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THE DAVIS-BACON ACT

by

Brian J. Collins

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Thesis Advisor: Jeffery Warmington

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THE DAVIS-BACON ACT

Brian J. Collins
Lieutenant Commander, United States Navy
B.S., United States Naval Academy, 1983

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Author: _____
Brian J. Collins

Approved by: _____
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_____
Lee Edwards, Second Reader

_____
David Whipple, Chairman
Department of Systems Management

ABSTRACT

This research provides analysis of the methodology used by the Department of Labor when issuing prevailing wage determinations in accordance with the Davis-Bacon Act. A survey was conducted of the key literature dealing with the economic and social consequences of this legislation. The conclusions based on this research are that the Department of Labor utilizes a methodology which often results in inappropriately high determinations of the prevailing wage and that the Davis-Bacon Act increases the price of Federal construction. The research also analyzed the background and legislative history of the Davis-Bacon Act, the Department of Labor's implementing procedures, and the major controversies surrounding the Davis-Bacon Act.

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I. INTRODUCTION

The Davis-Bacon Act is one of the most important laws affecting Federal construction procurement. Basically, the Act states that all Federal construction contracts exceeding $2,000 will require the contractor to pay "laborers and mechanics" no less than wages "determined by the Secretary of Labor to be prevailing for corresponding classes of laborers and mechanics on similar projects in the city, town, or other civil subdivision (State) in which the subject contract is to be performed" [Ref. 1, p. 440].

Since its enactment in 1931, the history of the Davis-Bacon Act has been one of controversy. Federal contracting agencies, contractors, contractor associations, unions, and the Department of Labor have all been dissatisfied with one aspect or another of the wage rates issued, enforcement of the Act, or both. With the numerous extensions of the Act's prevailing wage concept to other legislation, State and local Governments have also been affected.

The primary objective of the research effort is to provide analysis of the methodology used by the Department of Labor when issuing prevailing wage rate determinations in accordance with the Davis-Bacon Act. This is accomplished by a survey of the key literature dealing with the economic and social consequences of this legislation. Attention was given to the Davis-Bacon Act's influence on construction industry wages and on the cost of projects covered by it. Excellent sources of information were found in several General Accounting Office reports to Congressional Committees, advisory reports to the Commission on Government Procurement, and independent studies of the Davis-Bacon Act conducted at graduate business schools.

A secondary objective is to analyze the Davis-Bacon Act's impact on the allocation of resources to Federal construction

projects. It is important to note that this research effort is not intended to quantify the costs of implementation of the Davis-Bacon Act. A statistically significant number of Federal construction contracts would have to be investigated individually in order to properly answer that broader question.

The primary research question to be addressed in this thesis is: What methodology does the Department of Labor use when issuing prevailing wage determinations?

The subsidiary research questions to be addressed in this thesis are:

1. What is the background and legislative history of the Davis-Bacon Act?

2. How does the Department of Labor administer the Davis-Bacon Act?

3. What are the major controversies, problems, and issues regarding the Davis-Bacon Act?

Chapter II will address the first subsidiary research question. It will more fully develop the background of the Davis-Bacon Act, to include a description of when and why the Act was established, what the Act and its amendments state, and some of the important history of the Act.

Chapter III will concentrate on Department of Labor administration of the Davis-Bacon Act and will provide responses to both the primary research question and the second subsidiary research question. Emphasis will be placed on the primary output of Davis-Bacon provisions, prevailing wage rate determinations. Enforcement responsibilities and protest procedures will also be discussed.

Chapter IV will address the third subsidiary research question. The major controversies, problems, and issues regarding the Davis-Bacon Act will be discussed. These controversies include policy considerations, costs to the Federal Government, dollar threshold, and relevance of the Act

today.

The final chapter will present some concluding remarks along with responses to the research questions.

The Appendix will present the text of the Davis-Bacon Act, as amended.

II. BACKGROUND AND LEGISLATIVE HISTORY

A. EVENTS LEADING TO ENACTMENT

The Davis-Bacon Act was enacted in 1931 to compel contractors performing construction work for the Federal Government to pay their workers the wage prevailing in the community in which the construction takes place. Amendments to the Act added prevailing fringe benefits to the definition of prevailing wages and charged the Secretary of Labor with the responsibility of determining in advance the wages acceptable on Federal construction projects. The Davis- Bacon Act represents a dramatic reversal of earlier Federal policy, which had attempted to secure completion of Federal projects at the lowest possible cost to the taxpayer. Many subsequent Federal laws have also been passed that include Davis-Bacon prevailing wage determination provisions for Federally assisted projects. It should be noted the Federal Government itself is not party to the contracts for such Federally assisted projects. [Ref. 2, p. 5]

Prevailing wage legislation was not a new concept in 1931, when the Davis-Bacon Act was introduced and passed. Various states, beginning with Kansas in 1891, had passed similar legislation requiring workmen on State funded projects to be paid prevailing wages. Five States had passed such legislation by 1931, and 21 had done so by 1935. Prevailing wage legislation was not exclusively a product of the economic circumstances of the Depression, although those circumstances appear to have contributed to its passage at the Federal level. [Ref. 2, p. 6]

In 1927, Congressman Robert L. Bacon of New York introduced a bill in the 69th Congress to require contractors on Federal projects to comply with State laws, if any, regulating wages of employees. The Congressman was concerned over construction contractors bringing non-union workers into

New York and paying them at lower rates than those that prevailed locally. State law in New York protected State construction projects from such competition, because prevailing wage rates were required to be paid on all State funded construction projects.

To support the need for his bill, Congressman Bacon cited the following:

> I want to cite the specific instance that brought this whole matter to my attention. The Government is engaged in building in my district a Veterans' Bureau hospital. Bids were asked for. Several New York contractors bid, and in their bids, of course, they had to take into consideration the high labor standards prevailing in the State of New York. The bid, however, was let to a firm from Alabama who brought some thousand non-union laborers from Alabama into Long Island, New York, into my Congressional district. They were herded onto the job, they were housed in shacks, they were paid a very low wage, and the work proceeded. Of course, that meant that the labor conditions in that part of New York State where this hospital was to be built were entirely upset. It meant that the neighboring community was very much upset. The New York contractors were at a great disadvantage because they could not have brought in non-union cheap labor. They could have done it legally, but they would have lost their position and standing in the trade in New York State for future jobs. [Ref. 3, p. 2]

From 1927 until enactment of the original Act in 1931, 14 bills were introduced (4 in the Senate, 10 in the House). It was 1930, however, before any real momentum began in support of the legislation. At that time the Depression was increasing, resulting in mass unemployment. The conditions which produced the first proposed legislation were said to be increasing. The Government, to help alleviate the economic conditions, had initiated a massive construction program. Contractors eager for business were taking advantage of the unemployed job market to hire employees who were willing to work at any wage.

The 71st Congress became concerned that these practices would further degrade economic conditions by depressing the wage standard of the local communities in which the Federal projects were to be constructed. The Federal Government was involved with complaints that itinerant contractors on Government projects were employing aliens and taking advantage of the unemployment situation to cut wages below locally prevailing rates by transporting itinerant cheap labor to jobs, to the detriment of local labor and contractors. [Ref. 4, p. 6]

However, the argument that itinerant contractors were transporting cheap labor to jobs to the detriment of local labor and contractors was not well supported at that time, and may have been an exaggeration. The Treasury Department had tabulated a list of 26 Federal building projects under construction in 1930, showing the number of alien, local, and outside workers employed on each contract. The tabulation indicated that the itinerant problem was overstated. Of the 1,724 workers on these projects, only 21 per cent were outside workers and only 2 per cent were alien workers. The tabulation also showed that more than half of the outside workers were employed on projects in four localities where the local labor forces would not be expected to be as extensive as in large metropolitan centers: Boise, Idaho; Fargo, North Dakota; Tucson, Arizona; and Juneau, Alaska. Also, no outside workers reportedly were employed on projects in the larger metropolitan areas such as Brooklyn, Milwaukee, New Orleans, and San Francisco. [Ref. 5, p. 118]

The President proposed to resolve the issue administratively by providing a notice to bidders on Federal construction projects that contractors must maintain local wage scales. The Comptroller General ruled, however, that the proposal violated existing law, and he suggested that legislative action was necessary.

Thus, with the pressure of the Depression and unemployment, complaints of contractors transporting workers at low wages, and the adverse decision of the Comptroller General on an administrative attempt at a solution, the stage was set for legislative action. A proposed bill calling for the prevailing wage theory to be applied to Federal contracts for construction of public buildings was drafted by an interdepartmental committee from the Labor, War, and Treasury Departments. Identical bills were introduced in the 71st Congress by Senator Davis of Pennsylvania and Congressman Bacon. The Senate and House debates and hearings on the bill treated the unemployment situation as an emergency, and the measure was passed by Congress and enacted into law as the Davis-Bacon Act on March 3, 1931. [Ref. 5, p. 118]

B. THE ORIGINAL ACT

The original Act required that contracts over $5,000 for the construction, alteration, and repair of public buildings shall contain a provision that the rate of wages for all laborers and mechanics employed by the contractor or subcontractor on public buildings covered by the contract shall not be less than the prevailing rate of wages for work of a similar nature in the city, town, village, or other civil subdivision of the State (or District of Columbia) in which the buildings are located. It also provided that, in case any dispute arose as to what the prevailing rates of wages were for work of a similar nature applicable to the contracts and if the dispute could not be adjusted by the contracting officer, the matter would be referred to the Secretary of Labor for determination. The Secretary's decision would be conclusive upon all parties of the contract. The Senate and House Committee reports on the Davis-Bacon Act commented on the need for and objectives of the Act:

> The Federal Government has entered upon an extensive public building program throughout the United States and in the District of Columbia. This program will continue for a period of eight or ten years and will result in the expenditure of approximately a half a billion dollars for the construction, alteration, and repair of Federal buildings. It was intended that this vast sum of money should be expended not only to properly house Federal offices in their own buildings, but also to benefit the United States at large through distribution of construction throughout the communities of the country without favoring any particular section.
>
> The Federal Government must, under the law, award its contracts to the lowest responsible bidder. This has prevented representatives of the departments involved from requiring successful bidders to pay wages to their employees comparable to the wages paid for similar labor by private industry in the vicinity of the building projects

> under construction. Though the officials awarding contracts have faithfully endeavored to persuade contractors to pay local prevailing wage scales, some successful bidders have selfishly imported labor from distant localities and have exploited this labor at wages far below local wage rates.
>
> This practice, which the Federal Government is now powerless to stop, has resulted in a very unhealthy situation. Local artisans and mechanics, many of whom are family men owning their own homes, and whose standards of living have long been adjusted to local wage scales, can not hope to compete with this migratory labor. Not only are local workmen affected, but qualified contractors residing and doing business in the section of the country to which Federal buildings are allocated find it impossible to compete with the outside contractors, who base their estimates for labor upon the low wages they can pay to unattached, migratory workmen imported from a distance and for whom the contractors have in some cases provided housing facilities and food in flimsy, temporary quarters adjacent to the project under construction.
> [Ref. 6, p. 1]

The legislative history of the Act shows that the Congress intended that wage determinations should be based on the wage rates established by private industry for construction of a similar character. No new wage scales were to be established. Both the Senate and House reports on the Act contained the following statements:

> The purpose of this measure is to require contractors and subcontractors engaged in constructing, altering, or repairing any public building of the United States or of the District of Columbia situated within the geographic limits of the United States to pay their employees the prevailing wage rates when such wage rates have been established by private industry.
>
> This measure does not require the Government to establish any new wage scales in any portion of the country. It merely gives the Government the power to require its contractors to pay their employees the prevailing wage scales in the vicinity of the building projects. This is only fair and just to the employees, the contractors, and the Government

alike. It gives a square deal to all. [Ref. 6, p. 119]

Also, throughout the debates on the bills, there were statements and assurances from the sponsors that the bills did not require that new rates be established, but that the bills merely required contractors to pay the rates which had been established by private industry for construction of a similar character.

The Act did not establish what should constitute a prevailing wage rate in a given locality, nor did it prescribe any definite rule showing how it could be impartially and accurately determined. From the outset, two distinct theories on what constituted a prevailing wage were evident. Organized labor contended that the prevailing wage was that arrived at through collective bargaining between employers and employees, the union wage. Government contracting officers and contractors held to the theory that the prevailing wage was the rate paid to the largest number in a particular locality at a particular time. [Ref. 5, p. 121]

C. AMENDMENTS TO THE ACT

Dissatisfaction arose over the Act almost immediately after its enactment in 1931. First, the procedures used to implement the Davis-Bacon Act did not require the prevailing wages to be applied to a specific contract be determined prior to the award of said contract. Perhaps the Act's greatest flaw was its failure to provide for any effective means of enforcement [Ref. 7, p. 587]. By 1935, it became apparent that certain improvements in the Act were required.

On August 30, 1935, the Congress passed the first amendment to the Davis-Bacon Act. Extensive changes to the original 1931 version of the Act were made. First of all, it reduced the applicable dollar threshold from $5,000 to $2,000 and altered the general applicability of the Act to include public works as well as public buildings. To help remedy the problems caused by failure to determine prevailing wages prior to contract award, the Secretary of Labor was charged with the responsibility of predetermining such rates and these predetermined rates were required to be stated as such in the advertised specifications for every applicable contract. Additionally, the amendment required that the predeterminations be made for classes of workers as opposed to broad groups of laborers. The amendment further required the contractor to post on the site of work the scale of wages required to be paid and to make payments of such wages to workers employed directly on the site of work at least once a week.

The 1935 amendment established a mechanism for effective enforcement of the Davis-Bacon Act. This mechanism was established with three primary facets. First, the contracting officer was given authority to withhold from the contractor so much of accrued payments as may be considered necessary by him to pay workers the difference between required prevailing

wages and actual substandard wages paid. The Comptroller General of the United States was then authorized to make payments of wages found to be due to workers from any accrued payments withheld. Second, the amendment gave the contracting officer further authority to terminate the contractor's right to proceed with the work and to arrange for the outstanding or remaining work to be completed by contract or otherwise. The original contractor and his sureties could then be held liable for any excess costs to the Government. Third, the amendment provided that the Comptroller General publish a listing of persons or firms in violation of the law and that

> No contract shall be awarded to the persons or firms appearing on this list or to any firm, corporation, partnership, or association in which such persons or firms have an interest until three years have elapsed from the date of publication of the list containing the names of such persons or firms. [Ref. 8, p. 1137]

One final important provision of the 1935 amendment was the savings clause. This clause excluded from the Davis-Bacon Act's application "any authority otherwise granted by Federal law to provide for the establishment of specific wage rates" [Ref. 9, p. 714]. The reason for this clause lay in the passage of the Emergency Relief Act of 1935 which preceded the 1935 amendment to the Davis-Bacon Act by five months. The Emergency Relief Act was a $400 million public works Act. Its significance here was the fact that it allowed the President to fix rates to be paid on such projects at below the prevailing rates. Study Group #13-C of the Commission on Government Procurement states:

> The Davis-Bacon revisions represented a compromise with organized labor. On all other public works except the emergency works, the prevailing rate would be paid. Thus, the Davis-Bacon Act lost its emergency character and became permanent Federal labor standards law. [Ref. 10, p. 131]

The 1935 amendment to the Davis-Bacon Act virtually rewrote the legislation. While minor amendments were made to

the Act in 1940 (extended coverage to Alaska and Hawaii) and in 1941 (clarified that the Act applied to negotiated as well as advertised contracts), no major amendments were made to the Act until 1964. [Ref. 11, p. 588]

In early 1962, a bill was introduced in the House to amend the Davis-Bacon Act to include fringe benefits in prevailing wage determinations made by the Secretary of Labor. Hearings were held by a House Special Committee on Labor of the Committee on Education and Labor in March 1962 [Ref. 12, p. 1]. While these hearings did not lead to the passage of the proposed fringe benefits amendment, they did arouse serious questions regarding the administration of the Davis-Bacon Act. As a result, hearings regarding the administration of the Act were conducted during summer 1962 and continued in early 1963 [Ref. 13, p. 1]. These hearings were the first comprehensive review of the Act in more than 25 years. The testimony at the hearings served as an indictment of the administration of the Act by the Department of Labor and of the Act itself. Many of the problems presented in this testimony will be discussed in subsequent chapters of this thesis.

Due to the facts brought to light in these hearings, many Congressmen opposed further amendments to the Act until such time that it underwent a complete overhaul. Congressman Donald Bruce of Indiana, a member of the House Committee on Education and Labor, stated in a minority opinion to the Committee's report:

> Testimony before the Education and Labor Committee has conclusively established that the entire Davis-Bacon Act, as it is now operating, is nothing more than a hodgepodge that results in total confusion, discriminatory decisions, and unworkable regulations. Unless and until the entire Davis-Bacon Act is revised and rewritten, there should be absolutely no additions to this legislative monstrosity. [Ref. 14, p. 32]

Despite Congressman Bruce's arguments against the passage of the fringe benefits amendments to the Davis-Bacon Act, the legislation was enacted by the Congress and became public law on July 2, 1964.

The Federal Acquisition and Streamlining Act of 1994 waived prevailing wage setting provisions of the Davis-Bacon Act for certain volunteers who assist in the construction, repair, or alteration of certain public buildings funded with Federal financial assistance funds. [Ref. 15, p. 18]

The Davis-Bacon Act has not been substantially amended in over 30 years, yet it remains as one of the nation's most controversial pieces of legislation. As recently as February 1995, noted columnist George F. Will described the law as "economically irrational and morally execrable" [Ref. 16, p. A7].

D. SUMMARY

This chapter has answered the first subsidiary research question: What is the background and legislative history of the Davis-Bacon Act? The Great Depression contributed to increasing Congressional interest in a national prevailing wage law for Federal construction procurement. Many Congressman were concerned the contractor practices focused on by proponents of prevailing wage legislation (particularly, the importation of itinerant labor into a locality to perform Federal construction at below market wages) would further aggravate their constituents already distressed economic conditions. The original Act was passed in 1931.

The most notable amendments to the Davis-Bacon Act occurred in 1935 and 1964. These amendments are applicable to all Federal construction contracts in excess of $2,000.

Chapter III will address implementation of the Davis-Bacon Act.

III. IMPLEMENTING THE ACT

A. ADMINISTRATIVE PROCEDURES

The Davis-Bacon Act is administered both by the Federal agency contracting to have work done and by the Department of Labor. The Secretary of Labor has delegated the job of determining prevailing wage rates to the Solicitor of Labor, who in turn has delegated it to an associate administrator. In the absence of any legislative mandate defining the term prevailing wages, the Secretary has established administrative rules for carrying out the task intrusted to him. A Wage Determination Division of the Department of Labor has been specifically created to administer the Davis-Bacon Act.

In 1935, the Secretary of Labor adopted a methodology which provided for a three step test to determine the prevailing wage rate as:

1. The rate of wages paid in the area in which the work is to be performed, to the majority of those employed in that classification in construction in the area similar to the proposed undertaking;
2. In the event there is not a majority paid at the same rate, then the rate paid to the greatest number, provided such greater number constitutes 30% of those employed;
3. In the event that less than 30% of those employed receive the same rate, then the average rate.

[Ref. 17, p. 1033]

Procedures for obtaining and compiling wage rate information were also established. The solicitor shall depend on the following sources:

1. Voluntary submissions of wage rate data by contractors, contractors' organizations, labor organizations, public officials, and other interested parties, reflecting wage rates paid to laborers and

mechanics on various types of construction in the area;

2. Signed collective bargaining agreements;

3. Wage rates determined by the state and local authorities;

4. Public hearings and wage surveys, if necessary.

[Ref. 17, p. 1034]

It should be noted that the Davis-Bacon wage determinations are not subject to judicial review. A Wage Appeals Board has been established within the Department of Labor to hear complaints about wage determinations.

The so called "majority, 30 percent, or average" formula dominated Davis-Bacon prevailing wage determinations until 1985. Although presented by the Department of Labor as a three step formula, in fact it had only two steps. That is, since in all cases where a majority (greater than 50 percent) are paid the same rate, a 30 percent plurality is necessarily paid it as well, so the first step was superfluous. Under rules adopted by the Department of Labor in 1982 and finally approved by the courts in 1985, the formulation has changed to a two step process of majority or average, so the 30 percent rule is today the 50 percent rule [Ref. 17, p. 1035].

It should also be noted that the wage rates and fringe benefits packages that are used to determine whether the 50 percent rule is met are calculated to the penny rather than in 20 cent increments. Table 1 depicts how prevailing wage determinations can vary depending on the distribution of the work force among hourly wage rates. In addition, the immense task of making the two types of wage determinations (area and specific project) issued by the Department of Labor, with only a limited number of wage specialists, tends to produce wage determinations favoring employer and employee groups that have the strongest incentives to supply wage information to the Department of Labor and are well organized to do so.

Case 1

Percent of workers	Hourly wage	
75	$8.00	Prevailing Wage
25	$10.00	$8.00

Case 2

Percent of workers	Hourly wage	
25	$8.00	
25	$8.01	
25	$8.02	Prevailing Wage
25	$10.00	$8.51

Case 3

Percent of workers	Hourly wage	
48	$8.00	Prevailing Wage
27	$9.00	30% rule => $8.00
25	$10.00	50% rule => $8.77

Table 1. Prevailing Wage Determination Methods

In case 1, a clear majority of the 75 percent earning precisely $8.00 per hour produces a prevailing wage of $8.00, $2 less than 25 percent earn.

In case 2, though the same three-fourths earn rates that differ by only pennies from each other's and from workers earning $8 in case 1, the prevailing wage rate determination is influenced upward to $8.51 by the 25 percent earning the $10 hourly rate; this is because the three-fourths earning $8.00, $8.01, and $8.02 are prevented by these tiny differences from being considered a majority.

In case 3, the old 30 percent rule would have resulted in a prevailing wage of $8.00. However, today an areawide average of $8.77 would be considered the prevailing wage.

It is frequently alleged that unions have an advantage since their contracts usually require all workers of one classification to be paid the same rate to the penny. Of the relevant interest groups, unions have the strongest incentive to submit wage rate information and are nationally the best organized. [Ref. 5, p. 38]

A second controversial term defined in the Department of Labor regulations is the word area used in the above definition of prevailing wage rate. The formal definition provided for area is almost verbatim from the act itself:

> The term "area" in determining wage rates under the Davis-Bacon Act and the prevailing wage provisions of the other statutes shall mean the city, town, village, or other civil subdivision of the state in which the work is to be performed.
> [Ref. 17, p. 1036]

The importance of this definition becomes apparent when Department of Labor regulations go on to state:

> If there has been no similar construction within the area in the past year, wage rates paid on the nearest similar construction may be considered.
> [Ref. 17, p. 1036]

Thus, in determining prevailing wage rates, Department of Labor personnel are not required to collect data in a limited geographical area. The problem of wage scales determined in larger, municipal areas, but applied to rural counties, is one often cited in available literature on the Davis-Bacon Act and is referred to as importation of wage rates.

Judgmental flexibility is also afforded the Department of Labor in defining a third contentious term: similar nature. Davis-Bacon Act administrators must properly and consistently determine which types of construction are similar when conducting surveys for wage rate determinations. Is a three story frame house of similar nature to a ten story office building? Is a nuclear power plant of similar nature to a sports stadium?

The Department of Labor classifies construction into four general categories: 1) residential building; 2) commercial building; 3) heavy construction; 4) highway construction. This is both too few and too many categories. It is considered too limiting as there could be clearer distinctions between high rise and low rise residential construction than there are between high rise residential construction and office building (commercial) construction. It is also too limiting because the heavy category is a catch-all of fifty or more project types ranging from sewers to hydroelectric dams for which there is little commonality in skills required, job titles, or wage rates. Each such project type might require a completely separate set of rate determinations based on different comparability factors. There are too many construction categories because when multiplied by the number of job titles that might exist and localities for which rates might be needed, the rate determining task becomes almost impossible to perform fairly and accurately. [Ref. 18, p. 63]

There are two categories of wage rate determinations: project wage determinations and general (area) wage determinations. The basic difference between the two concerns their period of applicability. Project wage determinations are issued to be effective for a period of 120 calendar days from the date of the determination. These are intended solely for use in specific projects. If a project determination is not used during the period of its effectiveness, it is considered void. Another determination must then be requested for the specific project. For example, if a project determination expires prior to award of the contract for the subject project, the contracting officer must request another determination from the Department of Labor for the project. General wage (area) determinations are published in the Federal Register and contain no expiration date. Instead, the Department of Labor attempts to modify them on a timely basis

to keep them current. Any such modifications are also published in the Federal Register. The Department of Labor policy regarding the making of general versus project determinations is designed to consider individual local conditions. In areas in which the wage patterns for a particular classification of construction have been well established and in which the volume of such construction in that area is anticipated to be rather large, the Department of Labor may issue a general wage determination. Hence, such a policy is extremely beneficial to the Department of Labor as any one general wage determination may be used for any number of Federally financed projects awarded prior to the issuance of another general determination. Thus, instead of issuing several project wage determinations, the Department of Labor can reduce its workload in a particular area by issuing one general determination. [Ref. 19, p. 28]

B. THE WAGE RATE DETERMINATION PROCESS

Predetermination of prevailing wages for Federal construction projects is the very essence of the Davis-Bacon Act. In the course of making these determinations, the Department of Labor must address four key questions:

1. For which worker classifications do wage determinations need to be made?
2. What boundaries will be used for the geographic area for which the determinations need to be made?
3. Which construction projects are of a similar nature to the proposed project?
4. What method will be used to make the actual predetermination of prevailing wages?

Each of these key questions will be addressed in the following sub-sections.

1. Worker classifications

The Davis-Bacon Act and its implementing regulations both require the determination of prevailing wages to be based on the same classifications of laborers and mechanics found in the locality. One of the findings found in several GAO reports concerning Davis-Bacon was that the Department of Labor applied the wage rates of one classification to another without investigating the rates paid to each classification or the work practices in the area for which the determination was being made. [Ref. 20, p. 2]

One might suppose this problem would arise only in a limited number of cases, such as on very small jobs by firms of limited resources or on unusual jobs requiring nonstandard skills. Actually, because of the difference in operating patterns and employee training methods between union and open shop firms, the problem acquires significance both in terms of flexibility in work assignments and in the use of helpers and trainees. Thus, if a laborer picks up a hammer to nail up a

temporary barrier, for example, the laborer automatically is considered a carpenter and must be paid as such. Flexibility in work assignments is one of the most important contributions made by nonunion builders, and perhaps the principal factor that allows them a competitive advantage over their unionized counterparts. In broadest terms, this flexibility has three components: 1) the contractor's use of unskilled and semiskilled workers to perform work of which they are capable rather than assigning such work to higher paid craftsmen; 2) use of a skilled worker for a variety of tasks, some of which may be part of the job description of a different skilled occupation; and 3) dispensing with unnecessary and/or unproductive labor. Occupational distinctions in the open shop sector are often blurred. For example, cement may be poured and finished by a mixed crew of laborers; i.e., carpenters, ironworkers, and cement masons. Similarly, a helper (although often called by other names), is considered to be a worker who labors alongside a craftsman and may perform the more routine aspects of the trade. The helper is an integral part of the open shop work force. [Ref. 18, p. 58]

For example, Brown & Root, one of the country's largest construction companies, is an open shop firm. Employees of Brown & Root are classified under approximately 190 separate job classification titles, which include skill or responsibility gradations in each discipline; such as, three grades of helpers in each of a number of crafts; two grades of laborers; etc. The importance of the helper category is illustrated by the fact that on a particular day in 1981, Brown & Root employed a total of 33,425 construction laborers and mechanics, of whom 20,586 were craftsmen. Additionally, an estimated 10,000 were helpers or trainees, and an estimated 2,830 were helpers or equivalents. [Ref. 21, p. 1631]

The helper category has rarely been recognized by the unions and has been even more rarely recognized in Davis-Bacon

Act prevailing wage determinations. The net effect is that open shop contractors performing Federally financed construction work, whether or not that work is covered by wage determinations at a union rate, must pay their helpers (and similar categories of semi-skilled workmen) the journeyman rate - in accordance with union craft rules. For example, a helper who nails up insulation would be paid the carpenter's journeyman rate; one who unloads plumbing fixtures would have to be paid the plumber's journeyman rate. It also raises the absurd possibility that an open shop contractor whose rates were the sole basis for a wage determination might have to change wage scales and reorganize work assignments when using the same work crew on a Davis-Bacon job awarded under that determination. [Ref. 18, p. 59]

Another element of personnel utilization resulting from Davis-Bacon worker classifications is manning requirements: the stipulation of crew sizes; the required use of non-working foremen; and limitations on the tasks a worker may perform or the number of times he may be shifted from one job to another in the course of the day. An open shop contractor is free of these restrictions when working on a Davis-Bacon job, but shifting a worker from one job to another requires extremely careful record keeping, since each worker must be paid at the specified rate of each worker classification for the time periods he is performing the functions of that worker classification. As previously mentioned, open shop contractors generally do not strictly follow traditional craft lines, but instead provide some training to workers in a number of trades and use them for tasks that cross craft lines. In many firms, these workers are grouped in a separate classification: general building mechanic. In cases in which the Department of Labor does not issue this worker classification, the workers must be paid a composite rate reflecting several crafts, weighted for how much time is spent

on each task. This increases the open shop contractors' cost for labor. In contrast, these requirements are likely to have little impact on the costs of union employers, since collective bargaining agreements usually specify similar restrictions on assignment of work by craft jurisdictions. The result is that the open shop contractor's flexibility in work assignment is severely restricted.

Generally speaking, the Department of Labor prescribes rates for the classifications of workers recognized by the building trades unions. This means that, with the exception of three or four crafts, no rates for helper classifications are determined or set for trainees other than apprentices in certified programs. This situation seems to be true even in those areas where open shop contractors seem to predominate, and it is their practice to pay differential rates within classifications according to skill [Ref. 22, p. 250].

The Department of Labor's general failure to recognize helper, trainee, or other learner rates causes several effects. Faced with the choice of paying a learner at the journeyman rate or not using the learner on the job, most contractors are forced to replace the learner with a journeyman. Not only do costs increase, but the development of new journeymen is prohibited. This problem has been particularly noticeable for minority group members:

> In Alabama, we have been an open shop contractor for a number of years, and there are no certified apprenticeship training programs in that state except those that are union oriented and union dominated, and they are not open to nonunion members. As a result, in Alabama, on Davis-Bacon projects, we have not been able to use any apprentices whatsoever. We can't use helpers unless we pay helpers the prevailing standard for the journeyman. It just happens that I strongly favor upgrading the minorities in our company. We work at it actively and with some success. But if we bid on a job that comes under Davis-Bacon, that upgrading is stopped on that work. [Ref. 23, p. 7]

The administration of the Davis-Bacon Act in the area of worker classifications thus tends to hold back minority development in nonunion construction and has served to institutionalize the building trade's craft designations and demarcations. It has also increased costs, limited flexibility, and helped to prevent development of more realistic training patterns to compete with the industry's often inappropriate apprenticeship programs.

2. Area boundaries

As previously noted in Chapter I, the Davis-Bacon Act and its implementing regulations provide that the area to be considered in determining prevailing wage rates is the city, town, village, or other civil subdivision of the state in which the work is to be performed. This is perhaps the most specific language which can be found in the act and the closest that it comes to an operational definition of any term or specification. The Department of Labor utilizes informal guidelines not sanctioned by either law or regulation.

As early as 1935, the Secretary of Labor decided "county" was the standard civil subdivision which would be the basis for rate determinations, and "county" has remained the standard ever since. The legislative history of the Davis-Bacon Act does not indicate the above definition as intended to be construed so loosely as to permit use of wages from noncontiguous counties. The intent of the act was to protect *local* wage rates, not to raise these local rates by basing determinations on rates from other high paying areas.

There has been a tendency of the Department of Labor to use local union rates at the prevailing rate or to import union rates from noncontiguous counties when most workers in an area are open shop employees. This tendency was examined in considerable detail by Professor D. N. Gujarati in his doctoral dissertation at the University of Chicago [Ref. 24, p. 308]. Professor Gujarati collected data on 372 wage

determinations under Davis-Bacon for seven crafts in 300 counties selected in inverse proportion to the extent of unionization in them. One of his most significant findings was the extent to which union wages were imported into a locality from noncontiguous areas. According to the data collected, from 25 to 38 percent of the wage determinations for building construction, and from 46 to 73 percent of the determinations for heavy and highway construction were based on rates from noncontiguous counties or Statewide union wage rates. In some cases, he found that the Department of Labor had gone beyond State boundaries to noncontiguous States for prevailing wage data. He noted:

> The practice of "leap frogging" in search of prevailing wage rates does not conform to the act....All the contiguous counties that were reached to obtain prevailing wage rates, were either metropolitan areas or areas of 50,000 and more population. [Ref. 24, p. 308]

For seven construction crafts studied, the average distance between the place of construction and the area from which the rates were taken ranged from a low of 72 miles to a high of 84 miles. The highest average distance for any craft - that for power equipment operators, was 84.1 miles (see Table 2). These data provide strong evidence of the Department of Labor's tendency to import wage rates by expanding the area to be included in making surveys for prevailing wage purposes. [Ref. 24, p. 309]

Professor Armand J. Thieblot, Jr., in a report published by the Industrial Research Unit at the University of Pennsylvania's Wharton School of Business, evaluated a statewide wage determination decision in effect for Maryland and found that metropolitan Baltimore residential construction rates were applied to the noncontiguous rural counties of Cecil and Harford as well as in suburban Howard County.

Miles	Bricklayer	Carpenter	Plasterer	Electrician	Painter	Plumber	P.E.O.
45-60	16	14	6	9	12	11	10
60-75	15	10	12	20	12	12	10
75-90	13	11	14	13	14	12	10
90-105	5	4	5	11	3	5	8
105-150	2	5	5	8	6	5	9
Avg. miles	72.0	76.4	81.1	81.8	77.9	77.8	84.1

Table 2. Frequency Distribution of Noncontiguous County Determinations By Distance in Miles [Ref. 24, p. 56]

It was discovered that the dredging rate in effect for Worcester County, the southernmost Maryland county on the Delmarva Peninsula, was the same as the rate for Baltimore County, from which it was separated by 75 miles and five intervening counties by the most direct land route, but was different from the dredging rate for Somerset and Wicomico counties, the two counties contiguous to Worcester which pin it against the Atlantic Ocean and separate it from the general direction of Baltimore. [Ref. 25, p. 67]

In the views of many researchers, extension of the area for wage survey purposes is related to union organizational strength and the easy availability of negotiated rates in the larger metropolitan areas (see Table 3). It is felt that by establishing out of county union wage rates, the Department of Labor extends de facto union organization and boosts union organizational power at the expense of higher construction costs for the Government. Professor Gujarathi states:

> There is a pronounced tendency to establish union wage rates regardless of the area of construction. The establishment of large county rates in small counties, the establishment of metropolitan county rates in nonmetropolitan areas, and the distance which the Labor Department traverses in search of prevailing wage rates all point out to the preponderance of union rates. [Ref. 24, p. 308]

It is thought Professor Gujarathi reached this opinion on the basis of extensive sampling of wage rates used in Davis-Bacon determinations. It was found that an overwhelming majority of wage rates were union rates.

In selecting a representative sample for the 372 wage determinations studied, certain assumptions about the extent of union and open shop construction in the country must be made.

State	Number of Counties
Florida	24
Illinois	8
Iowa	75
Maine	8
Maryland	6
Minnesota	59
Missouri	95
New Hampshire	8
New York	32
Ohio	49
Vermont	1
Total	365
Total Counties in Country	3,141
Percent of counties for which no area determination in effect	11.6

Table 3. Location of Counties for Which No Area Determination Exists [Ref. 26, p. 7]

Gujarathi assumed that the level of union activity in a county is directly proportional to the county's population, i.e. the larger the population, the greater the degree of organization. Thus, counties with a population of 200 people up to 50,000 people were assumed to have a low degree of union organization, counties of population 50,000 to 250,000 a medium degree of organization, and counties with populations over 250,000 a high degree of organization. These assumptions would lead one to expect prevailing rates set for the smallest counties to reflect open shop or mixed rates consisting of partially open shop and partially union rates. In fact, the opposite was found to be true. Of the 259 wage determinations studied for counties with small populations, 174 (67 percent) have "out of county" union wage rates. Table 4 gives the results for prevailing wage determinations in counties of various sizes. Table 4 might suggest that the influence of union wage rates is immense and very definitely reflected in the prevailing wage determinations issued by the Department of Labor. As Professor Gujarathi so aptly noted:

> It would be a fair generalization to say that the Davis-Bacon wage rate determinations follow union jurisdictional boundaries regardless of the area of the federal construction. [Ref. 24, p. 310]

3. Determination of a similar nature

The Department of Labor must determine which projects are of a similar character to the proposed project or to the proposed classification of construction in order to issue wage rate determinations. In reviewing rules and regulations, little is said on this matter. However, in the case of project determinations, the agency submitted request must give a sufficiently detailed description of the work to indicate the type of construction involved. Any comparison of similarity between projects would greatly depend on this description.

Population	Total	Union Wage Rates			
		Entirely or Mostly Local	Out of County	Mixed Rates	Non-Union
200-50,000	259	25(9.6)	174(67.2)	28(10.8)	32(12.4)
50,000-250,000	76	35(46.1)	27(35.5)	5(6.6)	9(11.8)
250,000 and over	37	23(62.2)	10(27.0)	28(10.8)	32(12.4)

Note: Figures in parentheses are percentages

Table 4. Davis-Bacon Determinations by County Population [Ref. 24, p. 59]

Furthermore, in the Department of Labor solicitation of wage rate information from various interested parties, a description of the type of construction is required. Beyond those descriptions and the descriptions of projects by personnel in Department of Labor wage surveys, the judgment of the regional wage specialists and analysts is of great importance in decisions regarding the similarity of projects. [Ref. 19, p. 17]

As indicated in Chapter II, there are four types of construction: 1) building construction; 2) highway construction; 3) heavy construction; 4) residential construction. A General Accounting Office report on the administration of the Davis-Bacon Act concluded that the broad spectrum of Federal construction projects made these four classifications too wide, especially in the area of building construction; but it also concluded that in many cases the Department of Labor did not make proper distinctions among the four construction types [Ref. 20, p. 17].

The two most common areas of weakness are in building construction and in heavy construction. In building construction, the distinction between commercial building and residential construction of a homebuilding nature is not clearly delineated. Heavy construction serves as a catchall classification (see Table 5) determined sometimes at building rates and sometimes at highway rates. The concern in this area arises because not all segments of the construction industry share the same level of union organization. Again, very little trustworthy statistical information establishing precise levels of union organization has been available. But generally speaking, commercial construction in urban areas is highly organized, whereas residential construction and highway work are much less so.

railroads	viaducts	pipe lines
large sewers	dams	water power projects
heavy foundations	reservoirs	transmission lines
abutments	drainage projects	telephone lines
tunnels	sanitation projects	radio towers
subways	gas mains	mining tipples
elevated highways	wharves	mining washeries
ovens	dredging	breakwaters
furnaces	rock removal	channels
kilns	pile driving	dikes
silos	jetties	levees
docks	piers	watermarks
locks	land reclamation	water mains

Table 5. Classifications of Heavy Construction Work
[Ref. 27, p. 236]

Thus, if a housing project is classified as a project similar in nature to commercial construction, and if commercial construction rates form the basis for its wage determination, the rates for the job will most likely be much higher than if homebuilding rates formed the basis. The same relationship between commercial construction rates and highway construction rates is pertinent; one or the other of these rates will probably form the basis for heavy construction. [Ref. 25, p. 60]

As Table 5 shows, heavy construction categories vary considerably. These projects have little in common beyond their large scale. They definitely do not share a need for or reliance on the standard classifications of carpenters, plumbers, electricians, roofers, etc., of which the AFL-CIO building trades are composed. Nonetheless, some of these trades would certainly be necessary for most of the projects listed. [Ref. 25, p. 61]

Another significant problem is overspecification of similarity. The Department of Labor will sometimes specify a particular type of heavy construction as the only type it will include in surveys for rate purposes. Where area rates do not exist, it is quite possible that only one particular type of heavy construction would be considered of a similar nature for survey purposes. This method usually results, as noted previously in subsection 2, in importing wage rates from a considerable distance and imposing them on a local community. To imply that projects to be considered in a wage survey should be only those virtually identical to the proposed project suggests a standard which is virtually impossible to achieve and at variance with both the Davis-Bacon Act's legislative history and its administrative practice. Nonetheless, in view of the critical nature of this aspect of the act's implementation, it is surprising that the determination of what is and what is not "similar"

construction has been left completely to the discretion of the Department of Labor's Wage Determination Division.

4. Prevailing wage determinations

As a contemplated project to be done under Davis-Bacon related statutes nears the bidding stage, the Federal agency responsible for the project determines the applicability of Davis-Bacon provisions. If coverage is indicated, the agency, through the contracting officer, must secure an appropriate prevailing wage for the project. Thus, the Federal agency responsible for the construction is the ignition point for operating the Davis-Bacon machinery. Federal agencies have two distinct methods for securing the necessary prevailing wage rate schedule from the Department of Labor: area rates and project rates (see Table 6). [Ref. 25, p. 31]

Area wage rate determinations are used for localities that have a rather steady flow of construction in a particular category and where there is some assurance that the rates are likely to remain fairly stable. Usually, this means areas which are heavily unionized. Area wage rate determinations are published in the Friday issue of the Federal Register and have no expiration date. They remain in effect until they are either superseded in a subsequent Federal Register, or until they are withdrawn. A very large portion of construction work is now covered by the published area decisions. The General Services Administration estimates that from 90 to 95 percent of all prevailing wage rate schedules for its work are obtained from the published area rates. The first step of the contracting officer to secure a rate schedule determination is to check the current area decisions in the Federal Register. If the appropriate rates are located, they are attached to the request for bids sent to various contractors along with the necessary plans and specifications.

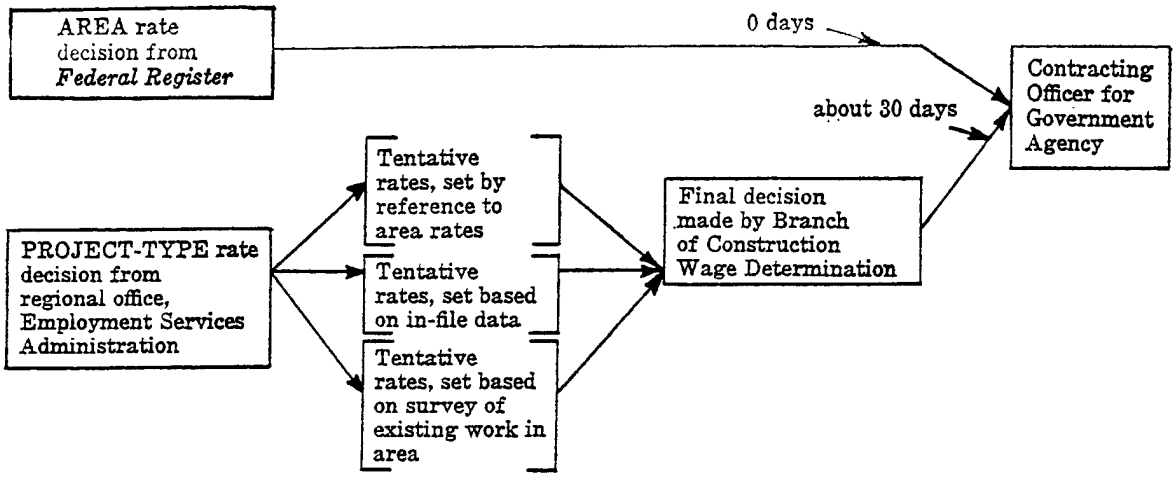

Table 6. Method of Securing Determinations for Work Covered by Davis-Bacon Act Provisions [Ref. 25, p. 35]

However, the contracting officer must continue to monitor the Federal Register in case the rates are updated prior to ten days before opening the bids. [Ref. 25, p. 33]

If the contracting officer cannot find a rate for the type of work contemplated in the locality under consideration, then a request is submitted for a special project type determination from the Department of Labor's Wage Determination Division. The Wage Determination Division first checks to determine if there is a prevailing area determination. If there is, the request is returned to the requesting agency, advising it to use the appropriate area decision. If the Wage Determination Division cannot find an area determination, it must render a project type determination after obtaining the appropriate information on which to base a determination. Normally 30 days lead time is required to make a project decision (see Table 6). [Ref. 25, p. 34]

Because the bidding period on most projects averages 30 days, the contracting officer must make the request early enough to be able to transmit rate schedules to the bidding contractors for their use in making a bid. A request made too early can also cause problems, however. Normally, the period between the opening of bids and the awarding of a contract is 30 to 40 days. Project decisions are valid for a period of 120 days, unless an extension is granted. Therefore, if a contracting officer requests a project decision too early, the rate may expire before the contract is awarded. Conversely, if the project decision is requested too late, the bid opening may have to be postponed. The contracting officer appears to have a maximum of 20 to 25 days leeway. Table 7 illustrates the time frame for contract award and rate modifications for area rate determinations. Table 8 illustrates the time frame for contract award and rate modifications for project type determinations. [Ref. 25, p. 34]

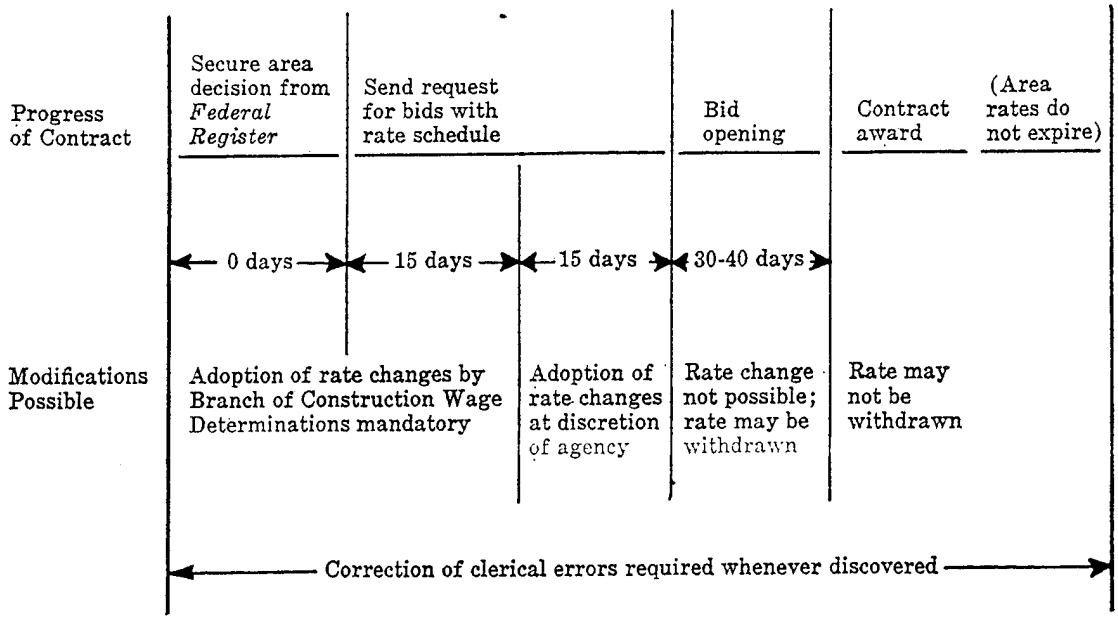

Table 7. Time Frame for Contract Award and Rate Modifications for Area Rate Determinations [Ref. 25, p. 38]

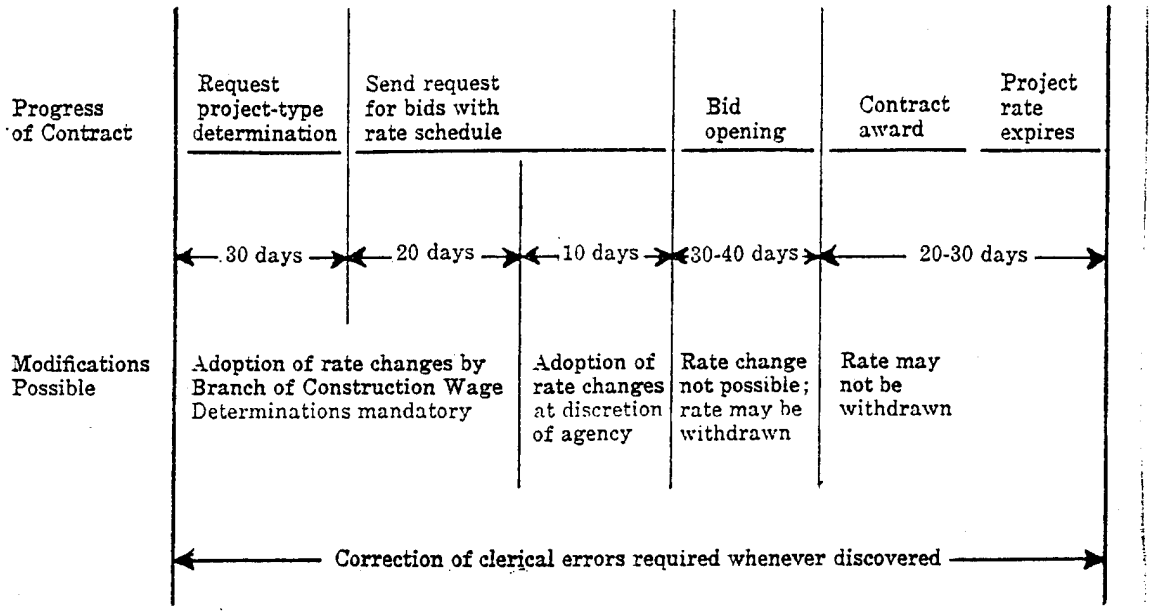

Table 8. Time Frame for Contract Award and Rate Modifications for Project Type Rate Determinations [Ref. 25, p. 36]

At this point, it is important to examine the mechanics of the Department of Labor's rate determination procedures. These procedures are applicable to both area and project type determinations and are critical towards understanding why all of the empirical studies of the Davis-Bacon Act have found corroboration of a tendency for the Department of Labor to make inappropriately high determinations of the prevailing wage.

Wage determinations may be extracted from rates on file at the Department of Labor or by conducting a survey. Any interested party has the right to submit wage information on rates actually paid. File information comes from various sources, including contractors, employer's associations, labor organizations, and other interested parties. These sources may submit at any time:

1. Statements showing wage rates actually paid on projects;
2. Signed collective bargaining agreements;
3. Wage rates determined for public construction by state and local prevailing wage laws;
4. Information furnished by federal and state agencies;
5. Anything else that is pertinent. [Ref. 5, p. 38]

There is little incentive for most individual contractors to submit such information. Since the majority of Government contractors tend to be larger firms, there is no incentive to submit wage information for small contractors who are not oriented towards or interested in Government work. A recent General Accounting Office report noted that of the 921,000 construction contractors in the United States, 82 percent had fewer than four employees [Ref. 5, p. 124].

Whatever rates are on file come principally from the unions, who have a vested interest in ensuring their most recent contract information is on file, and from employer

trade associations. Many trade associations are all or partially composed of unionized firms that, even if they were opposed to the Davis-Bacon Act, would have to display incredible altruism to submit information that might tend to produce lower prevailing rate determinations. The net effect is that whatever wage information is on file tends to be high rate information, except in a few geographic areas where the open shop firms felt they constituted more than a plurality of the workforce and therefore could force the average wage to be chosen as prevailing. [Ref. 18, p. 46]

The General Accounting Office conducted a review of 277 worker classifications in 30 locations (5 regions) and noted that 66 percent of the Department of Labor's prevailing rates were union negotiated rates based on collective bargaining agreements and 34 percent were nonunion rates. In the surveys conducted by the General Accounting Office, however, union negotiated rates prevailed on only 42 percent of the wage rates with nonunion rates prevailing on the remaining 58 percent. Table 9 presents the survey results on wage rates in the 30 localities (5 regions). [Ref. 5, p. 169]

Since union rates are the most likely to be on file for rate determination purposes, and are the easiest to obtain if they are not on file, the Department of Labor's sampling process favors union rates. The problem of survey sample size is one of the most important aspects of the undue influence of union rates on Davis-Bacon determinations. Assuming a typical mixed market composed of some low, nonunion wages and some high, union wages, if rates are found in accordance with a 50 percent or 30 percent rule, they would most likely be the union rates because union rates are more likely to be equal to be exactly equal. But if there is no majority (or 30 percent) at the union rate, the alternative is *not* the open shop rate as is commonly supposed.

Region	Total wage rates compared	Labor rates issued		GAO survey rates	
		Union negotiated	Non-union	Union negotiated	Non-union
New York	34	33	1	20	14
(percent)	(12)	(97)	(3)	(59)	(41)
Atlanta	75	16	59	3	72
(percent)	(27)	(21)	(79)	(4)	(96)
Chicago	46	35	11	18	28
(percent)	(17)	(76)	(24)	(39)	(61)
Dallas	43	34	9	14	29
(percent)	(16)	(79)	(21)	(33)	(67)
San Francisco	79	65	14	61	18
(percent)	(28)	(82)	(18)	(77)	(23)
Total	277	183	94	116	161
(percent)	(100)	(66)	(34)	(42)	(58)

Table 9. Comparison of Union Negotiated and Nonunion Wage Rates Issued by Department of Labor vs. GAO Survey
[Ref. 5, p. 119]

The alternative is a rate made up of the average of the high, union rates and the low, open shop rates, which is necessarily higher than the average of open shop rates. Under assumptions of a typical labor market and a current and accurate wage determination, there is substantially no possibility of the average open shop contractor not having to modify the wage scales of at least some of his employees on a Davis-Bacon contract. Furthermore, the impact of prevailing rates falls *exclusively* on nonunion firms. It is another common misconception of the Davis-Bacon Act that a rate established at less than the union rate will drive down wages in the industry. This is not true. Davis-Bacon rates are minimum requirements, and regardless of the level of rates determined they will not be higher than the union rate in a typical market; therefore, the union contractors' agreements with their employees take precedence. Union contractors do not have to (and in fact cannot) adjust their wage scales downward because of Davis-Bacon. Open shop contractors, on the other hand, frequently must adjust their wage scales upward or change their job assignments. [Ref. 18, p. 71]

If the Department of Labor is unable to extract a wage determination from the rates in its files, a survey must be conducted. The Department of Labor may survey all of the contractors in a locality, but this is not practical because of the large number of small construction contractors and because both contractors and construction workers are mobile and may not be from the immediate locality. Furthermore, the Department of Labor has no authority to require participation in its surveys, and many contractors simply decline to become involved. This leaves the Department of Labor with the problem that the set of wage rates from which survey rates are to be drawn contains an unknown number of rates paid, and that the surveys collected represent a partial response of unknown proportions. Since the Department of Labor must determine a

prevailing wage rate, it often decides that its survey results, however meager, are sufficient to establish the rate. The only other options are to bring in rates from another county (the "importation of wage rates" phenomena discussed earlier), from a nearby union local, from the nearest Davis-Bacon jobsite, or from an earlier time period. In the overwhelming majority of cases, whatever the Department of Labor decides will go uncontested because there is no external review of its decisions and because of the difficulties involved in a protesting a wage rate determination. [Ref. 18, p. 73]

Wage specialists are permitted to exercise discretion in accepting wage rates reported in a survey as actually paid, without external verification of their accuracy, and also can eliminate from the surveys rates considered to be too high or too low. Regulations do not specify the minimum or maximum number of wage rates required to constitute a survey. By these methods, the wage specialist could control the range of rates that are included in the survey and to which the prevailing rate formula is applied, thus controlling the final rate. The unrestrained survey process creates a greater opportunity for error and the possibility for an unrepresentative, unfair, or simply wrong rate being determined. [Ref. 18, p. 74]

The critical point is that the results of the wage rate determination process can vary tremendously depending on the manner in which a Department of Labor wage specialist decides what constitutes a sufficient survey size.

C. ENFORCEMENT

Responsibility for enforcing provisions of the Davis-Bacon Act rests squarely on the shoulders of the Federal agency contracting to have construction work performed. First, the contracting agency must ensure that all bidders for a construction project are aware of the Davis-Bacon provisions and the specific prevailing wage determination to be applied to the project. This is accomplished through inclusion of the provisions and the wage determination in the advertised specifications for the project. Once the project award has been made, the agency must then ensure that the same provisions are made a part of the contract for construction. Thus, the provisions form part of the so-called "boilerplate" which is attached to Federal contracts. Inclusion of these provisions and rates is required not only for directly Federally financed projects, but also for indirectly or partially Federally financed projects, such as is the case with Federal grants or loans involving construction [Ref. 28, p. 5].

After contract award, the contracting Federal agency must begin its policing efforts. Three primary methods of enforcement are used. First, Department of Labor regulations require the contractor and subcontractors on a construction project to submit certified weekly payroll reports to the contracting agency. These payroll reports would include: the name and work classification of each employee who worked on the project during the week; the hours worked each day of the week; the total hours worked; the rate of pay; the gross amount earned; any authorized deductions; and the net wages paid. The agency representatives are then required to examine these records to assure compliance with the various labor standards, to include the Davis-Bacon Act. Further, these records must be maintained or preserved by the agency and the

contractor for a period of three years following the completion date of the contract. [Ref. 28, p. 6]

The second method of enforcement required of the contracting agency is the performance of periodic investigations or inspections. Local procurement personnel perform such inspections once a month for large contracts. During these inspections, interviews with employees on the project site and examination of contractor held payroll data may be conducted. More alleged violations result from interviews with employees than from examination of certified weekly payroll efforts. Should an alleged violation be discovered, it is the responsibility of the contracting agency to conduct an investigation. In many cases, the alleged violations are found to be without merit. Such cases are usually resolved in preliminary investigative efforts by the contracting agency. Other violations may be found to be factual, but nonwillful and of very small dollar value. In such cases, the contracting agency may elect only to require back payment of wages to correct the violation. In fact, the Department of Labor, who requires reports of any Davis-Bacon violations, may elect not to require a report for a nonwillful violation totaling less than $500, provided that restitution is made and future compliance is anticipated. Whatever the actual nature of the possible violation, however, the agency must notify the contractor or subcontractor concerned. If required, a complete and thorough examination will be conducted by the agency or an examiner appointed by the agency. [Ref. 19, p. 39]

The third method of enforcement consists of those procedural sanctions authorized by the 1935 amendment to the Davis-Bacon Act outlined in Chapter II. Of these sanctions (withholding payments, terminating the right to proceed with the work, and a three year debarment), debarment is by far the most serious and thus will be addressed in further detail.

The final debarment decision resulting from Davis-Bacon violations is made by the Comptroller General. The General Accounting Office requires specific information be included in the reports submitted as a basis for the Comptroller General's debarment determination. This information includes a chronological narrative of the facts, copies of investigative reports, exhibits, correspondence, explanations of actions taken by offenders, and any additional information available. The recommendation of the agency concerned and that of the Department of Labor are requested, but the Comptroller General's decision is based on General Accounting Office criteria and the rules of practice of the Department of Labor. [Ref. 29, p. 61]

The Department of Labor rules for recommending debarment for a Davis-Bacon violation and for determining whether debarment is justified provide for:

1. Notifying the contractor or subcontractor of the violation;
2. A summary of the investigative findings;
3. An opportunity to present such reasons or considerations as the parties may have to offer opposing debarment;
4. An informal hearing before a hearing examiner, regional wage and hour director, or any other Departmental officer of appropriate ability;
5. An appeal from an adverse decision if requested to the Solicitor of Labor. [Ref. 29, p. 61]

The decision on this appeal includes findings, conclusion, and a recommendation or order for debarment. The Solicitor's recommendation or order for debarment is final unless the case is accepted for review by the Wage Appeals Board. The Commission on Government Procurement noted the following weaknesses in Davis-Bacon debarment practices:

1. The file on which the case is built is essentially ex parte, subject to internal guidelines that are neither available to the challenged contractor for examination nor for rebuttal of findings or confrontation or witnesses;

2. The nature of the presentations to rebut a proposed debarment, whether by oral hearing or another procedure and whether or not allowing other adversary type practice, is discretionary within the Department of Labor;

3. Functions are not clearly separated as between officials who propose debarment and those who decide the matter;

4. Final steps in the formal rules governing appeals are discretionary within the Department of Labor. [Ref. 29, p. 62]

From the above discussion it can be seen that the contracting agency is an important enforcement mechanism of the Davis-Bacon Act. It is primarily through the efforts of contracting personnel that violations of the prevailing wage law are found and resolved.

D. PROTESTS

During the early 1960's, hearings were held in Congress concerning judicial review of Davis-Bacon decisions. The general feeling held judicial review to be inappropriate because of the time delay involved. Nevertheless, the Secretary of Labor established an appeals procedure within the Department of Labor. In 1963, the Wage Appeals Board was established as a three man group to review and hear appeals of:

1. Wage determinations issued under the Davis-Bacon Act and its related minimum wage statutes;
2. Debarment cases;
3. Controversies concerning the payment of prevailing wage rates or proper wage classifications which involve significant sums of money, large groups of employees, or unusual situations;
4. Recommendations of a Federal agency for appropriate adjustment of liquidated damages which are assessed under the Contract Work Hours Standards Act.

[Ref. 30, p. 834]

Protesting a wage rate determination is possible, but certainly not a cheap or quick process. Any interested party can protest a wage rate, but in the period between the time that a wage rate is published and bids are opened, there is no contractor. At this point, only unions and contractors' associations are reasonable sources of interested parties. After bids are opened, there is a contractor, but it is too late to protest (wage rates may not be changed after bid opening, see Table 7 and Table 8), and only changes resulting from clerical error might be allowed. Although the Department of Labor is not required to justify the validity and accuracy of its rates, protestors must be prepared to prove their case. This involves the collection of prevailing wage information

with an explanation of what it consists of, and a request to the appropriate representatives in Washington for redetermination based on that information. Depending on the timing, a request may have to be made for extension of the bid opening deadline. [Ref. 18, p. 50]

At the very least, protesting a wage rate determination will require travel to the Department of Labor's regional office, and perhaps to Washington, D.C., to review the file of wage information used to make the determination. If a review at this time results in a changed rate, the appeal process is finished, a new determination is issued, and again depending on the time involved, invitations may have to be issued starting the bid process over again. If the Department of Labor rejects the proposed change, further appeal can be pursued. In addition to the time constraints, the costs to contractors to protest a rate determination, and the fact that construction firms in an area might balk even more at sharing the details of wage information with a competitor than with a Government agency, protests of determinations are inhibited by the fact that although the Department of Labor does not have to verify the accuracy of its determinations, the protestor does. Even if a protest is successful and wage rates are modified accordingly, the protestor who paid for it all has no greater likelihood of winning the contract. [Ref. 18, p. 51]

Assuming a protest is refused, the next step is to request an in-depth field investigation or a conference with the Davis-Bacon staff in Washington, D.C. to discuss the problem and review the wage data the staff claims support their position. If still refused, a final appeal can be made to the Wage Appeals Board. Decisions of the Wage Appeals Board are final. Courts do not entertain challenges to Davis-Bacon wage determinations, on the grounds that "the correctness of the Secretary's determination is not open to attack on judicial review" [Ref. 31, p. 278]. Furthermore, no

one has a litigable interest. A wage determination appeal can only be lodged before bid opening, a time when there was no contract and therefore no interested party (from the court's standpoint). After bids are opened, only clerical errors can be corrected, so no protests are permitted.

E. SUMMARY

Chapter III answered the primary research question: What methodology does the Department of Labor use when issuing prevailing wage determinations? Chapter III also addressed the second subsidiary research question: How does the Department of Labor administer the Davis-Bacon Act?

The Department of Labor's methodology for issuing prevailing wage determinations results in two types of determinations: area rates and project rates. Area rates are published in the Federal Register and do not expire until superseded. Project rates are issued in response to a request from a Government contracting officer and are valid for 120 days. Timing is an important consideration for a contracting officer requesting a project determination.

The Department of Labor has two primary sources of wage rate information used to produce wage determinations: rates on file and rates generated from surveys performed by wage specialists. Rates on file may be submitted by any interested party. In practice, rates on file are predominantly union rates. Wage specialists are permitted great discretion in performing wage surveys. Wage determinations can vary tremendously with survey sample size.

The Department of Labor's administrative procedures are also crucial to the prevailing wage determination process. The 50 percent or average rule is used to determine the prevailing wage. Wage rates are not grouped in increments but are calculated to the penny when applying the 50 percent or average rule.

Administrative procedures have been developed by the Department of Labor to determine those worker classifications requiring wage determinations, set area boundaries, and decree which types of construction are of a similar nature.

Similar nature determinations are made from four

construction classifications: building construction, highway construction, residential construction, and heavy construction. Heavy construction is a catchall category.

The contracting agency is an important enforcement mechanism of the Davis-Bacon Act. The three primary enforcement methods are: submission of certified weekly payroll reports, on site inspections, and debarment.

Protesting a wage determination is an expensive and time consuming process. A three man Wage Appeals Board exists to hear appeals of wage determinations. Its decisions are not subject to judicial review.

The Department of Labor utilizes a methodology which often results in inappropriately high determinations of the prevailing wage. Congress intended prevailing wage determinations to reflect wage rates established by private industry. The provisions of the Davis-Bacon Act have the effect of establishing new (higher) wage scales in the localities of Federal construction projects.

Chapter IV will address the major controversies, problems, and issues regarding the Davis-Bacon Act.

IV. PROBLEMS AND CONTROVERSIES

A. POLICY CONSIDERATIONS

Although it appears the Davis-Bacon Act has not been properly administered, there are grounds for doubting whether a prevailing wage law is required in construction, or in any industry. The degree to which Government can and should protect the wage rates of its contractors from the consequences of competition is a policy question involving normative judgments about the proper role of Government in the private employment relationship. Several factors must be considered in evaluating the validity of prevailing wage laws. The rationale of Davis-Bacon proponents may be objectively represented by the following synopsis. Government contracts are, by law, awarded to the lowest bidder, creating competition among contractors. In this competition, low-wage contractors are favored. To achieve low wages, contractors have appeared to cut wage rates or replace existing workers with low rate workers from elsewhere. The Government should not allow this to happen in the contracting for its own business. Repeal of Davis-Bacon would set an appalling precedent of Government using tax dollars to drive down the wages of its taxpayers. Therefore, protective wage laws are necessary, regardless of their resultant cost. [Ref. 32, p. 5]

Some of the predominant counterarguments contained in Davis-Bacon literature are presented below.

1. Unreasonable fears

The perceived need for wage protection is based on unreasonable fears that competition produces low wage rates. These fears are unreasonable for two reasons. First, procurement of goods by competitive bid and selection of the lowest cost bidder is by no means a procedure uniquely employed by Governments. A large proportion of private purchasing is carried out on the same basis, either formally,

as in a solicited bid system, or informally, as when advertised prices are used. To the claim that the Government system is more rigid and inflexible, forcing the Government to rely on price alone as a discriminator, one can respond that bid specifications can be varied, as can qualifications for inclusion on approved bidders lists. Therefore, proponents of prevailing wage legislation must argue either that all wage rates are lowered by competition (in which case prevailing wage laws reflecting existing standards on private employment would not improve them) or that wage rates are lowered only by competition for Government work - which is considered impossible. Second, the argument assumes that employers are able to unilaterally control wage rates, without regard for market factors. This is positively not correct for unionized employers and employers of minimum wage labor, and is at variance with the experience of most employers. It assumes that employers have monopsonistic control over labor services. This assumption stands in stark contrast to the realities of the marketplace. [Ref. 18, p. 125]

2. Inconsistent application

Arguing that protection of the type offered by prevailing wage laws is necessary for construction labor is inconsistent because many employees of Government contractors are not provided with, and have never been offered, such protection. Clerical and supervisory employees of construction contractors do not receive wage protection, nor do employees of Government contractors performing manufacturing or supply contracts. Many types of service contractors' employees are excluded from coverage by the Service Contract Act and a substantial proportion of covered service contracts are issued without prevailing wage specifications. In an incisive analysis by Professor Morgan Reynolds, this is deemed a glaring inconsistency in the arguments supporting the Davis-Bacon Act. Reynolds notes that prevailing wage laws extend their coverage

only to the approximately 30 percent of construction costs that are direct labor, neglecting the fact that the main ingredient in value-added for the intermediate goods purchased by contractors from material suppliers is also labor expense, and this labor is unprotected:

> An advocate of Davis-Bacon who concedes the virtues of competitive contracting must claim either (a) that it is alright for competition to determine pricing and labor costs for the other goods and services supplied to the construction industry but not for labor services supplied to the construction industry or (b) that the labor and materials used by the suppliers to produce output for the construction industry also should enjoy the benefits of stability and higher productivity from the prices set by Department of Labor administrators. Statement (a) is a plea for special privilege, and (b) is a plea to virtually abolish nonpolitical pricing throughout the economy. [Ref. 33, p. 304]

3. Economics

An understanding of how labor markets work and how wages are determined is also a key ingredient necessary when discussing the wisdom of prevailing wage laws. In its economic aspects, an effective union is a monopoly. A union's monopoly power is achieved by its restriction of entry into a particular trade, by its ability to withhold labor (its own and that of potential strikebreakers), and by its ability to negotiate wages that are higher than those that would prevail in a competitive market. The Davis-Bacon Act is the means by which substantial amounts of construction activity are transferred from the nonunion to the union sector, increasing the demand that the monopoly faces. The usual laws of economics seem to be overlooked by proponents of prevailing wage laws, who argue that Government contracting without Davis-Bacon would cause wage rates to fall. Government purchase of goods and services represents increased demand for those goods and services, which causes increased demand for

labor to produce them. Since the quantity of construction labor supplied is not affected, elementary economics suggests that the price of labor will tend to rise. [Ref. 2, p. 64]

B. COSTS TO THE FEDERAL GOVERNMENT

The Davis-Bacon literature is saturated with studies attempting to quantify the economic impact of the law and its implementing regulations. This research is not intended to duplicate those efforts. In terms of the amount of money the Government could save by buying the same type and volume of public works construction free from Davis-Bacon requirements, a preponderance of the credible estimates supports a conclusion that the cost of the Davis-Bacon Act is approximately $1 billion per year [Ref. 34, p. 38].

Nonetheless, discussion of Davis-Bacon related costs provides an apt framework for analyzing a classic clash between labor and business interests. The rationale of Davis-Bacon's proponents can be fairly represented by the following synopsis.

Davis-Bacon is not expensive for the Federal Government. John T. Dunlop, Ph.D., Secretary of Labor under President Ford and Harvard University Professor, concludes Davis-Bacon is at least neutral with respect to costs. The nation's preeminent economist on construction, Dunlop observes that productivity is greater among high wage, high skill workers. Projects using such workers often cost less than those using low-wage, low-skill workers. Inferior construction requiring repairs, revisions, and lengthy delays actually mean the Federal Government could lose money if Davis-Bacon is repealed. A recent, February, 1995, study conducted by the University of Utah (which repealed its state prevailing wage law in 1981) showed that cost overruns of State road construction tripled [Ref. 35, p. H2790]. The Davis-Bacon Act advocates think its opponents, who claim the Government would save billions per year, utilize vastly oversimplified and fundamentally flawed methods of economic analysis which fail to take into account productivity, safety, community development and other economic

forces contributing to the real cost effectiveness Davis-Bacon offers. [Ref. 32, p. 3]

Wage cuts do not automatically translate to procurement savings. If you pay someone half the wage you were paying someone else, but this person takes twice as long to do the job, you have not saved a penny. And if the job was done so poorly that it requires bringing it to standard, you are paying more, not less. Repeated studies have proven: there is a direct correlation between wage levels and productivity; well-trained workers produce more value per hour than poorly trained low wage workers. For example, a recent study of ten states where nearly half of all highway and bridge work in the United States is done indicated when high wage workers were paid double that of low wage workers, they built 74.4 more miles of roadbed and 32.8 more miles of bridges for $557 million less. Furthermore, most analyses fail to take into account the spin-off economic impact of maintaining prevailing wages. The prevailing wage law actually generates benefits to local communities 2.4 times the amount spent on a construction project because workers spend their money locally and pay local taxes [Ref. 36, p. H2793]. When workers' income goes down, they have less money to spend purchasing goods and making investments. When businesses close or cut back as a result, tax revenues to the Federal Government decline and social expenditures rise. It is simply penny-wise and pound-foolish to assume that driving wages down will be of any benefit in reducing the Federal deficit. [Ref. 32, p. 6]

Repeal of Davis-Bacon could result in cost shifting to other Government programs. Prevailing wage laws help keep private health insurance, disability and pension plans properly funded, which keeps employees from needing benefits from Government programs. In addition, if construction wages decline significantly, there will be a corresponding rise in the demand for Government programs, ranging from financial aid

for college students to food stamps. This phenomena would likely occur not just among the families of construction workers, but among owners and employees of businesses patronized by these workers. Furthermore, a current practice in some segments of the industry on private sector projects is for employers to misclassify workers, enabling irresponsible contractors to avoid paying employment taxes; such as, social security, unemployment insurance, and workers' compensation. This does not mean that costs are lowered, it means that others pay for these costs. Without Davis-Bacon, such practices would be extended to Government contracts, with some employers effectively using tax dollars to cheat other taxpayers. [Ref. 32, p. 4]

Opponents of the Davis-Bacon Act tend to emphasize the Act's effects on the costs of performing Federal Construction vice its aggregate costs to the Federal Government. Increased costs are frequently categorized into costs based on wage differential estimates and direct analysis of project costs. Davis-Bacon is also frequently cited as being inflationary.

Increased costs based on wage differential estimates may be measured by determining the amount by which payment of prevailing wages inflates the wage costs on some sample of Government projects, then translating the wage cost difference into project costs or savings, and finally expanding the result to the universe of all Federally aided construction. In 1983, the Congressional Budget Office performed the only study to date which utilized input data developed by the Department of Labor and, thus, is not subject to challenge on the basis of anti-Department of Labor bias. The total impact of Davis-Bacon costs, and therefore the amount that could be saved by repealing it, was conceived as the sum of the impacts derived from three sources. First, a wage impact resulting from wages required under Davis-Bacon exceeding average construction wages in the community. Second, a workforce

utilization impact resulting from restrictions on the use of helpers. Third, an administrative impact resulting from the paperwork associated with contract administration. [Ref. 18, p. 95]

Using a Department of Labor estimate that Davis-Bacon rate determinations were 5.4 percent above the average wage in a locality, wage differences were first reformed as percentage savings of construction costs. Since labor accounts for about 35 percent of construction costs, the wage difference of about 5.4 percent was expected to produce cost savings of approximately 1.9 percent of Federal construction costs. Applying this percentage to the universe of Federal construction, valued at $30 billion, the Congressional Budget Office estimated the total wage related impact of Davis-Bacon rate increases to be $568 million. It should be noted that a more relevant cost difference would have been that between Davis-Bacon determinations and the lowest rates generally available since, if Davis-Bacon were repealed. In this case, contracts would be awarded to the contractors with the lowest wage rates, rather than to an average rate of all contractors. With the addition of $500 million for eliminating work practice restrictions (increased use of helpers) and $50 million for eliminating contractor paperwork, total estimated savings from repeal were slightly over $1.1 billion. This figure is consistent with the $1 billion benchmark cited in the first paragraph of this subsection. [Ref. 18, p. 94]

Direct analysis of project costs requires a determination of the total cost of a given project with and without the Davis-Bacon Act in effect. To be able to make such a determination, it would be necessary to simulate history, once with the Davis-Bacon act in effect and once without it. The Davis-Bacon Act has been suspended three times in our nation's history. These suspension periods provide the best opportunity to analyze free market reactions to the removal of

prevailing wage requirements, although data are only available for one of the three suspension periods.

On June 5, 1934, President Roosevelt, acting upon the advice of the Secretary of Labor and the Administrator of Public Works, suspended Davis-Bacon as a matter of administrative convenience: to allow various New Deal statutes to function more smoothly. He made no attempt to define "national emergency" other than noting that concurrent operation of the two laws (the Davis-Bacon Act and the National Industrial Recovery Act) caused "administrative confusion and delay" which could be avoided were Davis-Bacon suspended. What transpired thereafter is not immediately clear; but, on June 30, 1934 (just three weeks later), President Roosevelt issued another proclamation. He stated that a revocation of the June 5th proclamation "would be in the public interest" and reinstated Davis-Bacon. The President does not appear to have offered any further public explanation for his actions. [Ref. 34, p. 22]

As a part of a package of anti-inflation measures, President Nixon suspended the Davis-Bacon Act from February 23 to March 29, 1971. Construction costs had been rising faster than prices in general and it was argued that suspension of the Act would contribute to a reduction in the rate of inflation. Agencies that had received bids for various projects, but had not yet awarded the contract, were asked to get a second set of bids. Despite the fact the extent of unionization influenced the degree to which contractors were able to lower their bids, it is useful to analyze data from this period. Data reported by the General Services Administration indicated that for 41 contracts for which Davis-Bacon requirements were suspended, the average low bid decreased by 5.4 percent. On another 15 contracts for which the Davis-Bacon Act was in effect for both the first and second bid, the low bid increased by 2 percent, indicating

that the net effect of the act is probably 7.4 percent. On the basis of this evidence from the suspension, it would seem reasonable to attribute about 5 percent of the costs of a substantial fraction of projects to the Davis-Bacon Act. [Ref. 2, p. 58]

On October 14, 1992, President George Bush ordered the Davis-Bacon Act suspended for certain jurisdictions in the States of Florida, Louisiana and Hawaii as a result of conditions caused by Hurricanes Andrew and Iniki. In suspending the Act, President Bush added several elements to the concept of national emergency, which had served as the basis for Presidential action. The Department of Labor, it was noted, had estimated that suspension could result in the creation of as many as 5,000 to 11,000 new jobs in the construction industry in these States. Further, the White House argued, payment of Davis-Bacon rates would increase the costs of rebuilding facilities in several areas and more construction companies would be able to bid on Federal construction contracts if Davis-Bacon were suspended. Further, it was explained:

> For more than half a century, the Davis-Bacon Act has imposed non-market wage rates in the construction industry. Unfortunately, the Davis-Bacon Act has historically operated to exclude semi-skilled workers, including many African-Americans, Hispanics, and new immigrants, from work on Federal contracting projects. In addition, by having the Government adhere to costly local wage settlements in the construction industry, the Davis-Bacon Act had added billions of dollars to the cost of Federal construction. [Ref. 37, p. 2]

The assumptions set forth in the suspension order and accompanying documents were contestable and sparked debates which continued through the 1992 Presidential election. Soon after his inauguration, on March 6, 1993, President Clinton issued a proclamation reversing that of his predecessor. The Clinton proclamation was a restoration of the full force of

the Davis-Bacon Act. [Ref. 34, p. 37]

A final argument frequently cited by critics of the Davis-Bacon Act is its inflationary impact. During the years that the Davis-Bacon Act has been enforced, the American taxpayer has paid and continues to pay hundreds of millions of dollars in increased construction, administrative, and other costs. The increased construction costs are due not only to the requirement to pay prevailing wage rates, but also to what many believe to be the mismanagement of the Department of Labor in determining those rates. The following example may help improve understanding of the Davis-Bacon Act's impact on construction costs:

> Two apartment buildings were being renovated in Boston. The cost of renovation in one building will be $23,000 per unit, resulting in rent of $225 to $357 per month. However, the cost of renovation in the second building will be $39,000 per unit, resulting in rent of $600 or more per month. The difference in renovation was not quality but Davis-Bacon. The second renovation was partially funded by the Department of Housing and Urban Development. Thus, a carpenter on the first project makes $13.34 an hour, and the same work on the second project brings $19 per hour. [Ref. 38, p. 187]

The inflationary aspects of the Davis-Bacon Act restrict the Federal Government's ability to provide low cost housing.

C. DOLLAR THRESHOLD

A controversy relevant to discussion of the Davis-Bacon Act is its dollar threshold. Currently the Act requires that it be applied to all Federal construction, alteration, and repair contracts in excess of $2,000. The threshold was established by the 1935 amendment to the Act and has remained unchanged for 60 years. There are those who feel such a low threshold is outdated, particularly in light of today's prices which find virtually all Federal construction contracts amounting to greater than $2,000. In 1971, the General Services Administration recommended a $25,000 minimum and in 1995, the Clinton administration is advocating raising the Davis-Bacon threshold to $100,000 [Ref. 39, p. A6].

Two arguments support such a change. First, $2,000 in the year 1935, represented a considerably larger sum in terms of the amount of construction or repair work which it could buy than $2,000 today. On a straight construction price index calculation, it cost $10,200 in 1972 to buy as much as $2,000 in 1935, and rampant price increases since 1972 have certainly pushed this figure even higher [Ref. 29, p. 135]. Second, lower cost projects are usually alteration, maintenance, or repair jobs. These lower cost projects are small jobs and have little or no impact on wage levels in the area. The General Accounting Office studied 600 wage determinations covering $663 million in four states in fiscal years 1965 and 1969. It found that 191 of them were issued for contracts less than $25,000. This 32 percent of the 600 determinations represented about two-tenths of one percent of the total construction dollar volume [Ref. 20, p. 37]. The number of persons employed on a job is directly related to the cost of the job. Thus, it seems that considerable administrative savings could be made without substantially affecting the number of persons covered by the Act's umbrella. Imagine how

ludicrous it might be to have a subcontractor painting two military housing units for $2,000 and having to maintain wage records on two union painters, in full accord with the Davis-Bacon Act's implementing regulations! Carried one step further is the fact the Secretary of Labor had to make the determination in the first place and said determination is valid for only 120 calendar days from issuance.

The Department of Labor's position is that increasing the dollar threshold would ease the department's workload, but the amount of savings is not quantifiable [Ref. 29, p. 136]. It further contends the workload would not ease greatly, because most of the small jobs are in areas already covered by area determinations. It is difficult to ascertain the validity of these positions, but on the surface they seem to be weak arguments raised by an agency which complains of being chronically understaffed and which might significantly cut its workload if the dollar threshold were increased. It is possible there is a relationship between this position and the AFL-CIO's strong opposition to any legislation calling for an increase in the $2,000 threshold which, it feels, would reduce the level of protection for workers on small repair and painting contracts, the type said to need it most. [Ref. 25, p. 79]

D. RELEVANCY OF THE ACT TODAY

Would the chaotic conditions of 1931 return if the Davis-Bacon Act were repealed? Readily available evidence indicates it would be highly unlikely. If Davis-Bacon applied to all construction, it would be a very difficult matter to test. But Davis-Bacon does not apply to all construction. Counting all Federal construction, Federally assisted projects, and projects done under similar State prevailing wage laws, Davis-Bacon directly or indirectly affects about $60 billion of the country's $232 billion annual construction business [Ref. 39, p. A6]. This is significant, but it does leave a large percentage uncovered. Many large factories, commercial structures, housing developments, and the like are built purely on competitive bidding, the contract being awarded to the lowest bidder. Sometimes the lowest bidder is a union contractor, sometimes an open shop. The two types compete effectively, neither one or the other the preordained winner. There are few complaints about itinerant cheap labor contractors obtaining all of this work and forcing local wage rates down; nor is there any evidence of union contractors being forced to do exclusively Government work because of their high wage structure.

Therefore, there would be little reason to suppose that, were the Davis-Bacon Act to be repealed, cutthroat competition would arise in the industry. Nor is there any reason to suppose that conditions in the entire construction industry would be any different than they are now in the private sector, unless the assumption were made that Davis-Bacon rates on Government jobs provide some sort of stabilizing influence on rates in the private sector. On this point, the opponents and supporters of Davis-Bacon find themselves involved in a role reversal. The construction unions and the Department of Labor have argued Davis-Bacon does not influence private

rates, but simply determines what rates are prevailing in a locality and applies them to Government work to be done in that locality. Thus Davis-Bacon could exert no stabilizing influence over private rates because it follows rather than leads them. Conversely, opponents have demonstrated in specific cases that Davis-Bacon rates do not simply reflect area practice, but are often higher than those actually prevailing and are frequently at the union scale. To the degree to which these higher rates influence the private sector, they may be considered either a stabilizing or inflationary influence, depending on whether the economy is in an expansionary or a recessionary state. [Ref. 25, p. 151]

Under either contention, the best that could be said of Davis-Bacon is that it exerts a stabilizing influence during an economic depression. Only in such circumstances would the rationale of the Act (that the Federal Government should not contribute to falling wage rates by insisting on the lowest priced bids for its construction work) be sustained. During any future economic depressions, the minimum wage laws, unemployment compensation, and the whole structure of the welfare system, all of which did not exist in 1931, would ensure that the intolerable conditions of falling wages and deteriorating working conditions, which existed then, would not happen now. Thus, it is suggested that during any future economic depressions, the provisions of the Davis-Bacon Act would be unnecessary. [Ref. 25, p. 152]

The Davis-Bacon Act was passed as an emergency measure aimed at stabilizing wages when the circumstances of the Great Depression favored management over labor. Today, the building trades unions hold a distinct advantage when negotiating wages and no longer require the protection of prevailing wage legislation.

E. SUMMARY

In this chapter, four of the controversies regarding the Davis-Bacon Act were discussed, thus answering the third subsidiary research question: What are the major controversies, problems, and issues regarding the Davis-Bacon Act?

There are certainly other issues, but the four issues presented: policy considerations, costs to the Federal Government, dollar threshold, and relevancy of the Act today appeared to be of greatest significance. Analysis of the controversies, problems, and issues regarding the Davis-Bacon Act helps to provide an understanding of the Act's impact on Federal construction procurement and should be of benefit when reviewing the conclusion.

V. CONCLUSION

A. WHY DAVIS-BACON HAS NOT BEEN REPEALED

The special interest bias of the political process helps to explain the continued existence of the Davis-Bacon Act. In essence, the Federal Government guarantees construction workers an above market price for their services by utilizing a methodology which results in inappropriately high determinations of the prevailing wages in a locality. The Davis-Bacon Act reduces the utility of the Federal procurement dollar, increases the price of construction, and results in higher taxes.

Nonetheless, Congress has failed to successfully repeal a depression era anachronism. Legislation was introduced in the 102nd Congress (1991-1992) and again in the 103rd Congress (1993-1994) that would have rewritten the Act entirely to eliminate certain of the ambiguities that have plagued it through the years. As of this writing (Spring, 1995), the cauldron continues to bubble as opponents of Davis-Bacon try to muster grassroots support for their repeal efforts. The Clinton administration is closely allied with organized labor and has promised a Presidential veto of any Davis-Bacon repeal.

Organized labor unions are generally aware of the importance of Davis-Bacon to their well being and make their views known to members of Congress. In contrast, most Americans are unaware they pay approximately $1 billion annually in increased Federal construction costs as a result of prevailing wage legislation.

It is rational for labor unions to inform themselves and become strong advocates of the Davis-Bacon Act, because it has such a large impact on their wealth. In contrast, it is irrational for taxpayers to spend time informing themselves on the nature and affects of the Davis-Bacon Act (and the

position of candidates on it) because for each taxpayer, the cost of such an investigation would exceed the personal losses resulting from the Act. This nation's system of representative Government is biased towards the adoption of counterproductive legislation, such as the Davis-Bacon Act, when an issue generates substantial benefits for a small number of constituents, while imposing a small individual cost on a large number of other voters. [Ref. 40, p. 743]

Construction industry employment is unusual in two respects. First, a large fraction of the work force is unionized, and the wage rates of the unionized and open shop sectors differ by substantial amounts for the different categories of workers. Second, activity in the construction industry tends to be volatile, and as a result workers in the industry are unemployed more frequently than workers in general. The higher rates of unemployment and volatility do not, however, establish any case for "wage protection." Workers are free to enter and leave this line of employment, and there is every indication that lifetime earnings (including unemployment compensation, unreported income, and the benefits of more leisure time) are as high in construction as in other industries. Especially in the case of skilled workers, who earn above average incomes, and, who have a sophisticated understanding of the opportunities available to them, wage protection of the sort claimed for the Davis-Bacon Act is redundant. [Ref. 2, p. 64]

Congress never intended Federal ratification of the local union wage. The Davis-Bacon Act distributes wealth not only inequitably, but also inefficiently. Continued adherence to the Act's requirements serves only labor union interests, at the taxpayers' expense. Davis-Bacon's social desirability remains suspect in light of Government's inability to demonstrate the benefits gained by individual construction workers exceed the costs. No amount of financial wizardry can

disguise the fact that high wages plus rigid job definitions push up construction costs. In addition, the imposition of socioeconomic goals on the procurement process adds numerous administrative complexities for the Government contracting officer.

It cannot be rationally argued that Government construction is a special case. Government, no less than the private sector, should attempt to acquire its construction for the least cost. The effect of setting minimum wages that are higher than would otherwise be obtained is an increase in construction costs on projects covered by the Davis-Bacon Act. As noted in Chapter IV, $1 billion is the best current estimate of the Act's annual cost. These are the direct costs to the Government that result because workers are paid unnecessary wage premiums. Additional social costs arise as well because small, nonunion firms are more likely to be adversely affected by the Act and because union employment practices and Department of Labor job classifications work to the disadvantage of younger workers and workers who are members of minority groups.

It is unfortunate that during the Congressional debates in 1931, legislators did not accept the advice of A.P. Greensfelder, then President of the Associated General Contractors of America, and consider the Davis-Bacon Act as an emergency measure for the duration of the Depression only. The Davis-Bacon Act should have been temporary legislation and allowed to expire when the depressed economic conditions which spawned it changed. The Davis-Bacon Act makes little sense under the current conditions of prosperity and expansion and provides too few benefits to offset its immense costs. It is considered poorly administered, and is probably too complex to ever be administered well, regardless of the administrative effort made. It does not fulfill its original stated purpose or other purposes that have been attributed to it.

Eliminating the Davis-Bacon Act, it is argued, will not disrupt the economy or the construction industry, although it will certainly be more difficult for construction labor unions to sustain the privilege seeking practices which have proven so costly to American taxpayers. It seems clear Davis-Bacon is an idea whose time has past.

B. RESEARCH QUESTIONS

Primary Research Question: What methodology does the Department of Labor use when issuing prevailing wage determinations?

The Department of Labor's methodology for issuing prevailing wage determinations results in two types of determinations: area rates and project rates. Area rates are published in the Federal Register and do not expire until superseded. Project rates are issued in response to a request from a Government contracting officer and are valid for 120 days. Timing is an important consideration for a contracting officer requesting a project determination.

The Department of Labor has two primary sources of wage rate information used to produce wage determinations: rates on file and rates generated from surveys performed by wage specialists. Rates on file may be submitted by any interested party. In practice, rates on file are predominantly union rates. Wage specialists are permitted great discretion in performing wage surveys. Wage determinations can vary tremendously with survey sample size.

The Department of Labor utilizes a methodology which often results in inappropriately high determinations of the prevailing wage. Congress intended prevailing wage determinations to reflect wage rates established by private industry. The provisions of the Davis-Bacon Act have the effect of establishing new (higher) wage scales in the localities of Federal construction projects.

Subsidiary Research Question One: What is the legislative history and background of the Davis-Bacon Act?

The Great Depression contributed to increasing Congressional interest in a national prevailing wage law for Federal construction procurement. Many Congressman were concerned the contractor practices focused on by proponents of

prevailing wage legislation (particularly, the importation of itinerant labor into a locality to perform Federal construction at below market wages) would further aggravate their constituents' already distressed economic conditions. The original Act was passed in 1931.

The most notable amendments to the Davis-Bacon Act occurred in 1935 and 1964. These amendments are applicable to all Federal construction contracts in excess of $2,000.

Subsidiary Research Question Two: How does the Department of Labor administer the Davis-Bacon Act?

The Department of Labor's administrative procedures are crucial to the prevailing wage determination process. The 50 percent or average rule is used to determine the prevailing wage. Wage rates are not grouped in increments but are calculated to the penny when applying the 50 percent or average rule.

Administrative procedures have been developed by the Department of Labor to determine those worker classifications requiring wage determinations, set area boundaries, and decree which types of construction are of a similar nature.

Similar nature determinations are made from four construction classifications: building construction, highway construction, residential construction, and heavy construction. Heavy construction is a catchall category.

The contracting agency is an important enforcement mechanism of the Davis-Bacon Act. The three primary enforcement methods are: submission of certified weekly payroll reports, on site inspections, and debarment.

Protesting a wage determination is an expensive and time consuming process. A three man Wage Appeals Board exists to hear appeals of wage determinations. Its decisions are not subject to judicial review. A wage determination appeal can only be lodged before bid opening.

Subsidiary research question three: What are the major controversies, problems, and issues regarding the Davis-Bacon Act?

There are certainly numerous issues, but the four presented: policy considerations, costs to the Federal Government, dollar threshold, and relevancy of the Act today appear to be of greatest significance. A detailed analysis of each issue is presented in Chapter IV.

APPENDIX. THE DAVIS-BACON ACT (AS AMENDED)

Title 40, U.S. Code, Section 276

a. Rates of wages for laborers and mechanics

(a) The advertised specifications for every contract in excess of $2,000, to which the United States or the District of Columbia is party, for construction, alteration, and/repair, including painting and decorating, of public buildings or public works of the United States or the District of Columbia within the geographical limits of the States of the Union, or the District of Columbia, and which requires or involves the employment of mechanics and/or laborers shall contain a provision stating the minimum wages to be paid various classes of laborers and mechanics which shall be based upon the wages that will be determined by the Secretary of Labor to be prevailing for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the city, town, village, or other civil subdivision of the State, in which the work is to be performed, or in the District of Columbia if the work is to be performed there; and every contract based upon these specifications shall contain a stipulation that the contractor or his subcontractor shall pay all mechanics and laborers employed directly upon the site of the work, unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account, the full amounts accrued at time of payment, computed at wage rates not less than those stated in the advertised specifications, regardless of any contractual relationship which may be alleged to exist between the contractor or subcontractor and such laborers and mechanics, and that the scale of wages to be paid shall be posted by the contractor in a prominent and easily accessible place at the site of the work; and the further stipulation that there may be withheld from the contractor so much of accrued payments as may be considered necessary by the

contracting officer to pay to laborers and mechanics employed by the contractor or any subcontractor on the work the difference between the rates of wages required by the contract to be paid laborers and mechanics on the work and the rates of wages received by such laborers and mechanics and not refunded to the contractor, subcontractors, or their agents.

(b) As used in sections 276a to 276a-5 of this title the term "wages", "scale of wages", "wage rates", "minimum wages", and "prevailing wages" shall include-

(1) the basic hourly rate of pay; and

(2) the amount of-

(A) the rate of contribution irrevocably made by a contractor or subcontractor to a trustee or to a third person pursuant to a fund, plan, or program; and

(B) the rate of costs to the contractor or subcontractor which may be reasonably anticipated in providing benefits to laborers and mechanics pursuant to an enforceable commitment to carry out a financially responsible plan or program which was communicated in writing to the laborers and mechanics affected,

for medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing, for unemployment benefits, life insurance, disability and sickness insurance, or accident insurance, for vacation and holiday pay, for defraying costs of apprenticeship or other similar programs, or for other bona fide fringe benefits, but only where the contractor or subcontractor is not required by other Federal, State, or local law to provide any of such benefits:

Provided, That the obligation of a contractor or subcontractor to make payment in accordance with the prevailing wage determinations of the Secretary of Labor, insofar as sections 276a to 276a-5 of this title and other Acts incorporating

sections 276a to 276a-5 of this title by reference are concerned may be discharged by the making of payments in cash, by the making of contributions of à type referred to in paragraph (2)(A), or by the assumption of an enforceable commitment to bear the costs of a plan or program of a type referred to in paragraph (2)(B), or any combination thereof, where the aggregate of any such payments, contributions, and costs is not less than the rate of pay described in paragraph (1) plus the amount referred to in paragraph (2).

In determining the overtime pay to which the laborer or mechanic is entitled under any Federal law, his regular or basic hourly rate of pay (or other alternative rate upon which premium rate of overtime compensation is computed) shall be deemed to be the rate computed under paragraph (1), except that where the amount of payments, contributions, or costs incurred with respect to him exceeds the prevailing wage applicable to him under sections 276a to 276a-5 of this title, such regular or basic hourly rate of pay (or such other alternative rate) shall be arrived at by deducting from the amount of payments, contributions, or costs actually incurred with respect to him, the amount of contributions or costs of the types described in paragraph (2) actually incurred with respect to him, or the amount determined under paragraph (2) but not actually paid, whichever amount is the greater.

a-1. Termination of work on failure to pay agreed wages; completion of work by government

Every contract within the scope of sections 276a to 276a-5 of this title shall contain the further provision that in the event it is found by the contracting officer that any laborer or mechanic employed by the contractor or any subcontractor directly on the site of the work covered by the contract has been or is being paid a rate of wages less than the rate of wages required by the contract to be paid as aforesaid, the Government may, by written notice to the

contractor, terminate his right to proceed with the work or such part of the work as to which there has been a failure to pay said required wages and to prosecute the work to completion by contract or otherwise, and the contractor and his sureties shall be liable to the Government for any excess costs occasioned the Government thereby.

a-2. Payment of wages by Comptroller General from withheld payments; listing contractors violating contracts

(a) The Comptroller General of the United States is authorized and directed to pay directly to laborers and mechanics from any accrued payments withheld under the terms of the contract any wages found to be due laborers and mechanics pursuant to sections 276a to 276a-5 of this title; and the Comptroller General of the United States is further authorized and is directed to distribute a list to all departments of the Government giving the names of persons or firms whom he has found to have disregarded their obligations to employees and subcontractors. No contract shall be awarded to the persons or firms appearing on this list or to any firm, corporation, partnership, or association in which such persons or firms have an interest until three years have elapsed from the date of publication of the list containing the names of such persons or firms.

(b) If the accrued payments withheld under the terms of the contract, as aforesaid are insufficient to reimburse all the laborers and mechanics, with respect to whom there has been a failure to pay the wages required pursuant to sections 276a to 276a-5 of this title, such laborers and mechanics shall have the right of action and/or intervention against the contractor and his sureties conferred by law upon persons furnishing labor or materials, and in such proceeds it shall be no defense that such laborers and mechanics accepted or agreed to accept less than the required rate of wages or voluntarily made refunds.

a-3. Effect on other Federal laws

Sections 276a to 276a-5 of this title shall not be construed to supersede or impair any authority otherwise granted by Federal law to provide for the establishment of specific wage rates.

a-4. Effective dates of sections 276a to 276a-5

Sections 276a to 276a-5 of this title shall take effect thirty days after August 30, 1935, but shall not affect any contract then existing or any contract that may thereafter be entered into pursuant to invitations for bids that are outstanding on August 30, 1935.

a-5. Suspensions of sections 276a to 276a-5 during emergency

In the event of a national emergency the President is authorized to suspend the provisions of sections 276 to 276a-5 of this title.

LIST OF REFERENCES

1. Government Contracts Guide, 1968. Chicago: Commerce Clearing House, Inc., 1968.

2. Gould, John P., The Economics of the Davis-Bacon Act. Washington, D.C.: American Enterprise Institute for Public Policy Research, 1980.

3. Hearings on House bill 17069 before the House Committee on Labor, 69th Congress, 2nd session, 1927.

4. Hearings on House bills 7995 and 9232 before the House Committee on Labor, 71st Congress, 2nd session, 1930.

5. General Accounting Office, The Davis-Bacon Act Should Be Repealed, HRD 79-18, 1979.

6. Senate Report 1445, 71st Congress, 3rd Session, 1931.

7. U.S. Congress. Commission on Government Procurement. Final Report, Study Group #2, Controls Over the Government Procurement Process, Volume II. Prepared as an advisory report to the Commission, 1971.

8. Title 40, United States Code, Section 276a-2.

9. Davis-Bacon Act. Statutes at Large. Volume XLIX, Section 276. Washington: Government Printing Office, 1936.

10. U.S. Congress. Commission on Government Procurement. Final Report, Study Group #13-C, Construction. Prepared as an advisory report to the Commission, 1971.

11. U.S. Congress. Commission on Government Procurement. Final Report, Study Group #2, Controls Over the Government Procurement Process, Volume I. Prepared as an advisory report to the Commission, 1971.

12. Amendments to Davis-Bacon Act, and a Bill to Establish a Work-Hours Act. Hearings, 87th Congress, 2nd session, March 1962.

13. U.S. Congress. House. Committee on Education and Labor, General Subcommittee on Labor. Administration of the Davis-Bacon Act. Report, 88th Congress, 1st session, June 1963.

14. U.S. Congress. House. Committee on Education and Labor, Special Subcommittee on Labor. Administration of the Davis-Bacon Act, Part 2. Hearings 87th Congress, 2nd session, June 1962.

15. Highlights of the Federal Acquisition Streamlining Act of 1994, Office of Assistant General Counsel (Research, Development & Acquisition), October 1994.

16. Will, George F. "Erase 'Prevailing Wage' Law," The Washington Post, February 6, 1995, p. A7.

17. Procedures for Predetermination of Wage Rates, 29 CFR 1.

18. Thieblot, Armond J., Jr., Prevailing Wage Legislation: The Davis-Bacon Act, State "Little Davis-Bacon" Acts, The Walsh-Healey Act, and The Service Contract Act, Labor Relations and Public Policy Series, Report No. 27. Philadelphia: University of Pennsylvania Press, 1986.

19. Mcgregor, Fred T., Jr., Captain, USAF. "The Impact of the Davis-Bacon Act on the Department of Defense Construction Procurement Process." Air Force Institute of Technology, 1974.

20. General Accounting Office, Need for Improved Administration of Davis-Bacon Act Noted Over a Decade of General Accounting Office Reviews, B-146842, 1971.

21. Affadavit of Thomas J. Feehan, President, Brown & Root, Inc., presented in Building and Construction Trades Department, AFL-CIO v. Donovan, Cir. A.N. 82-1631, 1982.

22. Johnson, David B. "Prevailing Wage Law," Labor Management and Social Policy, University of Wisconsin Press, 1963, p. 250.

23. Statement of Thomas Hails, general contractor, on behalf of Associated Builders and Contractors, in U.S. Congress, Senate, Subcommittee on Housing and Urban Affairs, 1972.

24. Gujarati, D. N. "The Economics of the Davis-Bacon Act," doctoral disseration, Graduate School of Business, University of Chicago, 1965. A Journal of Business article based on this dissertation published July 1967.

25. Thieblot, Armond J., Jr., The Davis-Bacon Act, Labor Relations and Public Policy Series, Report No. 10. Philadelphia: University of Pennsylvania Press, 1975.

26. Federal Register, September 7, 1973, p. 7.

27. U.S., Executive Office of the President, Bureau of the Budget, Office of Statistical Standards, Standard Industrial Classification Manual (Washington, D.C.: U.S. Government Printing Office, 1967).

28. U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division. Code of Federal Regulations, Title 29, Subtitle A, Part 5, "Labor Standards Provisions," WH Publication 1244. Washington: Government Printing Office, 1968.

29. U.S. Congress. Commission on Government Procurement. Final Report, Volume 4, Part G, Legal and Administrative Remedies. 1971.

30. Secretary of Labor, Order No. 32-63. Cited in 29 CFR 7, Sec 7.1(b).

31. Unites States v. Binghamton Construction Co., 347 U.S. 171 (1954).

32. Building & Construction Trades Department, AFL-CIO. Questions and Answers about Davis-Bacon: Protecting the American Standard of Living, 1994.

33. Reynolds, Morgan. Understanding Political Pricing of Labor Services: The Davis-Bacon Act 3, J. Laboratory Research. 1982.

34. Congressional Research Service. The Davis-Bacon Act: Institutional Evolution and Public Policy. May 1994.

35. Congressional Record. Urging Members To Support the Davis-Bacon Act. Representative Rahall. March 7, 1995, p. H2790.

36. Congressional Record. Urging Members To Support the Davis-Bacon Act. Representative Engel. March 7, 1995, p. H2793.

37. Press Release, The White House, Office of the Press Secretary, "Emergency Suspension of the Davis-Bacon Act," October 14, 1992.

38. Curry, Don W. "Should Congress Repeal the Davis-Bacon Act?" Contract Management, May 1983, p. 187.

39. Gaiter, Dorothy J. "State of Disunion: Davis-Bacon Act Comes Under Attack by Odd Alliance of Blacks and Republicans," The Wall Street Journal. May 3, 1995, p. A6.

40. Gwartney, James D. and Stroup, Richard L., Macroeconomics Public and Private Choice, New York: Harcourt Brace Jovanovich, Inc., 1992.

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