

Testimony

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DAVIS-BACON ACT

Process Changes Could
Address Vulnerability to Use
of Inaccurate Data in
Setting Prevailing Wage
Rates

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Davis-Bacon Act: Process Changes Could Address Vulnerability to Use of Inaccurate Data in Setting Prevailing Wage Rates

Mr. Chairmen and Members of the Subcommittees:

We are pleased to be here today to discuss the results of recent GAO work on the vulnerabilities in Labor's prevailing wage determination process under the Davis-Bacon Act.¹ The Congressional Budget Office estimates that for fiscal year 1996, the federal government will contract \$42 billion in construction projects throughout the nation. Given the magnitude of these expenditures, inaccurate wage determinations could lead either to excessive government construction costs or to large numbers of workers receiving wages and fringe benefits that are lower than required by the law.

In early 1995, allegations of the use of inaccurate and fraudulent wage data to determine the prevailing wages paid on federally funded construction projects in the Oklahoma City area precipitated a criminal investigation by the Department of Justice that is still ongoing. Because of your concerns that Labor's processes may allow the use of data that could result in inaccurate wage determinations, my comments today will address three questions:

- What process does Labor use to collect data and determine prevailing wages?
- Are there weaknesses in that process that could allow the use of fraudulent or otherwise inaccurate data?
- To what extent is Labor addressing any identified weaknesses in the process?

My remarks are based on the GAO report completed for your Subcommittees on May 31, 1995.² In summary, we found that Labor's wage determination process is based on voluntary participation by employers and third parties in surveys that report wage and fringe benefits data on construction projects. Using this information, Labor sets prevailing wage rates for job classifications in four different types of construction in about 3,000 counties or groups of counties. Any interested party can appeal the final wage determinations. This process does contain weaknesses that

¹Labor's regulations define a prevailing wage as the wage paid to the majority (more than 50 percent) of the workers in the job classification on similar projects in the area during the period in question. If the same wage is not paid to a majority of those employed in the classification, the prevailing wage will be the average of the wages paid, weighted by the total employed in the classification.

²See Davis-Bacon Act: Process Changes Could Raise Confidence That Wage Rates Are Based on Accurate Data (GAO/HEHS-96-130, May 31, 1996). Our study focused on whether Labor's wage determination process was vulnerable to the use of inaccurate data. We did not attempt to determine the extent to which Labor's prevailing wage determinations have actually been based on inaccurate data.

could permit the use of fraudulent or inaccurate data in the setting of prevailing wage rates. First, verification of wage and fringe benefits data is largely limited to telephone contacts. Second, limited computer capabilities hinder Labor's ability to detect erroneous data. Third, a lack of awareness about the appeals process may limit its effectiveness. If these weaknesses allow erroneous data to be used, the result may be in either of two directions: if the wage rate is set too low, construction workers may be paid less than the amount to which they are entitled; if the rate is set too high, the government may pay excessive construction costs. Labor has developed some short- and long-term initiatives to improve the prevailing wage determination process. In addition, it has agreed to implement recommendations we made in our report, which will increase confidence that the wage rates are based on accurate data.

Background

The Davis-Bacon Act requires workers on federal construction projects valued in excess of \$2,000 to be paid, at a minimum, wages and fringe benefits that the Secretary of Labor determines to be prevailing for corresponding classes of workers in the locality where the contract is to be performed. The act covers every contract to which the United States or the District of Columbia is a party for construction, alteration, or repair of public buildings or public works.

Labor's Wage and Hour Division (WHD), within Labor's Employment Standards Administration (ESA), has responsibility for administering the Davis-Bacon Act. Approximately 50 staff in the Washington, D.C., headquarters and in six regional offices are involved in the wage determination process. Two other Labor offices are sometimes involved in the administration of Davis-Bacon: Labor's Administrative Review Board hears appeals of prevailing wage determinations, and the Office of the Solicitor provides legal advice and assistance to Labor personnel relative to the act and represents WHD in Davis-Bacon wage determination cases before the Administrative Review Board.

In previous reviews of the Davis-Bacon Act,³ we have expressed concerns about the accuracy of Labor's wage determinations. Labor has made regulatory changes that addressed some of our specific concerns about the process used to determine prevailing wages. Technological changes have

³The Davis-Bacon Act Should Be Repealed (GAO/HRD-79-18, Apr. 27, 1979) and Davis-Bacon Act (GAO/HEHS-94-95R, Feb. 7, 1994). We also discussed changes to the Davis-Bacon Act in a more recent report, Addressing the Deficit: Budgetary Implications of Selected GAO Work for Fiscal Year 1996 (GAO/OCG-95-2, Mar. 15, 1995), and identified reforming or repealing the Davis-Bacon Act as an option that the Congress might wish to consider.

also improved Labor's ability to administer the wage determination process. Despite these changes, however, we reported in 1994 that data verification problems still existed.

Labor's Wage Determination Process Based on Voluntary Survey Participation

In setting prevailing wages, Labor's task is to determine and issue prevailing wage rates in a wide range of job classifications in each of four types of construction (building, residential, heavy, and highway) in more than 3,000 counties or groups of counties. It also needs to update these wage determinations frequently enough that they continue to represent the prevailing wages.

Labor's process for determining the wage rates is based primarily on a survey of the wages and fringe benefits paid to workers in similar job classifications on comparable construction projects in the particular area.⁴ This information is submitted voluntarily by employers and third parties. Labor encourages the submission of wage information from all employers and third parties, including employee unions and industry associations that are not directly involved with the surveyed projects.

Although an individual wage survey typically covers only one kind of construction, most surveys gather information on projects in more than one county. In fiscal year 1995, Labor completed 104 survey efforts resulting in wage determinations for over 400 counties.⁵

The wage determination process consists of four basic stages: planning and scheduling surveys, conducting the surveys, clarifying and analyzing respondents' wage data, and issuing the wage determinations. In addition, any employer or interested party who wishes to contest or appeal Labor's final wage determination can do so.

Given the large number of prevailing wage determinations and Labor's limited resources, Labor develops an annual plan to identify those geographic areas or counties for which wage determinations are most in need of revision. For each area designated for survey, Labor identifies the

⁴For those counties where the type of construction is represented by a collective bargaining agreement, prevailing wage rates are typically revised through the use of newly negotiated agreements, rather than through a survey.

⁵Given that prevailing wages are set for multiple job classifications in about 12,000 combinations of construction type and geographical areas, most wage determinations are not changed annually. Labor estimated that the average age of a wage determination for a county dominated by nonunion wage rates in fiscal year 1995 was about 7 years.

counties for which the wage determination should be conducted and determines what construction projects will be surveyed.

The work of conducting the surveys and clarifying and analyzing the data is done by about 30 staff distributed among six regional offices. The survey is distributed to the participant population, which includes the general contractor for each construction project identified as comparable and within the survey's geographic area. In surveying the general contractors, Labor requests information on subcontractors to solicit their participation. Labor also surveys interested third parties, such as local unions and construction industry associations that are located or active in the survey area. Once the data submissions are returned, the analysts review and analyze the returned survey forms. They follow up with the employer or third parties to clarify any information that seems inaccurate or confusing. The analysts then use this information to create computer-generated recommended prevailing wages for key construction job classifications. The recommended prevailing wages are reviewed and approved by Labor's National Office in Washington, D.C. Labor publishes the final wage determinations in printed reports and on its electronic bulletin board.

The opportunity to appeal a final wage determination is available to any interested party at any time after the determination is issued. For example, appeals could come from contractors, contractor associations, construction workers, labor unions, or federal, state, or local agencies. Appeals may take the form of informal inquiries resolved at the regional office level or formal requests for reconsideration that are reviewed at the regional office or the National Office and may be appealed to the Administrative Review Board for adjudication.

Weaknesses in Labor's Wage Determination Process Could Lead to Inaccurate Prevailing Wage Rates

Labor's wage determination process contains weaknesses that could permit the use of fraudulent or inaccurate data for setting prevailing wage rates. These weaknesses include limitations in the degree to which Labor verifies the accuracy of the survey data it receives, limited computer capability to review wage data before calculating prevailing wage rates, and an appeals process that may not be well publicized to make it accessible to all interested parties. Wage determinations based on erroneous data could result in wages and fringe benefits paid to workers that are higher or lower than the actual prevailing rates.

Verification of Wage Data Largely Limited to Telephone Contacts

Labor's regional staff rely primarily on telephone responses from employers or third parties to verify the information received on Labor's WD-10 wage reporting forms. Regional office staff told us that most of the verification—clarifications concerning accuracy, appropriateness, or inclusion—was done by telephone. Labor's procedures also do not require and Labor staff rarely request supporting documentation—for example, payroll records—to supplement the information on the forms submitted by employers. Labor officials and staff told us that if an employer insists that the wages reported are accurate, the wage analyst generally accepts that statement.

It is because of resource constraints, according to Labor headquarters officials, that verification is limited to telephone contacts without on-site inspections or reviews of employer payroll records to verify wage survey data. In recent years, Labor has reduced the number of staff allocated to Davis-Bacon wage-setting activities. For example, the number of staff in Labor's regional offices assigned to the Davis-Bacon wage determination process—who have primary responsibility for the wage survey process—decreased from a total of 36 staff in fiscal year 1992 to 27 staff in fiscal year 1995. Labor officials in one region also told us that staff had only received two work-related training courses in the last 6 years. Labor's regional staff told us that the staff decline has challenged their ability to collect and review wage survey data for accuracy and consistency.

Limited Computer Capabilities Hinder Detection of Erroneous Data

Labor's administration of the Davis-Bacon wage determination process is also hampered by limited computer capabilities. Labor officials reported a lack of both computer software and hardware that could assist wage analysts in their reviews. Instead, they said that analysts must depend on past experience and eyeballing the wage data for accuracy and consistency. For example, Labor offices do not have computer software that could detect grossly inaccurate data reported in Labor's surveys. Regional staff reported only one computer edit feature in the current system that could eliminate duplicate entry of data received in the wage surveys. As a result, several review functions that could be performed by computers are conducted by visual reviews by one or more wage analysts or supervisory wage analysts in Labor's regional offices.

Labor's ability to review wage survey data is also hindered by a lack of up-to-date computer hardware. For example, in the Atlanta and Philadelphia regional offices, most of the computer hardware is outdated. In these offices, because of the computers' limited memory and storage

capabilities, Labor staff told us that they are unable to store historical data on prior wage determinations that would allow wage analysts to compare current with prior recommendations for wage determinations in a given locality.

These limitations could be significant given the large number of survey forms received and the frequency of errors on the WD-10 reporting forms. In fiscal year 1995, Labor received wage data on about 75,000 WD-10 wage reporting forms; these were from over 37,000 employers and third parties, some of whom provided information on multiple construction projects. Labor staff reported that submissions with some form of data error were quite common. The frequency of errors could be caused in part by employer confusion in completing the wage reporting forms. Depending on the employer's size and level of automation, completing the WD-10 reporting forms could be somewhat difficult and time consuming. For example, employers must conduct so-called peak week calculations where they must not only compute the hourly wages paid to each worker who was employed on the particular project in a certain job classification but also do so for the time period when the most workers were employed in each particular job classification. We were told that this can be especially difficult for many smaller, nonunion employers.

Although Labor staff reported that wage surveys with data errors are fairly common, agency officials believe that it is very unlikely that erroneous wage data went undetected and were used in the prevailing wage determination. They said that a key responsibility of Labor's wage analysts is to closely scrutinize the WD-10 wage reporting forms and contact employers as necessary for clarification. Labor officials contended that, over time, this interaction with employers and third parties permitted Labor staff to develop considerable knowledge of and expertise in the construction industry in their geographic areas and to easily detect wage survey data that are inaccurate, incomplete, or inconsistent.

Lack of Awareness of the Appeals Process May Limit Its Effectiveness

Labor's appeals process could provide an important safeguard against reliance on inaccurate data in that it allows any interested party to question the validity of the determinations. But our review suggests that this mechanism is not understood well enough to serve its purpose.

The appeals process has both informal and formal aspects. An interested party may make informal inquiries by telephone or in writing for quick resolution of questions about wage determinations. Labor reported that

most inquiries on its wage determinations are informal and are generally resolved quickly over the telephone at the regional offices. If an informal inquiry is not resolved to the satisfaction of the interested party, he or she may submit a formal request for reconsideration to either the regional or National Office. A formal request for reconsideration of a wage determination must be in writing and accompanied by a full statement of the interested party's views and any supporting wage data or other pertinent information. A successful request for reconsideration typically results in Labor modifying an existing determination or conducting a new wage survey. An interested party may appeal an unsuccessful request—that is, one in which he or she is dissatisfied with the decision of the WHD Administrator—to Labor's Administrative Review Board for adjudication. Labor officials said it is extremely rare for anyone to appeal formal requests for reconsideration of a determination to the Board, reporting that there had been only one such case in the last 5 years.

The infrequency of formal appeals to the Board can be interpreted in more than one way. Labor officials interpreted this record to mean that there is little question about the accuracy and fairness of the prevailing wage determinations issued. Alternatively, this could reflect interested parties' lack of awareness of their rights and the difficulty they face in collecting the evidence necessary to sustain a case. Representatives of construction unions and industry trade associations told us that employers were generally unaware of their rights to appeal Labor's final wage determinations. Officials with a state Labor Department also told us that, even if an interested party wanted to appeal a wage determination to the National Office and the Administrative Review Board, the effort it takes to independently verify wage data submissions could discourage such an action. They reported that it took a state investigation team a full month to gather information to support the need for Labor to reconsider some wage determinations—and that involved investigating and verifying the information for only three construction projects. A private employer or organization wishing to appeal a determination might experience similar difficulties.

Consequences of Wage Determinations Based on Erroneous Data

Wage determinations based on erroneous data could result in workers being paid higher or lower wages and fringe benefits than those prevailing on federal construction projects. Higher wages and fringe benefits would lead to increased government construction costs. On the other hand, lower wages and fringe benefits would result in construction workers being paid less than is required by law.

Although they considered it unlikely, Labor officials acknowledged that, in general, there could be an incentive for third parties, particularly union contractors, to report higher wages than those being paid on a particular construction project. By reporting higher wages, they could influence the prevailing wages in a local area toward the typically higher union rate.

The use of inaccurate data could also lead to lower wages for construction workers on federal projects than would otherwise be prevailing. Labor officials acknowledged that an employer in a largely nonunion area who had been paying lower than average wages would have an incentive to “chisel” or report wages and fringe benefits levels somewhat lower than what he or she was actually paying, in an attempt to lower the Davis-Bacon rate. However, officials also said that it is much more likely for some employers to report data selectively in an effort to lower the prevailing wage rate. For example, a contractor may only submit data on those projects where the wages paid were relatively low, ignoring projects where a somewhat higher wage was paid.

In addition, the wages required under the Davis-Bacon Act have implications for construction projects other than those specifically covered by the act. Industry association members and officials told us that in several parts of the country, employers, especially nonunion contractors, paid wages on their private projects below the prevailing wage levels specified by the Davis-Bacon Act in their areas.⁶ These officials told us that this differential sometimes proved problematic for contractors in retaining their skilled labor force. An official of an employer association told us, for example, that an employer who successfully bid on a Davis-Bacon contract but who typically paid wages below the prevailing rate would be required to pay the workers employed on the new project at the higher Davis-Bacon wage rates. Depending on the local labor market conditions, when the project was completed, these workers typically received their pre-Davis-Bacon, lower wages and fringe benefits on any future work. In such cases, some employees became disgruntled, believing that they were being cheated, and may have suffered lower morale that sometimes led to increased staff turnover. Depending on local labor market conditions, if the employer did not bid on the Davis-Bacon project, he or she could still be affected if the employer’s skilled workers quit to search for work on the new, higher wage federally funded project.

⁶In at least some parts of the country, nonunion wages determine the vast majority of prevailing wage determinations. For example, in Labor’s Atlanta region, nonunion wage rates dominated 72 percent of all existing wage determinations. In these determinations, prevailing wages were determined by a weighted average of the submitted wage data.

Labor Acknowledges Weaknesses of Its Wage Determination Process

Labor has acknowledged the weaknesses of its current wage determination process and it has proposed both short- and long-term initiatives to improve the accuracy of the data used to make prevailing wage determinations.

One recent change improves the verification process for data submitted by third parties. In August 1995, Labor began requiring its wage analysts to conduct telephone verifications with the employer on all third-party data that appear to be inaccurate or confusing. In addition, the new policy requires analysts to verify with the employers at least a 10-percent sample of third-party data that appear to be accurate.

Labor has also proposed a change that would specifically inform survey respondents of the possible serious consequences of providing false data, since it is a crime under federal law to knowingly submit false data to the government or use the U.S. mail for fraudulent purposes. In February 1996, Labor solicited comments in the Federal Register on its proposal to place a statement on the WD-10 survey reporting form that respondents could be prosecuted if they willfully falsify data in the Davis-Bacon wage surveys. The comment period for this proposal ended in May 1996, and the proposed regulation has now been sent to the Office of Management and Budget.

Labor has also proposed a long-term strategy to review the entire Davis-Bacon wage determination process. In late 1995, Labor established an ongoing task group to identify various strategies for improving the process it uses to determine prevailing wages. These continuing discussions have led to the identification of various weaknesses in the wage determination process and steps Labor might take to address them. In its fiscal year 1997 budget request, Labor asked for about \$4 million to develop, evaluate, and implement alternative reliable methodologies or procedures that will yield accurate and timely wage determinations at reasonable cost. Approaches that it is considering include alternatives such as use of other existing databases to extrapolate wage data instead of collecting its own survey data. Labor anticipates making a general decision on the overall direction of its strategy for improving its wage determination process by late 1996.

In our report, we expressed our concern that until Labor completes development and implementation of long-term initiatives to improve its processes, it would continue to issue new wage determinations and enforce compliance with existing ones that may be based on fraudulent or

inaccurate data. Therefore, we recommended that, while it continues its more long-term evaluation and improvement of the overall wage determination process, it move ahead immediately to improve its verification of wage data submitted by employers. We also recommended that it make the appeals process a more effective internal control to guard against the use of fraudulent or inaccurate data. Specifically, we recommended that Labor improve the accessibility of the appeals process by informing employers, unions, and other interested parties about the process—about their right to request information and about procedures for initiating an appeal. In its response to our draft report, Labor agreed to implement these recommendations.

Concluding Remarks

Our review confirmed that vulnerabilities exist in Labor's current wage determination process that could result in wage determinations based on fraudulent or otherwise inaccurate data. Although we did not determine the extent to which Labor is using inaccurate data in its wage calculations nor the consequences, in terms of wages paid, of such use, we believe that these vulnerabilities are serious and warrant correction. We believe that the process changes we recommended address those vulnerabilities and, if implemented in a timely manner, could increase confidence that the wage rates are based on accurate data. Specifically, Labor needs to move ahead immediately to improve its verification of wage data submitted by employers.

We recognize, however, that the wage determinations could be flawed for other reasons. For example, other problems with the survey design and implementation, such as the identification of projects to survey or the response rates obtained, could affect the validity of the determinations. In addition, untimely updating of the wage rates decreases confidence in their appropriateness. Nevertheless, using only accurate data in the wage determination process is, in our view, a minimum requirement for ultimately issuing appropriate wage determinations.

Mr. Chairmen, that concludes my prepared statement. At this time, I will be happy to answer any questions you or other members of the Subcommittees may have.

Contributors

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