



May 17, 2022

Amy DeBisschop
Director, Division of Regulations, Legislation, and Interpretation
U.S. Department of Labor
Wage and Hour Division
200 Constitution Avenue NW
Washington, D.C. 20210

Re: RIN 1235-AA40, Notice of Proposed Rulemaking on Updating the Davis-Bacon and Related Acts Regulations

Dear Ms. DeBisschop:

On behalf of the National Demolition Association (NDA), we respectfully submit the following comments regarding the Department of Labor’s proposed rule on Updating the Davis-Bacon and Related Acts Regulations published in the Federal Register on March 18, 2022.

NDA represents nearly 500 U.S. and Canadian companies that offer standard demolition services as well as a full range of demolition-related services and products. NDA educates members on the latest advances in equipment and services, provides educational programs and tools to stay abreast of regulatory and safety matters and keeps regulators informed about issues in our industry. NDA also increases public awareness of the economic and societal benefits of demolition.

The proposed rule would amend regulations issued under the Davis-Bacon and Related Acts (DBRA) that set prescribe rules for the administration and enforcement of the Davis-Bacon labor standards which apply to Federal and federally assisted construction projects. The DOL is proposing to add a new sub-definition to the term “construction, prosecution, completion, or repair” in § 5.2, to better clarify when demolition and similar activities are covered by the Davis-Bacon labor standards.¹

Specifically, the DOL is proposing to clarify that demolition work is covered under any of three circumstances: (1) Where the demolition and/or removal activities themselves constitute construction, alteration, and/ or repair of an existing public building or work; (2) where subsequent construction covered in whole or in part by the Davis-Bacon labor standards is planned or contemplated at the site of the demolition or removal, either as part of the same contract or as part of a future contract; or (3) where otherwise required by statute.²

In the proposed rule, DOL states: “While determining whether demolition is performed in contemplation of a future construction project is a fact-specific question, the Department also proposes a nonexclusive list of factors that can inform this determination. Although the inclusion of

¹ 87 FR 15726

² 87 FR 15727

demolition activities in the scope of a contract for the subsequent construction of a public building or work is sufficient to warrant Davis Bacon coverage, such a condition is not a necessary one. Other factors that may be relevant include the existence of engineering or architectural plans or surveys; the allocation of, or an application for, Federal funds; contract negotiations or bid solicitations; the stated intent of the relevant government officials; the disposition of the site after demolition (e.g., whether it is to be sealed and is abandoned or left in a State that is prepared for future construction); and other factors. Based on these guidelines, Davis-Bacon coverage may apply, for example, to the removal and disposal of contaminated soil in preparation for construction of a building, or the demolition of a parking lot to prepare the site for a future public park. In contrast, Davis-Bacon likely would not apply to the demolition of an abandoned, dilapidated, or condemned building to eliminate it as a public hazard, reduce likelihood of squatters or trespassers, or to make the land more desirable for sale to private parties for purely private construction".³

While NDA appreciates the DOL's willingness to review and update the DBRA, we believe some of the changes in the proposed rule would be arduous for small demolition contractors and add unnecessary complexity to the implementation of the DBRA. NDA is particularly concerned about the DOL's proposal to expand the scope of demolition activities that could be subject to Davis-Bacon Act requirements. NDA believes the revised definition proposed by the DOL for demolition work would pose an undue burden on small and open shop demolition contractors who compete for federal contracts.

To this end, NDA opposes the Department of Labor's proposal to add a new sub-definition to the term "construction, prosecution, completion, or repair" in § 5.2, to clarify when demolition and similar activities are covered by DBRA standards.⁴ NDA respectfully requests that the Department not adopt this new sub-definition in the final rule.

NDA urges the Department to carefully consider the economic impact of this proposed rule and ensure that any new regulations in the Davis-Bacon and Related Acts will not disadvantage small businesses. Thank you for the opportunity to provide comment on this issue. For any questions, please contact me at jlambert@demolitionassociation.com.

Sincerely,



Jeff Lambert
Executive Director
National Demolition Association (NDA)

³ Ibid.

⁴ 87 FR 15726