AGC THE CONSTRUCTION ASSOCIATION

DAVIS-BACON & RELATED ACTS

Changes to the Davis-Bacon & Related Acts Regulations Significantly Expand Coverage

Background:

The U.S. Department of Labor (DOL) Wage and Hour Division issued a final rule that would significantly revise the regulations implementing the Davis-Bacon Related Acts (DBRA). This 40-year awaited update reverts to the pre-1983 methodology for determining whether a wage rate is prevailing, also referred to as the "30 percent rule". The proposal also significantly revises its "site of work" provisions along with its survey data and wage determination collection and processes that would allow DOL to use a broader data set (geographically) than they currently utilize.

Action Needed:

The DOL wage determination process suffers from a lack of quality and accurate data. Improved data collection and rejecting DOL overreach will improve compliance.

AGC Message:

- **Reverting to the (pre-1983) 3-step process is unnecessary and a missed opportunity at true modernization of the wage determination process.** The changes appear to just make it easier on the DOL itself to set prevailing wages with less of the data it already collects, or lack thereof. The DOL's almost exclusive reliance on voluntary wage surveys to produce and update wage determinations has created a compensation system for DBRA covered construction that poorly reflects the construction labor market in many parts of the country. DOL should instead focus on how to collect more accurate data, instead of being able to rely on less or even at times inappropriate data, to determine wages that are truly prevailing.

- **Changes to the "Site of Work" and related provisions will expand DBRA coverage beyond statutory authority.** AGC also strongly questions the legality of the rule's expansions of coverage, including the "Site of Work" and related provisions. The site of work provisions have been settled through litigation for decades and the regulatory changes made in response to litigation have made application of the "site of work" and "adjacent or virtually adjacent" more consistent and predictable. Contractors understand the current site of work regulations and it appears to AGC that the DOL is trying to get around the litigation and excessively expand the definitions. Additionally, AGC believes the current limitation of Davis-Bacon coverage to adjacent or virtually adjacent facilities imposed by previous court decisions does not need further elaboration and does not apply to "nearby" facilities.

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