



Human Resources Division

B-256314

February 7, 1994

The Honorable Larry E. Craig
United States Senate

The Honorable Charles W. Stenholm
House of Representatives

The Honorable William F. Goodling
House of Representatives

The Honorable Tim Valentine
House of Representatives

The Honorable Thomas E. Petri
House of Representatives

The Davis-Bacon Act, passed in 1931, requires that workers on federal construction projects be paid a wage at or above the level determined by the Department of Labor to be prevailing in the area. Since 1937, the prevailing wage provisions have been extended by many statutes to involve construction financed in whole or in part by the federal government. In a 1979 report, we expressed our concern about the accuracy of the wage determinations and its impact on federal construction costs.¹ In addition, we said that the act appeared to be impractical to administer due to the magnitude of the task of producing an estimated 12,400 accurate and timely prevailing wage determinations.

In response to your request that we describe the changes to Davis-Bacon regulations and administration since our 1979 report, we conducted interviews with officials in the Department of Labor's Wage and Hour Division and reviewed the key literature, the pertinent legislation, and Labor's written policies and procedures. After briefing your staff on the results of our work, we agreed to provide the information to you in correspondence.

¹The Davis-Bacon Act Should Be Repealed (GAO/HRD-79-18, Apr. 27, 1979).

BACKGROUND

The Wage Determination Process

The Department of Labor is responsible for determining prevailing wages for construction projects in each county in the United States for the four categories of construction (building, heavy, highway, and residential). These wage rates are then used as the minimum amount that workers on federal construction projects are to be paid. Each wage determination usually involves establishing prevailing wage rates in a series of occupations. For example, Washington, D.C., prevailing wages include figures for 143 different construction trade occupations.²

To obtain information on what different types of workers are being paid, the Department of Labor conducts surveys of employers to determine the prevailing wage in a specific geographic area. In general, the objective is to set the prevailing wage at the average wage (including fringe benefits). Labor mails a questionnaire to all employers in a county that Labor identifies as employing construction workers in that area. The questionnaire asks for wages, including fringe benefits, for all the different construction trades. Information is also requested on whether employers use helpers.³ Labor obtains the data orally through follow-up telephone calls to nonrespondents, when it believes this is necessary.

WHAT WE FOUND

Davis-Bacon regulatory changes have addressed some specific concerns raised in our 1979 report about the processes used to determine prevailing wages. Changes to rules that permitted (1) including federal contracts in the area wage surveys and (2) mixing prevailing wage data from surveys of urban and rural areas, have likely improved the accuracy of wage determinations. A change related to the calculation procedures--the 30-percent rule--is likely to have resulted in more wage determinations to be based on the average wage. In addition, technological change has improved Labor's ability to administer the Davis-Bacon wage determination process. However, other concerns we noted in 1979 remain, most notably the potential for wage determinations to be

²There are 3,100 counties and four broad classifications of construction--building, heavy, highway, and residential. Each wage determination requires the calculation of prevailing wages for many different trades, such as electrician, plumber, carpenter, and drywall installer.

³Helpers are workers used in certain construction trades who assist journey-level workers. Helpers receive lower wages than journey-level workers.

based on low-quality data. For example, wage determinations are completed with response rates as low as 25 percent because Labor must depend on the voluntary cooperation of contractors to respond to requests for wage and benefit data. In addition, Labor does not verify the data received, even on a sample basis. Finally, Labor reports that the average age of a wage survey is more than 7 years.

REGULATORY CHANGES

Inclusion of Federal Contracts

Since 1985, regulation has prohibited, to the extent practicable, the use of wages for federal construction in determining prevailing wages. In 1979, we reported that Labor's use in the area wage surveys of wages paid on federally funded projects, where the wage was subject to the Davis-Bacon Act, reduced the accuracy of the private sector wage determination. In May 1982, Labor published final regulations prohibiting the use of wages paid on projects subject to the Davis-Bacon Act on building and residential construction unless Labor found that insufficient data were available from privately financed projects of a character similar to the federal project to determine prevailing wages.⁴ In 1982 this rule was challenged in federal court, resulting in an injunction that was subsequently lifted in December 1984, when the rule was upheld. The regulation was implemented on January 31, 1985. Labor officials estimate that because of insufficient data, wages paid on contracts subject to the act are currently used in less than 25 percent of the wage determinations for building construction, but 50 percent or more of wage determinations for residential construction.

Combining Urban and Rural Wages

Our 1979 report found that in several areas prevailing wages were not separately computed for urban and rural areas. This could have resulted in wage rates for higher cost urban areas being used for lower cost rural areas. Labor's 1982 regulatory change prohibited the mixing of wages paid to workers employed on projects in urban areas with those of workers in rural areas in the area wage surveys. The urban and rural wage rule was subject to the same legal challenge as the inclusion of federal contracts in surveys; the issues were resolved in the same proceeding, and the rule became effective on January 31, 1985.

⁴For heavy and highway construction, little private sector experience is available upon which to base a prevailing wage determination because most such projects are federally supported and therefore subject to Davis-Bacon requirements.

The 30-Percent Rule

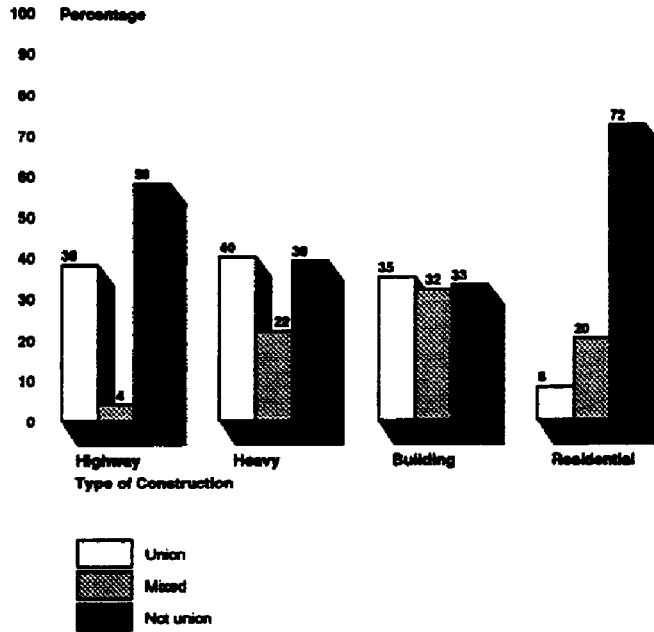
Since 1983, Labor's determination of prevailing wages has been less likely to use union wages and more likely to use the average wage because of a change in the calculation procedures. In 1979, Labor's regulations defined the prevailing wage rate as the following:

1. The rate of wages paid in an area in which the work is to be performed, to the majority of those employed in the classifications to be used on the proposed construction project.
2. In the event there is not a majority paid at the same rate, then the rate paid to the greater number, provided such greater number constitutes 30 percent of those employed. This is called the 30-percent rule.
3. In the event that no single rate is paid to 30 percent of those employed, the average rate is used.

Because the wage rate needed to be the same to the penny to constitute a single rate, in certain areas, the rate set by unions often became the prevailing rate. Labor's May 1982 regulatory change included a provision that changed the 30-percent standard to 50 percent. Because the 50-percent standard is harder to meet, the prevailing wage would more likely be based on the average wage. This provision became effective in June 1983.

Data provided to us by Labor show that as of April 1993, the wage rate found to be prevailing was more likely to be the same as the union wage in highway, heavy, and building construction than in residential construction (see fig. 1). When the wage determination is described as "mixed," Labor has determined that the prevailing wage is the same as the union wage for some individual trades but not for others within the same county.

Figure 1: Proportion of Labor's Wage Determinations That Equal the Union Wage, April 1993



Notes: The unit of analysis is counties (including both project and general wage determinations). Percentages may not add to 100 due to rounding.

Helper Regulations

The regulations governing the use of helpers have been revised but at this time the Congress has prohibited the expenditure of funds to administer the revised regulations. In 1979, helpers could perform on federal construction projects only those duties that were distinct from those of the journey level and laborers. Regulations governing the use of helpers were revised in 1982 to allow greater use of helpers on federal contracts, but implementation of the revised regulations was prohibited through the same 1982 injunction affecting the other regulatory changes, as discussed above. Labor published revised helper regulations allowing contractors to substitute lower paid helpers for some journey-level workers in January 1989 and submitted them to the court to have the injunction lifted.

The court lifted the injunction September 24, 1990, and the new regulations took effect February 4, 1991. However, 2 months later, section 303 of "The Dire Emergency Supplemental Appropriations Act for 1991," enacted on April 10, 1991, prohibited the expenditure of Department of Labor appropriated funds to implement or administer the revised helper regulations. Fiscal year 1992 funds did not have this

prohibition on expenditures, and Labor began implementation of the helper regulations.⁵ However, the implementation of the helper regulations was again suspended following the enactment of "The Department of Labor Appropriations Act, 1994" on October 21, 1993, which prohibited expenditure of funds for such use in fiscal year 1994.

DATA QUALITY

The quality of the data Labor uses in determining the prevailing wage remains a concern. Wage determinations are completed with response rates as low as 25 percent because Labor must rely on the voluntary cooperation of contractors to respond to requests for wage and benefit data. Labor says that the response rates vary, with surveys for residential construction (an industry group with many small firms that are less likely to complete the questionnaires) having response rates as low as 25 percent. Response rates for other types of construction are typically higher--for example, often 80 percent or more for highway construction--because they have fewer, larger firms that are more likely to respond to the questionnaire. Labor does not perform a response bias analysis to determine whether there are a disproportionate number of responses from certain types of employers--such as employers with a unionized workforce or larger employers--that could result in survey results that differ significantly from the actual wage prevailing in the area. A responsible Labor official told us that he believed that response bias was a potential problem but that there was no data available on such characteristics as the size of contractor or rate of unionization for all contractors in a given area which would be required to perform such an analysis. In addition, Labor does not verify the accuracy of the data received (for example, by comparing survey results to payroll records) even on a sample basis. The Labor official also stated that there were insufficient resources to do such verification. In fact, with current resources they are able to complete surveys for only about 200 areas a year. As a result, the average age of a wage survey is more than 7 years.

TECHNOLOGICAL CHANGE

Major technological changes have facilitated Labor's administration of the Davis-Bacon wage determination process. Technological changes since our 1979 report have resulted in the automation of many aspects of the wage determination process. For example, the mailing of surveys and the analysis of survey data are now largely

⁵Labor told us that, as of September 1993, the use of helpers was found to be a prevailing practice in 23 of the 73 surveys (32 percent) completed since the surveys were started in April 1992.

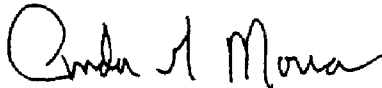
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automated.⁶ Through the expanded use of technology it is now possible that the entire wage determination process could be automated, with instant communication and rapid analysis of all wages paid in the construction industry. However, the additional cost of the automation to both the federal government and contractors is unknown.

OTHER INFORMATION

You also asked us to provide you with information on what the dollar threshold for which contracts are covered by the act would be if it had been continually updated to keep pace with inflation. When the act passed in 1931, the dollar threshold was any construction contract of \$5,000 or more. Adjusting for inflation would make this \$47,400 in 1993 dollars. However, the threshold was reduced to \$2,000 in 1935. Adjusting for inflation yields a threshold of \$21,100 if the \$2,000 base is used.

If you have any questions or would like to discuss this material further, please call me at (202) 512-7014 or Sigurd R. Nilsen at (202) 512-7003.


Linda G. Morra, Director
Education and
Employment Issues

(205255)

⁶Within the past month, general wage determinations have become available on an electronic bulletin board, allowing updates to be rapidly communicated to contracting and assisting agencies. In the past, contracting officers had to rely on printed reports from the U.S. Superintendent of Documents, which could take a number of weeks to reach them, potentially resulting in the use of outdated wage determinations.



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