



Construction Industry Round Table

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Division of Regulations, Legislation, and Interpretation
Wage and Hour Division
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RE: Updating the Davis-Bacon and Related Acts Regulations Regulatory Information Number (RIN): 1235-AA40 | Docket Number: WHD-2022-0001

On behalf of the design and construction firms that comprise the Construction Industry Round Table (CIRT)ⁱ, we wish to submit comments in response to the U.S. Department of Labor’s proposal to amend regulations issued under the Davis-Bacon and Related Acts that set forth rules for the administration and enforcement of the Davis-Bacon labor standards that apply to Federal and federally assisted construction projects.

The Department contends that proposed revisions to these regulations are needed to provide greater clarity and enhance their usefulness in the modern economy. The evidence said goals have been reached or achieved by the recommended changes, remains unconvincing and lacking. The rulemaking seems to be more of an exercise in expanding the scope and reach of Davis-Bacon requirements – than in modernization.

DISCUSSION

It is not uncommon to see agencies seek to broaden their jurisdictions and/or become more intrusive and burdensome. In some respects, these aspects often become *the goal* of the proposals being promulgated. Such appears to be the point in this current endeavor; as witnessed by the following matters of concerns.

(A) Expanding Reach of the Agency

(1) Surveying: The proposal seeks to expand the application of the Davis-Bacon Act to a class of workers – *survey crews* – who have never previously been considered “laborers and mechanics.” In fact, this group or class of employees are not construction workers, but rather work under the responsible charge of licensed, professional surveyors. For this reason, CIRT *strongly* opposes inclusion of survey crews in any new definition or expanded scope under this rulemaking.

(2) Site of Work: The proposal revises definitions such as “*site of the work*” to include sites where prefabricated buildings are manufactured or produced. This is a creeping jurisdiction going up-stream from the construction site to now include “manufacturing” elements under the Act is *strongly* opposed by CIRT.

(3) Scope of Work: In addition, the rulemaking seeks to include energy infrastructure within the “scope of work” covered as construction in the Davis-Bacon Act. [This type of change broadens, if not violates, the precise language of the statute itself].

(B) Burden/Costs of Rules

In addition to expanding the reach of the agency, the proposed rulemaking also has changes to the process that can become more burdensome, in the name of modernization. For example:

(1) Wage Determination Methodology: The proposal also changes the methodology for determining the prevailing wage. [DOL currently uses the average rate if a majority of workers do not receive the same wage rate. Under the proposed rule, if a majority of workers are not paid a particular wage, DOL will identify any wage rate that is paid to more than 30 percent of the workers as prevailing. If there is still no wage prevailing, the agency will revert to an average rate to determine prevailing wage]. The agency *may* see this as clarifying – what it may be is stupefying and is not supported by CIRT.

(2) DOL also proposes to update non-union prevailing rates every three years to address out-of-date wage determinations. Again, it can work but it will also require constant updates across dozens if not hundreds of individual salary scales. . . to keep up with the cycles.

CONCLUSION

While these issues may seem of small concern in the face of a federal rulemaking, with the lofty goals to modernize and create greater clarity – they represent the *real-world impacts* of constant, invasive, and overwhelmingly burdensome layers of statutory and regulatory “death by a thousand cuts.”

CIRT applauds the SBA Office of Advocacy, an independent office within the U.S. Small Business Administration (SBA), for holding a virtual roundtable to hear directly from small businesses about DOL’s proposed rulemaking on the Davis-Bacon Act matter. The bottom line seems to be: the proposed changes may lead to more small firms being required to comply with burdensome, costly, and sometimes divisive Davis-Bacon labor standards. [Note: 85% or more of the A/E/C companies meet the definition of a small firm].

Given the myriad of statutes and regulations that the private sector must contend with (especially burdensome for smaller firms), compliance is often achieved by familiarity. Seeking to expand the scope of coverage under the Davis-Bacon Act, and/or change the methodologies and processes just adds to the complexity and costs of those trying to stay in compliance.

For these reasons, CIRT is not in favor of changing the scope and application of the Davis-Bacon Act requirements.

Sincerely,

Mark A. Casso, Esq., NAC
President, Construction Industry Round Table

The Construction Industry Round Table (CIRT) strives to create one voice to meet the interest and needs of the design and construction community. CIRT supports its members by actively representing the industry on public policy issues, by improving the image and presence of its leading members, and by providing a forum for enhancing and/or developing strong management approaches in an ever-changing environment through networking and peer interaction. The Round Table is composed of 125 CEOs from the leading architectural, engineering, construction, and specialty firms in the United States. These firms deliver on billions of dollars of public and private sector infrastructure projects that enhance the quality of life of all Americans while directly employing over half a million people.