally separate from, and as a practical matter is capable of being performed on a segregated basis from, the other work called for by the contract. Thus, in the examples given, it would appear that such work, if performed as part of a scheduled and routine maintenance check under the SCA covered prime contract, would not be subject to DBA under the criteria set forth in 29 CFR 4.116(c) (2).

With respect to your fourth question, such work would be covered by DBA provided that it is not in conjunction with or prelude to future demolition of the building. Application of DBA in your fifth and sixth questions is pertinent to the removal of any functional or integral part, such as insulation, ceiling tiles, siding, etc., regardless of the composition material, of a public building or a public work. As previously noted, such removal clearly "alters" a building or work. In response to your last question, DBA applies to asbestos removal in all circumstances except for those situations discussed in response to your first three questions.

The AAM was issued, in consultation with the Department's Office of Solicitor, as a result of a large number of inquiries, both written and oral, directed to the Wage and Hour Division concerning the removal of asbestos and paint on various ongoing and proposed projects. If you have any further questions regarding this matter, please do not hesitate to contact me.

Sincerely,

Daniel F. Sweeney
Deputy Administrator