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"Raising standards in the construction industry."

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Via Email: WHDPRAComments@dol.gov

Acting Administrator Jessica Looman
Wage and Hour Division
United States Department of Labor
200 Constitution Avenue NW
Washington, DC 20210

Re: Comments to Wage and Hour Division, Department of Labor
Report of Construction Contractor's Wage Rates (87 Fed. Reg. 36,152)
Control Number: 1235-0015

Dear Acting Administrator Looman,

The Indiana, Illinois, Iowa Foundation for Fair Contracting (III FFC) respectfully submits these comments on the Department of Labor-Wage and Hour Division (WHD or DOL) proposed revisions to the Report of Construction Contractor's Wage Rates and WD-10 form to improve the Davis-Bacon and Related Acts (DBRA) survey process.

The III FFC is a 501(c)5 nonprofit construction industry advocacy organization guided by a joint board of trustees representing the International Union of Operating Engineers, Local 150 (Local 150) and its signatory contractors. Local 150 represents approximately 23,000 members performing work for more than 1,000 contractors in various locations including 25 counties in northern Illinois, 14 counties in northern Indiana, and 7 counties in eastern Iowa.

The III FFC's mission is to increase market share for responsible contractors, work opportunities for skilled craftspeople, and value for taxpayers. The III FFC is committed to promoting fair and efficient contracting practices in support of responsible contractors and keeping skilled workers employed on jobsites throughout Indiana, Illinois, and Iowa. We achieve our mission through procurement oversight, market share analysis, jobsite monitoring, legal and regulatory advocacy, and governmental and public policy education.

With more than 20 years' experience in the public construction arena working with labor and management, the III FFC recognizes the importance of DOL's efforts to improve the efficiency of the DRBA survey process and make data collection less burdensome for respondents. Specifically, the III FFC has worked to encourage contractor participation in the survey process by providing

notice and reminders to contractors about upcoming surveys, submitting contractor questions to WHD for clarification, and following-up with contractors to confirm survey submissions.

Overview

The III FFC supports many of WHD’s proposed changes to the survey process. Like the proposal “Updating the Davis-Bacon and Related Act Regulations,” the III FFC recognizes the importance of streamlining the survey process, furthering the goal of the DBRA to protect the wages and benefits of construction workers on federal and federally assisted construction projects. Streamlining the process will make reporting less confusing and burdensome for stakeholders, resulting in greater participation and submission of more data. This is key to ensuring wage determinations accurately reflect the prevailing wage rates paid in a locality.

In particular, the III FFC supports changes that eliminate the determination of a “peak week” for reported projects. In the III FFC’s experience, this determination is often confusing and burdensome for contractors, particularly those reporting work performed by Operating Engineers given the numerous pieces of equipment to report.¹ Since contractors do not typically maintain records compiling “peak week” data, the proposal to eliminate peak week reporting and instead have contractors list the number of workers at a particular rate paid is much less burdensome and likely to result in greater participation. As such, it will enhance the quality, utility and clarity of information submitted.

Similarly, utilizing a new WD-10A form pre-survey to report contractors and subcontractors that performed work in the survey area will result in identification of potential stakeholders earlier in the process, which is also likely to lead to greater participation. This pre-survey data collection will also remove a step in the survey process that will save stakeholders time and resources when completing the WD-10 form.

Finally, the III FFC supports WHD’s proposed “picklist” of labor classifications as a step toward improving the survey process. However, the III FFC agrees with the International Union of Operating Engineers (IUOE) that the picklist of subclassifications for power equipment operator, while a good start, must be re-assessed and revised to better reflect commonly utilized power equipment on Davis-Bacon projects. The III FFC further supports the IUOE’s recommended additions, consolidations, and subtractions to the equipment picklist, as described in the IUOE’s Comments and Addendum A.

¹The Comment submitted by the International Union of Operating Engineers (IUOE) on the Report of Construction Contractor’s Wage Rates discusses the significant reporting problems for power equipment operators following the 1981 Davis Bacon reforms and Mistick decision. *In re Mistick Constr.*, ARB No. 04-051, 2006 WL 861357, at *5-7 (Mar. 31, 2006). As discussed by the IUOE, the III FFC is hopeful that amendments set forth in the proposed rule Updating the Davis-Bacon and Related Acts will address these issues.

Recommendations to the Picklist for Power Equipment Operator

The III FFC supports all the proposals submitted by the IUOE for the power equipment operator classification. Specifically, the IUOE's recommendations include adding pieces of equipment - along with new subclassifications for certain equipment (set forth in the IUOE's Addendum A), consolidation of certain equipment, and removing several of the WHD's proposed pieces of equipment.

The III FFC further supports the IUOE's recommendation that WHD edit the proposed picklist to capture additional information for 13 pieces of power equipment to capture size (weight/boom/bucket), which impacts the skill and experience required to operate the equipment, as well as the corresponding pay rate.

The IUOE and its Locals are leaders in safety and training the construction industry, particularly when it comes to utilizing new technology such as autonomous equipment and drones. This is evidenced across the country in their state-of-the-art joint apprenticeship and training facilities. The following equipment descriptions are provided in further support of the IUOE's recommended additions to the picklist.

Autonomous Power Equipment – Hydro-demolition machines are one example of new technology and autonomous equipment utilized by members of IUOE Local 150. This equipment uses high pressure water to remove concrete. Traveling over the concrete surface at a constant speed, the high-pressure water jets take advantage of the concrete's permeability to create an over pressure that breaks it apart.

Drone – IUOE Local 150's Apprenticeship and Skill Improvement Program (ASIP Local 150) offers a Drone Level 1 course providing operating engineers with the knowledge required to obtain a Remote Pilot Certificate under FAA regulations for becoming a Drone Pilot. It also provides the skills needed to safely fly drones, including specific techniques used on construction projects and when inspecting sites. The Drone Level 2 course builds on this knowledge by providing Operators with the skills to use drones for construction applications, including advanced flight procedures used in site inspections, and automated data collection for surveying applications.

Surveyor – It is essential that WHD add Surveyor to the WD-10 form picklist to ensure coverage under Davis-Bacon labor standards when survey crews are performing work on federal or federally assisted construction projects. As described in the III FFC's comments to the proposed rule Updating the Davis Bacon and Related Acts (submitted May 17, 2022), surveyors work alongside other construction trades from start to finish on a project. For example, on horizontal construction, surveyors lay out control points, then locate, mark, and install lath and hub with a hammer and/or sledgehammer across the jobsite from initial/rough grade to final/finish grade. Construction layout on vertical projects includes locating and marking foundations, as well as electrical, plumbing, communications, and HVAC systems.

Specialty Bridge and Highway Equipment – The III FFC supports the IUOE’s recommendation that stakeholders have the opportunity to manually enter specific pieces of equipment under this subclassification, given the numerous pieces of sophisticated and specialized power equipment on highway and bridge construction. In particular, pieces commonly operated by IUOE Local 150 members include:

Bridge Deck Groover – applies grooves into the bridge deck surface after concrete is cured, a process that is essential to providing better drainage and traction, thereby providing safer driving conditions across bridge decks.

Dowel Machine – may be self-propelled or boom-mounted; drills horizontal holes into concrete pavement to add anchoring material and installs dowel bars during the paving process.

Welder – As discussed by the IUOE, Local 150 members weld in conjunction with the use of power equipment, for example, in the maintenance of equipment. In particular, welding is done by IUOE members for underwater repair in conjunction with the use of power equipment and barges to construct and maintain marine projects.

Conclusion

In sum, and as discussed by the IUOE, collecting wage data for power equipment operators is not a “one size fits all” concept. As DOL reviews comments to the proposed rule Updating the Davis Bacon and Related Act with regard to the issues arising from the Mistick decision, the III FFC hopes WHD will return to a pre-Mistick analysis recognizing groups of power equipment based on collective bargaining agreements when an IUOE Local demonstrates it prevails in the locality.

As discussed above, while WHD’s proposed picklist of labor classifications and subclassifications is a good first step, it is essential that WHD incorporate the recommendations detailed in the IUOE’s Comments and Addendum A to efficiently and accurately collect wage data for power equipment operators. The III FFC appreciates the opportunity to comment on the Report of Construction Contractor’s Wage Rates and would be happy to provide additional information or assistance as WHD moves forward with implementation of the proposals to improve the survey process.

Respectfully submitted,



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