

U.S. Department of Labor

Assistant Secretary for
Employment Standards
Washington, D.C. 20210



FEB 18 2004

MEMORANDUM FOR ELLIOT P. LEWIS

Assistant Inspector General
for Audit

FROM:

VICTORIA A. LIPNIC

SUBJECT:

Draft OIG Audit Report on Davis-Bacon Wage Determinations

Thank you for the opportunity to comment on your draft audit report entitled "Concerns Persist with the Integrity of Davis-Bacon Act Prevailing Wage Determinations."

You have recommended that the Employment Standards Administration "promote changes to the *Davis-Bacon Act* that allow reliable and objective sources of data and a defensible methodology, such as that offered by BLS surveys, to be used in prevailing wage determinations." ESA is not convinced that the report is supported by data or analysis relevant to a statutory provision. Also, the report does not provide any guidance on what changes might be appropriate.

In addition, your report acknowledges that there are obstacles to using BLS surveys, but concludes that you "do not believe they are insurmountable." The report does not identify these obstacles that would presumably apply to any sample survey. Since the report does not identify these obstacles, the report provides insufficient guidance on how to overcome these unspecified obstacles.

As indicated in your report, the Wage and Hour Division (WHD) previously explored the possibility of using BLS survey data as a basis for Davis-Bacon wage determinations. In addition to funding several pilot surveys to determine the feasibility of collecting fringe benefit data as part of BLS's National Compensation Survey (NCS), WHD also worked with BLS to examine the extent to which the Occupational Employment Statistics (OES) survey might provide detailed construction industry wage rate information by locality and occupation. As you know, in the last days of the previous administration, former Assistant Secretary Bernard E. Anderson concluded that while the use of BLS data was attractive from a timeliness and accuracy standpoint, "the feasibility of meeting the Davis-Bacon statutory requirements, the cost of obtaining fringe benefit data, and our concerns about the completeness of the wage data when classified by occupation and type of construction" led to the conclusion that improving the current wage survey process offered the "best and most cost-effective solution for long term improvements in the Davis-Bacon wage determination program."

Although the decision to no longer pursue a BLS approach was based in part on concerns with meeting the Davis-Bacon statutory requirements, these concerns were not the only

reasons expressed in former Assistant Secretary Anderson's letter. Also, the fact that the statutory provisions of the Davis-Bacon Act presented obstacles for using BLS data does not mean that the statutory requirements are without merit. For example, BLS conducts and reports survey data for a Metropolitan Statistical Area (MSA) rather than the county-by-county basis that traditionally has been applied under the Davis-Bacon Act. If the statute were changed to allow a MSA type approach as the base level for calculating prevailing wage rates, that would certainly make using BLS data more viable; however, it would not necessarily provide a more accurate reflection of prevailing rates for all areas within the MSA. As we noted in the closing conference, Spotsylvania, Warren, and Arlington counties in Virginia are all part of the Washington, DC MSA; however, it is not clear that the prevailing rate paid to carpenters performing building construction in all three counties should be the same. The difference in such wage rates might be even greater if state lines were crossed and the Virginia counties were combined with wages in other parts of the MSA such as the District of Columbia or Montgomery County, MD.

As demonstrated above, the county-by-county geographic approach currently used for collecting and reporting data for Davis-Bacon wage determinations is different from the MSA approach used by BLS, but that does not mean that the underlying basis for the current Davis-Bacon approach is without merit and should be changed. We would also note that the Davis-Bacon Act does not prohibit issuing wage determinations for broader geographic areas such as an MSA, and we routinely issue such wage determinations when sufficient data are not available on a county basis.

In light of your recommendation, however, it might be useful to reexamine the conclusions reached by the prior administration and again explore with BLS the possibility of using BLS data. We do not agree, with your concerns about the current universe survey approach as opposed to a sample survey, but we are willing to reevaluate the feasibility of conducting Davis-Bacon surveys using a sampling methodology. If a change to a sample survey methodology for Davis-Bacon wage determinations is pursued, it should involve the use of BLS data and should not overlay a whole new sample survey conducted by Wage and Hour.

Your report expresses continuing concerns regarding issues raised in earlier OIG and GAO reports. Specifically you note that errors in wage data continue; wage data may be biased; and timeliness of wage decisions is still an issue. These are issues that any survey program must continually address, and we believe we have made and are continuing to make progress in addressing these issues.

In documenting your concerns that errors in the wage data continue, you note that the contractor conducting on-site reviews of wage reports submitted by contractors and third parties found that one or more errors existed in nearly 100 percent of the wage reports they reviewed. While it was not within the scope of your current audit to measure the impact of the errors, you did note that errors identified in your 1997 audit report resulted in inaccuracies in the published wage determinations that ranged from an overstatement of \$1.08 per hour to an understatement of \$1.29 per hour. However, as noted in WH's response to that earlier audit, only about thirteen percent of the affected wage

determination classifications needed to be changed based upon the audit findings, and most of those changes were small and likely would have fallen within the statistical margin of error normally associated with sample surveys.¹ Even the extremes of \$1.08 and \$1.29 per hour identified by your earlier audit would often fall within the 90 and 95 percent confidence intervals calculated for many BLS published survey results. Nevertheless, we share your continuing concern regarding the accuracy of the data submitted and we remain committed to making the data used in Davis-Bacon wage determinations as accurate as possible. In this regard, based upon the last GAO recommendation, our on-site verification efforts now target those data submissions that would have the greatest impact upon the resulting wage determination.

With respect to your concern that wage data may be biased, this is a concern with any survey, be it a sample survey or a universe survey. Although the source of the potential bias may be different, the potential is always there. For that reason WH continues to make every effort to reach out to all parties and encourage participation by all segments of the construction industry. Further, we would note that after years of extensive on-site verification we have found no evidence of fraud or intentional misreporting by construction contractors, subcontractors, or third parties. Thus, while we continue to be vigilant, we have found no evidence to indicate a recurrence of the 1995 incident discussed in your report.

Your third concern – the timeliness of wage decisions – also continues to be a critical concern of WH. In some respects, however, a full evaluation of this issue is premature because all of the infrastructure improvements have not been fully implemented. As with many large infrastructure projects, it is difficult to measure incremental improvements because the whole system is integrated and the full benefit of individual improvements cannot be fully realized until all aspects of the project are completed. Nevertheless, this fiscal year WH is establishing baselines and developing timeliness measures to ensure that we remain focused on this issue.

Finally, as noted in your audit report, WH has contracted with McGraw-Hill to conduct a comprehensive review of the Davis-Bacon wage survey and determination process. While such external reviews are elements measured by the PART process, the McGraw-Hill effort is not simply to help WH respond to the PART. We fully believe, as the GAO report in May 1999 concluded, that the system changes we are pursuing with the Davis-Bacon wage survey program have the potential to improve wage determinations. We want to make this the best and most efficient system possible and for that reason we are eager to have the benefit of McGraw-Hill's independent analysis and recommendations.

Again, thank you for your comments and recommendations. We will keep you apprised of our further discussions with BLS.

¹ For example, the following are the 90% confidence intervals for a few randomly selected construction occupations in Abilene, TX and Washington, DC. Abilene: Carpenters ± \$1.91; Electricians ± \$.77; Painters ± \$.94; Plumbers ± \$1.18. Washington, DC: Brickmasons ± \$1.04; Carpenters ± \$.43; Electricians ± \$.76, Painters ± \$.45; Plumbers ± \$.80; Reinforcing Iron Workers ± \$3.73. The 95% confidence interval would be even greater.