



National Society of Professional Surveyors

5119 Pegasus Court, Suite Q, Frederick, MD 21704

Phone: 240-439-4615 * Fax: 240-439-4952

www.nsps.us.com

September 11, 2013

The Honorable Joseph G. Jordan
Administrator, Office of Federal Procurement Policy
Office of Management and Budget
1650 Pennsylvania Avenue, NW
EEOB, Room 264
Washington, DC 20503
Email: jjordan@omb.eop.gov

The Honorable Howard Shelanski
Administrator, Office of Information and Regulatory Affairs
Office of Management and Budget
New Executive Office Building
725 17th Street, NW.
Washington, DC 20503
Email: howard_shelanski@omb.eop.gov

Dear Administrators Jordan and Shelanski:

The National Society of Professional Surveyors (NSPS) is the national organization of practitioners in the field of professional surveying. Our members are licensed professionals, and technicians in support thereto, that provide boundary delineation, land surveys, and other location based services.

I am writing to bring to your attention our deep concern for the process and policy implemented by the Department of Labor in All Agency Memorandum 212 (AAM 212 - <http://www.dol.gov/whd/programs/dbra/Survey/AAM212.pdf>) in March of this year.

Our concern is that a Federal policy that has been accepted and applied since the Kennedy Administration has been overturned without public comment or analysis of economic impact, particularly on small business.

For more than 50 years, the Labor Department has considered survey crews exempt from the provisions of the Davis-Bacon Act. Documentation from then-Secretary Arthur Goldberg in the Kennedy Administration stated that members of survey crews are exempt from the Act except to the extent to which they “perform manual work, such as clearing brush and sharpening stakes” which Secretary Goldberg correctly observed “are not commonplace”.

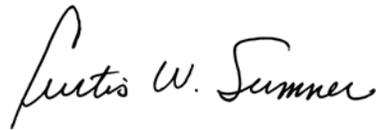
In March of this year, the Department Labor issued AAM 212 reversing that policy and expanding the application of Davis-Bacon to members of survey crews. Apart from our concerns about this policy, I am writing to express my strong opposition to the process utilized by the Department of Labor.

There has been no legislation, court ruling, Comptroller General opinion, or other governmental action that changed Secretary Goldberg's interpretation. Nevertheless, the Department of Labor issued no public notice that it was considering a change in its regulations; no request for public input or comments; no notification seeking the advice, comment, or input from the general public or the surveying profession and employers/management; and to the best of our knowledge conducted no analysis of the economic impact of the change in policy. This is particularly troubling for the 99% of surveying firms in the United States that are defined as small businesses under the Small Business Administration definition.

We believe the manner in which the Department of Labor considered and promulgated this drastic and significant change in policy and government contracting procedure is a violation of the spirit if not the letter of the Administrative Procedures Act (5 U.S.C. § 551-59, 701-06, 1305, 3105, 3344, 5372, 7521), the Regulatory Flexibility Act (5 U.S.C. § 601-612), the Paperwork Reduction Act (44 U.S.C. § 3501-3521), and the Office of Federal Procurement Policy Act 41 U.S.C. . 1701).

We respectfully request that AAM 212 be rescinded unless and until a full review, and public notice and comment, is accomplished pursuant to the aforementioned provisions of law.

Sincerely,

A handwritten signature in cursive script that reads "Curtis W. Sumner". The signature is written in black ink and is positioned above the typed name and title.

Curtis W. Sumner, LS
Executive Director