The Honorable James Comer, Ranking Member
Committee on Oversight and Reform
U.S. House of Representatives
Washington, DC 20515

Dear Ranking Member Comer:

The National Society of Professional Surveyors (NSPS) is the preeminent national professional society working in affiliation with the respective state societies of professional surveyors and along with persons trained, registered, or engaged in the profession of surveying and mapping. NSPS advances the science and disciplines within the profession and strives to establish and further common interests, objectives, and political efforts to help bind the surveying profession into a unified body in the United States. NSPS is the interface for the surveying profession with a multitude of national organizations in related fields, and with federal government entities.

In response to your inquiry of the business community in identifying job killing regulations to roll back, NSPS urges your oversight and investigation into the expansion and applicability of Davis-Bacon labor standards to members of survey crews for your review and oversight.

Since 1935, the Davis-Bacon Act has required that workers on all federally funded or federally assisted construction projects whose contracts total more than $2,000 be paid no less than the “prevailing wages” in the area in which the project is located. All Agency Memorandum (AAM-212), issued by the Department of Labor’s (DOL) Wage and Hour Division during the Obama Administration on March 22, 2013, regarding the applicability of Davis-Bacon Act to members of survey crews, is a costly and unnecessary change in more than 50 years of accepted and applied policy. The memorandum provides no rationale for this change in policy, cites no recent legislation, and references no court case to explain the basis of this new policy. There has been no action by Congress, no ruling by a court, and no other recent development to change a 50+ year policy. Moreover, this change in policy was made with no public notice, no public comment, no consultation with affected stakeholders, no economic or regulatory impact analysis, and no study of its affect on small business.

DOL has unilaterally expanded the application of the Act to a class of workers who have never been heretofore considered “laborers and mechanics”. Survey crews work under the responsible charge of licensed, professional surveyors and their services provide a level of professionalism and technical support to construction projects. The policy in AAM 212 is an affront to the surveying profession. We believe the classification of members of survey crews as “laborers and mechanics” is detrimental to our profession and an inappropriate demotion of valued and skilled employees.

The National Society of Professional Surveyors (NSPS) administers a “Certified Survey Technician” (CST) program for employees of surveying firms, including those who perform field survey technical functions. The classification of members of survey crews as “laborers and mechanics” is inconsistent with the CST program and the professional standing of those survey crews in the surveying community. Moreover, AAM 212 is in direct contrast with the classification of such workers promulgated elsewhere in the DOL and other federal
agencies, including the Occupational Employment Statistics (17-3031 Surveying and Mapping Technicians), the Occupational Outlook Handbook (Surveying and Mapping Technicians), the Occupational Information Network, successor to the Dictionary of Occupational Titles, (Code 22521A Surveying Technicians), and the Office of Personnel Management (OPM) General Schedule Qualification Standard (GS 817 Survey Technical Series) for surveying technicians employed by the federal government. None of these federal classifications categorize members of survey crews as “laborers and mechanics”.

We are deeply concerned the DOL changed its policy and expanded the coverage of the Davis-Bacon without public notice, hearings, or notification and engagement of affected stakeholders. We also strongly object to that process utilized by the DOL to consider and promulgate this change in policy. Apparently, a request for this change was filed by the International Union of Operating Engineers on August 4, 2011. During 19 months of consideration of that request, the DOL never contacted, informed, nor consulted with NSPS, or any other organization of professional surveyors or employers of survey crews. Moreover, upon the issuance of AAM 212 on March 22, 2013, no notification was provided to NSPS or other employer organizations. There was no public notice, no public hearings, and no other attempt to change longstanding policy in a fair and open manner. This lack of transparency gives the appearance of a closed-door, back-room deal that is inconsistent with every reasonable standard of openness, fairness, or consideration of the point of view of all affected stakeholders. We believe the spirit, if not the letter, of the Administrative Procedures Act, Regulatory Flexibility Act, and Paperwork Reduction Act was not honored.

The expansion of Davis-Bacon by AAM 212 places an extreme burden on the thousands of surveying firms that are small business. It is disruptive, a paperwork quagmire, and an unnecessary administrative cost to those small business owners. There is no evidence that members of survey crews are underpaid, in fact, these employees are compensated better than the average member of the U.S. workforce, according to the Labor Department’s own data, and are in high demand.

At a time of record deficit and debt, and unemployment, expanding the application of wasteful and controversial laws like the Davis-Bacon Act is ill-advised. We respectfully recommend the immediate rescission/repeal of AAM 212 as you conduct oversight of this 2013 policy.

Thank you for this opportunity to comment. Should you have a question or need additional information, please contact NSPS Federal Lobbyist John “JB” Byrd at 703-787-6665 or jbyrd@jmpa.us.

Sincerely,

Curtis W. Sumner, LS
Executive Director