

**Congress of the United States**  
**Washington, DC 20515**

October 4, 2018

Ms. Cindy Brown-Barnes  
Director of Education Workforce and Income Security  
U.S. Government Accountability Office  
441 G Street, NW  
Washington, D.C. 20548

Dear Ms. Brown-Barnes:

Pursuant to our congressional oversight duties, we write to request an investigation of the contracting practices of the U.S. Army Corps of Engineers (“USACE”), with a specific focus on how the agency complies with and enforces the nation’s requirement to pay prevailing wages on federally-financed construction jobs.

As you know, the Davis-Bacon Act of 1931, 40 U.S.C. § 3141 *et seq.*, requires that contractors and subcontractors on certain government projects pay construction workers locally prevailing wages as determined by the U.S. Department of Labor (“DOL”). Locally prevailing wages vary by job classification and consist of a basic hourly rate of pay and fringe benefits. Generally, the Davis-Bacon Act applies to projects that meet three criteria: (1) there is a contract for construction in excess of \$2,000; (2) the United States or the District of Columbia is a party to the contract; and (3) the contract is for construction, alteration, or repair. Under Davis-Bacon, the government may terminate a contract if locally prevailing wages have not been paid to employees working on the project. For close to 90 years, this law has helped ensure quality craftsmanship on federal projects, protected the standard of living of skilled and trained blue-collar construction workers, improved workplace safety by discouraging low-road contractors from bidding, and stimulated the economy.

The DOL’s Wage and Hour Division administers the Davis-Bacon Act by, among other things, determining prevailing wage rates and prescribing regulations and standards to be observed by contracting agencies. Contracting agencies, such as USACE, however, have the primary day-to-day responsibility for enforcement of the Davis-Bacon Act and its labor standards requirements. *See, e.g.*, FAR 22.406 - .407. Unfortunately, we have heard persistent and credible reports that USACE’s enforcement efforts are lacking.

It is our understanding that irresponsible contractors and subcontractors often times avoid their prevailing wage obligations by, among other things, engaging in craft and independent contractor misclassification. Craft misclassification refers to the practice in which unscrupulous contractors misclassify high-skilled workers as general laborers or other low-skill classifications in order to avoid paying the higher prevailing wage rate applicable to the high-skilled work actually performed.

Independent contractor misclassification refers to the practice in which contractors misclassify employees as independent contractors to avoid paying prevailing wages, reduce labor costs and avoid state and federal taxes. This practice hurts workers because it denies them access to critical benefits and protections, including prevailing wages, worker's compensation and unemployment insurance. Communities also suffer because misclassification results in lower tax revenues for federal, state, and local governments. In 2000, DOL commissioned a study to determine the extent of misclassification, and found that up to 30 percent of audited firms had employees misclassified as independent contractors.

In light of the intended federal investment of \$10.3 billion for military construction projects for FY19, we request an investigation of the U.S. Army Corps of Engineers, which would answer the following questions:

1. What programs or protocols does USACE have in place for the purpose of carrying out its Davis-Bacon enforcement obligations as set forth in the FAR?
2. What programs or protocols does USACE have in place for the purpose of identifying and addressing independent contractor misclassification on projects subject to the Davis-Bacon Act?
3. How often does USACE conduct site visits on each covered project to monitor Davis-Bacon compliance?
4. How often does USACE monitor certified payroll reports submitted by contractors and subcontractors on each covered project?
5. Does USACE accept and investigate complaints of Davis-Bacon violations submitted by third parties, such as contractors and workers' rights organizations?
6. Does USACE maintain a database listing all contractors and subcontractors who have, in one way or another, violated the Davis-Bacon Act? If so, does USACE consult this database as part of its contract award process?
7. Over the last five years, how often has USACE penalized, disqualified, terminated and/or moved for debarment of a contractor for Davis-Bacon violations?
8. How does USACE verify that the contractors it hires for its projects are properly licensed?

Sincerely,



CHRISTOPHER H. SMITH  
Member of Congress



DAVID B. MCKINLEY, P.E.  
Member of Congress



BRIAN FITZPATRICK  
Member of Congress



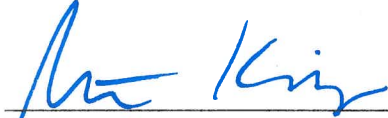
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