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Good morning Mr. Chairman and Subcommittee members. Thank you for inviting me to testify in my capacity as the Inspector General of the U.S. Department of Labor. I am pleased to appear before you today to present the results of the OIG's recent audit of the accuracy of the data used in making prevailing wage determinations under the Davis-Bacon Act. I am accompanied by Mr. Robert Wallace, the Regional Inspector General for Audit, whose Atlanta office conducted this nationwide study. This audit was initiated following a special request to review the program from former Senator Nancy Kassebaum while she chaired the Senate Committee on Labor and Human Resources. Her request arose following a 1995 allegation from the State of Oklahoma that fraudulent wage data had been submitted to the Wage and Hour Division (WH), which was then used in making Davis-Bacon Act (Davis-Bacon) prevailing wage determinations. The investigation of the actual Oklahoma allegations was conducted by the FBI, which resulted in a criminal conviction earlier this month.

Background

The Davis-Bacon Act was passed in 1931. The intent of the Act was to prevent U.S. Government-funded construction projects from undercutting local prevailing construction wages and displacing local labor, which might result from the importation of low-wage workers from outside of the Government construction area. Davis-Bacon

requires that employers pay local prevailing wages in the various construction skill trades for U.S. Government-funded projects. WH defines the "prevailing wage" as the wage rate paid to more than 50 percent of employees during the "peak week," which is when the largest number of individuals are employed in that craft.

The provisions of the 1931 Davis-Bacon Act have remained largely unchanged over the intervening sixty-six years; although -- since 1964 -- Davis-Bacon has also included provisions for determining prevailing rates applicable to fringe benefits, in addition to wages.

WH personnel make determinations that are used to establish prevailing wages. These determinations are based on wage information collected by WH through survey instruments provided to contractors, their subcontractors, and third parties, such as unions and trade groups. WH's seven regional offices actually conduct the surveys. Since participation in the surveys is voluntary, many employers -- according to WH -- do not respond to wage requests because of the time required to complete the form, the associated costs, and a lack of interest in Federal construction contracts.

The determinations, that WH ultimately makes, establish the minimum wages that Federal construction employers must pay workers. The determinations also affect states that have "little Davis-Bacon" statutes and who rely, in part, on Federal wage determinations to set prevailing wages for state and local construction projects.

The universe of projects covered by Davis-Bacon includes Federal and Federally-assisted contracts involving construction, alteration or repair of public buildings, or public works of over $2,000. Davis-Bacon applies to general contractors,

prime contractors, and subcontractors. The prevailing wage provisions also apply to approximately 60 other Federal laws that assist construction projects through grants, loans, loan guarantees, insurance, and direct financing. These statutes are known as "Davis-Bacon Related Acts".

OIG's Sampling Methodology

Our audit was designed to examine the accuracy of the data and the procedures that were used by WH to establish the prevailing wage rates. Data we examined in drawing our conclusions were based upon samples that were both randomly and judgmentally selected. Consequently, information derived from our samples can not be statistially projected to all activities for the period of our audit. Nonetheless, we are confident that the data presented support the conclusions we reached.

We selected calendar year 1995, which was the most recent 12-month period for which data were available. By using the most current period, we increased our chances of being able to successfully contact contractors and subcontractors, and locate and examine the payrolls for the WD-10 forms (Report of Construction Contractor's Wage Rates). Notices of completed survey decisions are published in the Federal Register. Decisions are based on WH's compilation and analysis of information that is voluntarily submitted on Forms WD-10s by employers and interested third parties. During calendar year 1995, WH published a total of 70 surveys.

We stratified the surveys by region and randomly selected one survey from each of the six regions that had published a survey that year. Additionally, we selected a seventh survey that had been performed by Construction Resources Analysis, which

is affiliated with the University of Tennessee and also performs surveys for WH.

During our review, we obtained all usable WD-10s that WH had included in the seven surveys, and we then performed a desk review to assess the completeness and accuracy of each of the WD-10s. In all, we examined 837 responses.

We next selected a sample of WD-10s for written confirmation from the employer, so that we could validate the accuracy and legitimacy of the information that was provided on the form. We stratified the sample to ensure that WD-10s with large numbers of employees or crafts would be among those to be confirmed. We also selected a random sample of the remaining WD-10s in order to ensure that all forms had a chance to be selected. We sent out a total of 360 employer confirmations.

Our final selection was for onsite payroll reviews at the employers' place of business. These reviews were performed to determine if authentic source data were available to support the information that had been reported to WH on the WD-10s. In determining which payroll reviews were to be selected, we considered such factors as: employers' and third parties' responses to confirmations, the number of crafts and employees included on the WD-10, and number of WD-10s submitted by the employer for the survey. We examined payroll records relating to 110 WD-10's.

OIG Findings

We found no evidence in our sample to conclude that inaccurate data reported on the WD-10s were intentionally false or deliberately submitted in error to WH; however, we did find that much of the data was inaccurate. Overall, we found 211 significant exceptions involving nearly 15 percent of the survey instruments (WD-10 forms).

Significant exceptions were discovered through each of our audit procedures. However, those errors found through payroll examinations are of greatest concern to us. We found that 64 percent of the WD-10s that were subjected to payroll verification contained errors. Inaccuracies in data reported by employers and third parties accounted for 84 percent (177 of the 211) of all exceptions. The remaining 16 percent (34 exceptions) were attributed to errors in WH's compilation of the data.

Material errors in WD-10s resulted in wage decisions needing revision in five states. Among these decisions, wages or fringe benefits for certain crafts were overstated by as much as $1.08 per hour and understated by as much as $1.29 per hour. Some errors were caused by employers or third parties who misunderstood the instructions on the survey instruments that WH had sent them. Other errors resulted from data being reported on the same project by more than one party. However, many errors were the result of either carelessness or the reporting of approximations to WH. Mr. Chairman, the frequency of exceptions found in the data causes us concern about the overall methodology that WH uses to collect data and compute prevailing wage rates.

During our audit, we discussed WH's methodology with the staff from the Bureau of Labor Statistics (BLS). The methods used by WH differ markedly from those used by BLS. For example, while BLS relies on the consent of employers to participate in many of its surveys, BLS independently selects, collects and assembles the data. It should be noted that BLS currently conducts surveys for ESA to assist in administering provisions of the Service Contract Act, a relatively similar statute for the service industries, which may have some application to the collection of Davis-Bacon data.

We also identified several other issues involving WH's survey methodology, the Davis-Bacon Act itself, and its implementing regulations that either contributed to the exceptions we found or bring into question the representativeness of the wage decisions. They include:

- Use of only data that has been compiled and voluntarily submitted by employers and third parties from requests that WH mails.
- Decisions which are sometimes based on data for a very small number of individuals in a craft.
- Disparities in the age of the data used to establish craft rates, since nonunion rates may not be updated for years.
- Small geographic areas covered by WH's surveys which may result in wage decisions that are based on an inadequate number of responses and a much larger workload for WH.
- Conventions currently used in establishing wage decisions, such as "prevailing wage", "peak week" and a limited time frame which may not provide a representative decision.

Our audit concluded that the high proportion of erroneous data that is submitted to WH poses a threat to the validity of prevailing wage decisions. Moreover, our audit additionally concluded that the strictly voluntary nature of the survey process itself can produce bias in the composition and number of respondents. As a result, the data captured may not be representative of locally prevailing labor conditions.

OIG Recommendations

To improve the validity and representativeness of the data used to determine locally prevailing wages, we recommended that the Assistant Secretary for Employment Standards revise the survey process to:

1. Select contractors for participation using statistical or other independent means, and

2. Obtain necessary data directly from contractors' records through onsite collection, thus, eliminating the need for third party reporting. If mail surveys are used for statistically selected employers, onsite reviews to verify submissions -- on at least a sample basis -- should be built into the process.

The reduction of items as a result of statistical sampling, along with other measures -- such as expanding the geographic coverage of the wage surveys -- could mitigate the higher costs associated with onsite collection. Third parties could continue to be involved by providing information to WH for verification of wage and benefit data that has been collected from employers, especially in those geographic areas that are dominated by collective bargaining agreements.

Congress' recent appropriation of $3.75 million for fiscal year 1997 to assist WH in improving its wage survey system presents a timely opportunity for the design and testing of modifications to the process. Accordingly, we further recommended that the Assistant Secretary for Employment Standards:

3. Obtain assistance from the Commissioner of the Department's Bureau of Labor Statistics in reviewing procedures used in the Davis-Bacon wage determination process and recommending -- as needed -- legislative, regulatory or administrative changes in the survey methodology. In the interim, contractor-submitted data can be verified on a sample basis and appropriate enforcement actions initiated against persons making false reports.

OIG'S Conclusions

Although we did not find fraud or deliberate misreporting of wage data, we should note that such activity may exist in the responses that we did not examine. Since our audit included both random and judgmental sampling, the results cannot be projected statistically to the nation as a whole. Nevertheless, we are confident that the data presented fully support the conclusions we reached.

As we advise the users of our audit report of its limitations and caution against drawing inferences that are not supported, we also caution against dismissing the need for fundamental improvements in WH's survey methodology. Much of the data that we examined was in error. As I previously mentioned, nearly two of three WD-10s that we subjected to onsite payroll reviews contained errors. If we had conducted more payroll reviews, we believe that even more exceptions would have been identified, and resulted in our detection of additional material errors in the published wage decisions. Many of the errors that we discovered did not materially change wage decisions. However, this was because the data that we sampled often represented only a small portion of the responses for an individual WH survey.

We believe that an independent selection of employers by WH would provide many benefits. The strictly voluntary nature of the survey process can produce bias in the composition and number of respondents. Thus, the data may not represent local prevailing labor conditions.

The time and costs of onsite payroll reviews may be offset by broadening the geographical coverage of the surveys and by combining data collection efforts with other BLS survey efforts. In fact, employer resistance actually could be lessened through a reduction in the frequency of wage requests resulting from combined survey efforts.

Actions Taken by WH

WH has advised us that it is considering our recommendations. While WH has yet to make final decisions, it has indicated that it has contracted with a public accounting firm to perform on-site verification of a 10 percent sample of WD-10s, using

employers' payroll records to validate the information on the WD-10s.

As a part of its re-engineering initiative, WH is working with BLS to test the feasibility of also gathering the fringe benefit data that is required by the amended Act. In addition, WH is also considering our recommendation to broaden the geographical survey areas; although, it has yet to make a final decision.

Mr. Chairman, this concludes my prepared statement. We would be pleased to respond to any questions that you or the other Members of the Subcommittee might have.