

From: Tamika Carter <cartert@agc.org>
Sent: Monday, December 19, 2016 5:24 PM
To: WHDPRAComments
Subject: AGC Comments on Report of Construction Contractor's Wage Rates [Control Number 1235-0015]

December 19, 2016

VIA EMAIL: WHDPRAComments@dol.gov

Mr. Robert Waterman
Compliance Specialist
Division of Regulations, Legislation, and Interpretation
Wage and Hour Division
U.S. Department of Labor, Room S-3502
200 Constitution Avenue NW
Washington, DC 20210

Re: Report of Construction Contractor's Wage Rates [Control Number 1235-0015]

Dear Mr. Waterman:

On behalf of the Associated General Contractors of America (hereinafter "AGC"), let me thank you for the opportunity to submit the following comments on the U.S. Department of Labor Wage and Hour Division's (hereinafter "WHD" or "the agency") information collection and comment request (hereinafter "request"). The request intends to extend the information collection titled "Report of Construction Contractor's Wage Rates" (a.k.a., Form W-10) and was published in the *Federal Register* on October 18, 2016.

AGC is the leading association for the non-residential construction industry, representing more than 25,000 firms, including over 6,500 of America's leading general contractors and over 8,800 specialty contracting firms. In addition, more than 10,400 service providers and suppliers are associated with AGC through a nationwide network of chapters. These firms, both union and open shop, engage in the construction of buildings, shopping centers, factories, industrial facilities, warehouses, highways, bridges, tunnels, airports, water works facilities, waste treatment facilities, dams, water conservation projects, defense facilities, multi-family housing projects, municipal utilities and other improvements to real property. Many of these firms regularly perform construction services for government agencies.

As previously discussed with WHD staff, AGC understands the difficulty of getting contractors to voluntarily submit wage data to the government – particularly to the same agency that is authorized to take enforcement action against them. In the same light, AGC understands the agency's dilemma of having the assignment of setting prevailing wages for federal and federally assisted construction. While the process currently used is not ideal and needs improvement, until such improvements are made, AGC believes that the collection of construction wage data directly from construction contractors on a voluntary basis is necessary for the Secretary of Labor to effectively perform his or her duty as assigned by Congress.

Time Needed to Accurately Complete the Form Exceeds the Estimated Twenty Minutes

AGC does not agree with the agency's estimate of twenty minutes to *accurately* complete the form – especially when there are multiple classifications and/or fringe benefits to be listed. Depending on the size of a project, particularly in the case of a general contractor that may self-perform their own work, there may be multiple classifications to report including sub-classifications that specify a laborer's or mechanic's level of expertise and/or specialty. For example, when just looking at the classification of "laborer" alone, according to a 2015 survey of AGC members, there are nearly forty different types of laborers working in construction. Additionally, within those forty, each contains workers with varying levels of skill who receive various rates of pay based on their skill level.

Furthermore, AGC has received feedback from WHD staff regarding the number of survey forms that could not be used to determine the prevailing wage rate due to the number of inaccuracies on the form. AGC believes that one of the reasons for such inaccuracies is due to the length of time it takes to complete and report the fringe benefits for each classification and sub-classification. As a result, contractors may be choosing to report just the base wage or the total cash wage equivalent instead of taking the time to report each of the fringe wages, separately, for each classification.

However, even though the process is fundamentally flawed, until more efficient ways of collecting the data are carefully considered by the agency and the contractor community together, AGC recommends keeping the current practice of voluntarily soliciting the submission of Form WD-10 as a means for contractors to report wages.

Considerations For Improving the Collection of Contractor Wage Data

With regard to considerations for improvement and to respond to the agency's request for information on the utility, quality and clarity of the information to be collected, as well as the agency's estimate of burden and means of reducing that burden, AGC makes the following additional recommendations:

- 1. Collect and report wage data more frequently to accurately reflect current market conditions.** With the WHD's current practice of conducting a survey – at most – every three years, with an additional one-to-two years for a wage determination to be published from the wages collected, wage determinations often do not reflect the current market conditions of a local area. If annual surveys are too burdensome for the agency, AGC recommends partnering with third-party wage survey specialists with specific knowledge of the construction industry such as PAS (www.pas1.com) or FMI (www.compensationinteractive.com) as a means of collecting construction wage data from both federal and private contractors who willingly submit pay data to those sources.
- 2. Ensure that wages are solicited and incorporated by private contractors to more accurately reflect the overall conditions of the market.** AGC understands the challenge faced by the agency when trying to get contractors to voluntarily submit data to the government. However, incorporating wage data from private contractors is vital to the integrity of the wage determinations process. In addition to working with third-party wage survey specialists to obtain such data, AGC recommends the agency conduct broader outreach to the entire construction contractor community regarding the unintended impact for all construction contractors of not participating in the survey process such as the impact on a private company's ability to compete for workers against higher-paying Davis-Bacon covered projects within the company or against other competing companies.

Furthermore, the agency should discontinue methods for collecting wage data that exclusively use information collected from federal contractors, such as the use of certified payroll forms in lieu of conducting wage surveys for highway construction. While AGC appreciates the agency's efforts to gather data from a source that does not require additional time spent by contractors, using such data creates a cyclical effect of getting the same data out that went in. Additionally, since certified payrolls are only submitted by federal and federally-assisted contractors, wages paid by private contractors are not considered. Using such incomplete data generates an inaccurate prevailing wage figure. AGC contends that such a flawed process does not sufficiently satisfy Congress's intent under the Davis-Bacon Act as to how to calculate that figure.

3. **Allow the adoption of state prevailing wage rates when the process for determining those rates meets U.S. Department of Labor's requirements.** In many cases, AGC members and chapters have stated that wages determined for use by state agencies in the form of Little Davis-Bacon Laws are more accurate than those determined by the U.S. Department of Labor. Where applicable, this will ease the burden of submitting wage data for contractors as well as the burden of collecting and analyzing such data for the agency.

Conclusion

AGC appreciates the WHD's efforts to collect wage data that reflect current market conditions and also understands the challenge faced by the agency to increase contractor participation in Davis-Bacon wage surveys. As a result, AGC highly recommends implementing measures to improve the data collection process while minimizing the burden on construction contractors. Should the WHD be interested, AGC will gladly meet with administrators and staff to consult on ways to improve the wage collection process in a manner that is beneficial to both construction contractors and the agency. Additionally, because Form WD-10 is not the only means the agency uses to collect wage data, AGC also welcomes the opportunity to discuss post-wage collection procedures in an effort to increase transparency with regard to how published wages were determined.

Sincerely,



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