



**DEC 2 - 2015**

Mr. Curtis W. Sumner, PLS  
Executive Director  
National Society of Professional Surveyors  
5119 Pegasus Court, Suite Q  
Frederick, Maryland 21704

Dear Mr. Sumner:

This is in response to the proposals offered by the National Society of Professional Surveyors (NSPS) in your December 10, 2014, letter related to the Wage and Hour Division's (WHD) policy for determining when Davis-Bacon labor standards may apply to members of survey crews. The WHD has reviewed your proposals carefully and believes that many of the concerns that serve as the basis for your proposals can be addressed through additional explanation. The following information and attached Q&As are provided to assist in explaining the criteria used in determining when Davis-Bacon prevailing wage requirements may apply to such workers on construction projects subject to the Davis-Bacon labor standards. The WHD, however, will not grant your request to "rescind and replace" All Agency Memorandum (AAM) 212.

In your letter you recommend that the WHD:

- 1) Apply the Davis-Bacon Act to individuals involved on construction, not those engaged in surveying;
- 2) Remove all references to terms such as "surveying", "field surveyors", "survey crew", "rodman", or "chainman";
- 3) Distinguish between "surveying" and "construction";
- 4) Exempt any work that is surveying in nature and for which survey crew members are not directly employed by a construction contractor or subcontractor;
- 5) Exempt workers who are performing surveying services; and
- 6) Cover only construction workers not engaged in surveying activities and whose duties are solely manual or physical in nature.

Many of the NSPS proposals are already addressed in the guidance provided by All Agency Memorandum No. 212 (AAM 212). Specifically, elements of the NSPS recommendations are already reflected in AAM 212, and they also are reflected and amplified in the attached Q&As. In particular, AAM 212 and the attached Q&As make clear that only a survey crew member who performs primarily physical and/or manual duties while employed by a contractor or subcontractor in work performed immediately prior to or during actual construction in direct support of construction crew(s) on the site

of the work will be considered a laborer or mechanic covered by Davis-Bacon requirements. Survey crew members who do not satisfy all of these conditions of coverage generally will not be covered by Davis-Bacon requirements. To the extent that your recommendations seek a broader exclusion from Davis-Bacon requirements, we believe that such an exclusion would be inconsistent with the Davis-Bacon Act and its implementing regulations.

As this agency had not closely examined survey crew classifications and duties in detail in recent years, a determination was made that it would be appropriate to identify and evaluate the extent of physical and manual work performed by the various survey crew classifications in use today. Available information suggested that the composition of survey crews, the nomenclature used for their job classifications, and the duties assigned to survey crew workers may have evolved over the years, particularly with the introduction of new technologies such as the use of the global positioning system (GPS).

Generally, on federal and federally assisted construction, the Davis-Bacon labor standards apply to “laborers and mechanics” employed by contractors and subcontractors on the “site of the work” for such projects. The following regulatory definition, which has been included in Davis-Bacon regulations since 1983 and is set forth at 29 CFR § 5.2 (m), is used to determine whether individuals employed by contractors and subcontractors on the “site of the work” of a Davis-Bacon project qualify as laborers and mechanics:

The term *laborer* or *mechanic* includes at least those workers whose duties are manual or physical in nature (including those workers who use tools or who are performing the work of a trade), as distinguished from mental or managerial. . . . The term does not apply to workers whose duties are primarily administrative, executive, or clerical, rather than manual. Persons employed in a bona fide executive, administrative, or professional capacity as defined in part 541 of this title are not deemed to be laborers or mechanics. Working foremen who devote more than 20 percent of their time during a workweek to mechanic or laborer duties, and who do not meet the criteria of part 541, are laborers and mechanics for the time so spent.

This definition is used to determine whether or not a worker (including a member of a survey crew) is a “laborer or mechanic” under the Davis-Bacon Act. Determining whether individual members of survey crews who otherwise satisfy all of the conditions of coverage set forth above and in AAM 212 qualify as laborers or mechanics is a question of fact that must take into account the actual duties performed.

In this context, on March 22, 2013, AAM 212, regarding “Applicability of Davis-Bacon labor standards to members of survey crews” advised the federal contracting agencies that they should accept requests for the addition of classifications to contract wage

determinations for “survey crew members whose duties are primarily physical and/or manual while employed by the contractor or subcontractor(s) on Davis-Bacon covered projects immediately prior to or during construction in direct support of construction crews.” (AAM No. 212 also provided important information relevant to determining whether an individual performs primarily physical and/or manual duties.) The Wage and Hour Division’s Branch of Construction Wage Determinations review of such requests includes an analysis of whether the elements required for Davis-Bacon labor standards coverage are present, such as whether or not the duties of requested classifications are primarily physical and/or manual and whether the workers for whom such classifications are requested are employed in direct support of construction crews on the site of the work immediately prior to or during construction (not in relation to the design of a project).

The same criteria apply in evaluating when wage data for survey crew worker classifications reported by contractors (and other interested parties) may be used in determining locally prevailing wages for laborer and mechanic classifications that will be listed in new wage determinations for application to future contracts to which the Davis-Bacon labor standards apply.

We intend to publish the attached Q&As on our website, but would appreciate any input you have as to additional questions or clarifications you believe we should make. We will continue to offer and provide additional compliance assistance to you and your members to ensure that they understand the Davis Bacon Act and its requirements. It is my hope that this letter and the attached Q&As will be helpful to you and your members.

Sincerely,

A handwritten signature in black ink, appearing to read "M. Lazzeri", with a long horizontal flourish extending to the right.

Michael Lazzeri, Director  
Office of Government Contracts

Attachment