

Health, Education and Human Services Division

B-274360

October 30, 1996

The Honorable Pete Hoekstra
Chairman, Subcommittee on Oversight
and Investigations
Committee on Economic and Educational
Opportunities
House of Representatives

Dear Mr. Chairman:

The Davis-Bacon Act requires employers on federal construction projects to pay workers wages at or above the level determined by the Department of Labor to be prevailing in a geographic area.¹ The Wage and Hour Division (WHD), within Labor's Employment Standards Administration, has responsibility for administering the Davis-Bacon Act. 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.

At your June 20 hearing,² we testified on the findings of our recent report.³ The report identified how certain vulnerabilities in Labor's prevailing wage

¹Labor's wage determinations are based on voluntarily submitted wage and benefit data from employers and third parties, such as representatives of unions or trade groups, on construction projects. Labor'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 number of workers employed in the classification.

²See Davis-Bacon Act: Process Changes Could Address Vulnerability to Use of Inaccurate Data in Setting Prevailing Wage Rates (GAO/T-HEHS-96-166, June 20, 1996).

³See Davis-Bacon Act: Process Changes Could Raise Confidence That Wage Rates Are Based on Accurate Data (GAO/HEHS-96-130, May 31, 1996).

GAO/HEHS-97-30R Information on the Davis-Bacon Act

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determination process under the Davis Bacon Act could permit the use of fraudulent or inaccurate data in setting prevailing wage rates. We concluded that these internal control weaknesses could lead to increased government construction costs or result in lower wages and fringe benefits being paid to construction workers than required by law. During our testimony, you specifically asked that we respond to three Subcommittee questions:

- Has GAO looked at whether wage determinations promulgated by Labor under the Davis-Bacon Act were lower than local area prevailing wages?
- Has GAO examined the possibility of fraud in the payment of wages under the Davis-Bacon Act and, if so, what were our findings?
- What is the total dollar amount spent on construction covered by the Davis-Bacon Act and on all construction throughout the nation during fiscal year 1995?

To respond to your request, we reviewed all GAO work, including that conducted by our Office of Special Investigations and our Office of General Counsel, that addressed matters concerning the Davis-Bacon Act as well as legal decisions concerning wage rate issues under the Davis-Bacon Act issued between April 1, 1979, and August 12, 1996.⁴ We contacted officials at Labor's WHD in Washington, D.C., to obtain estimates of the dollar amount spent on all construction throughout the nation for fiscal year 1995. We also contacted officials with the Congressional Budget Office to obtain the dollar amount spent on Davis-Bacon-related construction. We conducted our review in accordance with generally accepted government auditing standards.

GAO's COMPARISON OF LABOR'S
WAGE DETERMINATIONS WITH
LOCAL AREA RATES

Since April 1979, we issued a total of 26 products that dealt either directly or indirectly with issues related to the payment of wages on construction projects covered by the Davis-Bacon Act prevailing wage requirement. (See encl. 1.) In

⁴This interval covers GAO work (excluding testimony) issued since our 1979 report, The Davis-Bacon Act Should Be Repealed (GAO/HRD-79-18, Apr. 27, 1979), which identified certain verification problems with the data Labor uses to determine prevailing wages that could lead to inaccurate wage rates.

one analysis, we compared Labor's wage rates as determined under the Davis-Bacon Act with local area prevailing wage rates. In an October 1980 study,⁵ we compared those wage rates issued by Labor under the Davis-Bacon Act applying to the construction of the Washington Regional Rapid Rail Transit System (METRO) with local area wage rates. On the basis of our own construction wage rate survey of the Montgomery County, Maryland area, we found that the rates specified by Labor under the Davis-Bacon Act were higher or identical to rather than lower than the area prevailing wage rates on private construction for 13 key craft occupations.⁶

During this period, GAO issued no legal decisions dealing with the accuracy of Labor's wage determinations. The Comptroller General has certain duties under the Davis-Bacon Act, including the issuance of decisions regarding bid protests and the exercise of debarment or wage disbursement responsibilities. However, reviewing the correctness of the prevailing wage rate determination is not one of them. The act gives the wage rate determination responsibility to the Secretary of Labor and the Secretary's determination is not even subject to review by the courts.⁷

Labor does periodically review and revise its prevailing wage determinations for a variety of reasons that include responding to concerns raised by employers and third parties or adjusting for recent changes in area wage rates. As we have pointed out in recent GAO testimony regarding the Davis-Bacon wage determination process, Labor's current procedures are vulnerable to the

⁵See Review to Determine Whether Davis-Bacon Act Has an Inflationary Impact and Increases Costs on METRO Construction (GAO/HRD-81-10, Oct. 2, 1980) and Review to Determine Whether Davis-Bacon Act Has an Inflationary Impact and Increases Costs on METRO Construction (GAO/HRD-81-11, Oct. 2, 1980).

⁶In another study, although GAO did not compare Labor's wage determinations with the wages prevailing in the local area, GAO compared the composite wage rate for a Site Stabilization Agreement—a site specific collective bargaining agreement—for a construction project at the Idaho National Engineering Laboratory of the Department of Energy with the prevailing wage rate determined by Labor under the Davis-Bacon Act. GAO found that the composite wage rate under the agreement was 17 percent higher than the Davis-Bacon prevailing wage rate. See Labor-Management Relations: Construction Agreement at DOE's Idaho Laboratory Needs Reassessing (GAO/GGD-91-80BR, May 23, 1991).

⁷See United States v. Binghamton Construction Co., 347 U.S. 171,177 (1954).

introduction of inaccurate or fraudulent data that could result in the setting of erroneous prevailing wage rates. Labor has acknowledged the need to take steps to improve the accuracy of submitted wage data. It has already taken some action by requiring additional verification of wage data submitted by third parties and employers and by providing more information to interested parties on how to access its wage appeals process. Labor also continues to evaluate longer-term revisions to the Davis-Bacon wage determination process that would address many of the problems that we have identified.

REVIEWS OF POTENTIALLY FRAUDULENT
SITUATIONS UNDER THE DAVIS-BACON ACT

Since April 1979, GAO has not reviewed alleged situations of wages being fraudulently or otherwise improperly paid to workers on federal construction projects. GAO also has not reviewed situations where contractors, labor unions, or other individuals were alleged to have fraudulently or otherwise improperly influenced Labor's establishment of the prevailing wage rates. In addition, our Office of the General Counsel has not issued any legal decisions that address the issue of whether a prevailing wage rate established by the Secretary of Labor was made on the basis of fraudulent information.

However, other federal agencies are currently involved in the investigation of such allegations. For example, the Department of Justice continues an investigation to determine whether third parties involved in Labor's wage survey conducted during 1993 and 1994, which was used to determine prevailing wage rates for the Oklahoma City and Tulsa areas, submitted inaccurate or fraudulent data. In addition, Labor's Office of the Inspector General (OIG) is currently surveying the extent to which fraudulent or inaccurate wage data were used by Labor in fiscal year 1995 to determine prevailing wages under the Davis-Bacon Act in several of Labor's regions. The OIG study is expected to be completed in early 1997.

PERCENTAGE OF TOTAL NATIONAL CONSTRUCTION
COVERED BY DAVIS-BACON

Our analysis of the Department of Labor's data⁸ shows that \$295.4 billion was spent nationally in the construction industry during fiscal year 1995. The

⁸Labor's estimates are based on data obtained from the F.W. Dodge Division of McGraw Hill. Estimates are based on construction starts initiated during fiscal year 1995.

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Congressional Budget Office estimates that \$41 billion (14 percent) of the total dollar amount spent during fiscal year 1995 in the construction industry nationally was covered by the Davis-Bacon Act.

In conclusion, the federal government has invested some \$41 billion in Davis-Bacon-covered construction projects throughout the nation during fiscal year 1995. Although GAO has certain duties under the Davis-Bacon Act, the Labor Department sets, reviews, and revises the wage rates that prevail on these projects. Other parties, including GAO and Labor's Office of the Inspector General, have examined various aspects of the setting of these prevailing wages, including both the system's potential vulnerability to fraudulent or inaccurate data. We have recently identified vulnerabilities in Labor's wage determination process and made recommendations that we believe could improve that process.

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In reviewing a draft of this correspondence, Labor officials provided us with technical suggestions, which we incorporated as appropriate. We are sending copies of this correspondence to the appropriate congressional committees and subcommittees, the Secretary of Labor, and the Assistant Secretary of the Employment Standards Administration. We also will make copies available to others on request. If you have any questions, please feel free to contact me at (202) 512-7014. Major contributors to this correspondence include Charles A. Jeszeck, Assistant Director; and Linda W. Stokes, Evaluator-in-Charge.

Sincerely yours,



Carlotta C. Joyner
Director, Education and
Employment Issues

Enclosure

GAO PRODUCTS CONCERNING ASPECTS OF THE DAVIS-BACON ACT
ISSUED SINCE APRIL 1979

Davis-Bacon Wage Determinations (GAO/HEHS-96-177R, July 17, 1996).

Davis-Bacon Act: Process Changes Could Address Vulnerability to Use of Inaccurate Data in Setting Prevailing Wage Rates (GAO/T-HEHS-96-166, June 20, 1996).

Davis-Bacon Job Targeting (GAO/HEHS-96-151R, June 3, 1996).

Davis-Bacon Act: Process Changes Could Raise Confidence That Wage Rates Are Based on Accurate Data (GAO/HEHS-96-130, May 31, 1996).

Lincoln NE Building (GAO/GGD-96-7R, Apr. 11, 1996).

Management Reform: Implementation of the NPR's Recommendations (GAO/OCG-95-1, Dec. 5, 1994).

Rural Development: Patchwork of Federal Programs Needs to Be Reappraised (GAO/RCED-94-165, July 28, 1994).

Workplace Regulation: Information on Selected Employer and Union Experiences (GAO/HEHS-94-138, June 30, 1994).

Los Angeles Earthquake: Opinions of Officials on Federal Impediments to Rebuilding (GAO/RCED-94-193, June 17, 1994).

Community Development: Block Grant Economic Development Activities Reflect Local Priorities (GAO/RCED-94-108, Feb. 17, 1994).

Davis Bacon Act (GAO/HEHS-94-95R, Feb. 7, 1994).

Labor-Management Relations: Construction Agreement at DOE's Idaho Laboratory Needs Reassessing (GAO/GGD-91-80BR, May 23, 1991).

DOD Budget: Observations on the Future Years Defense Program (GAO/NSIAD-91-204, Apr. 25, 1991).

Water Pollution: States' Progress in Developing State Revolving Loan Fund Programs (GAO/RCED-91-87, Mar. 19, 1991).

Transportation Infrastructure: A Comparison of Federal and State Highway Laws (GAO/RCED-90-157, June 27, 1990).

Building Purchases: GSA's Program Is Successful But Better Policies and Procedures Are Needed (GAO/GGD-90-5, Oct. 31, 1989).

The Davis-Bacon Act: Applicability to Supply Contract at Defense Depot, Tracy, California (GAO/HRD-89-13, Jan. 24, 1989).

Ocean Research Fleet: Contracting Practices for Repair of NOAA Ships (GAO/RCED-89-25, Oct. 31, 1988).

Water Resources: Competition for Corps of Engineers Civil Construction Contracts (GAO/RCED-88-193, Sept. 29, 1988).

Navy Contracting: Award of a Contract at Whidbey Island Naval Air Station (GAO/NSIAD-88-10BR, Oct. 7, 1987).

Veterans Administration: Procurement Actions for Crown Point Outpatient Clinic (GAO/HRD-87-95, June 25, 1987).

Circumstances Surrounding the First Colony Peat-to-Methanol Project (GAO/RCED-84-32, Nov. 10, 1983.)

Contractor's Use of Foreign Labor on Federal Contracts (GAO/PLRD-82-23, Dec. 16, 1981).

Review to Determine Whether Davis-Bacon Act Has an Inflationary Impact and Increases Costs on METRO Construction (GAO/HRD-81-10, Oct. 2, 1980).

Review to Determine Whether Davis-Bacon Act Has an Inflationary Impact and Increases Costs on METRO Construction (GAO/HRD-81-11, Oct. 2, 1980).

Should Small Purchases Be Exempt From Complying With Social and Economic Program Requirements (GAO/PSAD-80-77, Sept. 26, 1980).

The Library of Congress' New Madison Building: Reasons for, and Effects of, Delays and Escalating Costs (GAO/LCD-79-330, Sept. 17, 1979).

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