



VIA ELECTRONIC SUBMISSION

April 6, 2017

Office of Information and Regulatory Affairs
Attn: OMB Desk Officer for DOL-WHD
Office of Management and Budget
Room 10235
725 17th Street NW
Washington DC 20503

Re: Comments on DOL's Submission for OMB Review; Report of Construction Contractor's Wage Rates

Dear Sir or Madam:

Associated Builders and Contractors, Inc. (ABC) submits the following comments to the Office of Management and Budget (OMB) in response to the above-referenced information collection request (ICR) published in the *Federal Register* on March 7, 2017, at 82 Fed. Reg. 12850.

About Associated Builders and Contractors, Inc.

ABC is a national construction industry trade association representing more than 21,000 members. ABC and its 70 chapters help members develop people, win work and deliver that work safely, ethically and profitably for the betterment of the communities in which ABC and its members work. ABC's membership represents all specialties within the U.S. construction industry and is comprised primarily of firms that perform work in the industrial and commercial sectors. Moreover, the vast majority of our contractor members are classified as small businesses. Our diverse membership is bound by a shared commitment to the merit shop philosophy in the construction industry. The philosophy is based on the principles of nondiscrimination due to labor affiliation and the awarding of construction contracts through open, competitive bidding based on safety, quality and value.

Comments on the Proposed ICR

The Department of Labor is requesting in accordance with the Paperwork Reduction Act of 1995 (PRA) for the authority to continue to use form WD-10, a report of construction contractor's wage rates. The agency uses the WD-10 form to request construction project data from contractors and

unions, which is used to determine the locally prevailing wages under the Davis-Bacon Act and related acts. While ABC continues to advocate for full repeal of the Davis-Bacon Act, we also continue to recommend common-sense reforms to the law. ABC's comments focus on the four questions presented by the agency.

1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.

ABC has repeatedly urged the Department to make greater use of data that is already captured by the Bureau of Labor and Statistics (BLS). BLS's data uses proven statistical sampling techniques to arrive at an accurate and market-driven approximation of prevailing wages throughout the country. There is no statutory obstacle to having BLS conduct Davis-Bacon wage surveys.¹

2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.

The Department inaccurately estimates that it will take 20 minutes for an employer to complete form WD-10. The Department's estimate fails to take into consideration that a vast majority of construction contractors, including merit shop contractors, are small businesses. Based on ABC members' experiences, it can often take 20 minutes just to read and understand how to fill out the form WD-10, and after reviewing the form, contractors often determine that collecting and imputing the information is too much of a time burden, so they opt not to participate. Thus, the current collection process leads to the survey producing statistically unrepresentative samples.

The current methodology used by the Department has been shown to be flawed through multiple reports, including those by the Government Accountability Office (GAO) and DOL's Office of the Inspector General (OIG). A 2004 OIG report revealed that nearly 100 percent of the wage determinations that were analyzed contained errors.² More recently, a 2011 GAO report found that "most survey forms verified against payroll data had errors." The report further stated that more than "one-quarter of the final wage rates for key job classifications were based on wages reported for six or fewer workers."³

¹ Maury Baskin testimony at a hearing before the Subcommittee on Workforce Protections of the Committee on Education and the Workforce on "Promoting the Accuracy and Accountability of the Davis-Bacon Act," June 18, 2013, http://edworkforce.house.gov/uploadedfiles/baskin_-_testimony.pdf.

² U.S. Department of Labor, Office of the Inspector General, *Concerns Persist with the Integrity of Davis Bacon Prevailing Wage Determinations*, Audit Report No. 04-04-003-04-420, 2004, <http://www.oig.dol.gov/public/reports/oa/2004/04-04-003-04-420.pdf>.

³ Government Accountability Office, *Davis-Bacon Act: Methodological Changes Needed to Improve Wage Survey*, April 6, 2011, <http://www.gao.gov/new.items/d11152.pdf>.

Additionally, GAO found that “contractors have little or no incentive to participate in the Davis-Bacon wage survey” as it is currently administered.⁴ Contractors that are struggling to stay in business have no time or resources to fill out reports to the government. Furthermore, they do not trust the government to keep the sensitive wage data confidential, and are justifiably worried about being targeted for DOL audits and inspections.⁵

3) Enhance the quality, utility and clarity of the information to be collected.

As noted above, the current collection process and publication leads to inaccurate and unscientific wage rates. Under the Department’s current rules, a survey can be published if it has a minimum of two companies with three workers’ wages from each.⁶ To enhance the quality of the information collected, the agency should utilize the data already being collected by BLS. Currently, the Department uses BLS data (specifically the Occupational Employment Statistics survey) for the Service Contract Act and the Foreign Labor Certification program, which are both prevailing wage requirements.⁷

BLS already has in place two separate surveys that are done on an annual basis to estimate occupational wages: the Occupational Employment Statistics survey, which estimates local wage rates, and the National Compensation Survey, which estimates benefits at the national level.⁸ By combining the results from these two surveys, the agency could effectively create more representative and accurate wage rates. Economists at BLS have already created a model to combine the two sets of wage data, and a similar methodology could be used to determine Davis-Bacon wage rates.⁹

4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses.

As discussed previously, this information is currently collected by BLS; therefore OMB should not approve this information collection request and instead should utilize the data that is already collected by BLS.

⁴ Government Accountability Office, Davis-Bacon Act: Methodological Changes Needed to Improve Wage Survey, April 6, 2011, <http://www.gao.gov/new.items/d11152.pdf>.

⁵ Maury Baskin Testimony at a hearing before the Subcommittee on Workforce Protections of the Committee on Education and the Workforce, “Promoting the Accuracy and Accountability of the Davis-Bacon Act,” June 18, 2013, http://edworkforce.house.gov/uploadedfiles/baskin_-_testimony.pdf.

⁶ “Labor Department Can Create Jobs by Calculating Davis-Bacon Rates More Accurately,” James Sherk, January 21, 2017, <http://www.heritage.org/jobs-and-labor/report/labor-department-can-create-jobs-calculating-davis-bacon-rates-more>, page 4.

⁷ Sherk, “Labor Department Can Create Jobs by Calculating Davis-Bacon Rates More Accurately,” page 16.

⁸ Sherk, “Labor Department Can Create Jobs by Calculating Davis-Bacon Rates More Accurately,” page 14.

⁹ Sherk, “Labor Department Can Create Jobs by Calculating Davis-Bacon Rates More Accurately,” page 16.

Conclusion

While ABC continues to advocate for full repeal of the Davis-Bacon Act, we ask the agency to consider these common-sense reforms. For these reasons described above, we urge OIRA to consider denying the agency's information collection request.

Thank you for the opportunity to submit comments on this matter.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Ben Brubeck". The signature is written in a cursive, flowing style.

Ben Brubeck
Vice President of Regulatory, Labor and State Affairs