



May 16, 2022

Ms. Jessica Looman
Acting Administrator
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210

RE: Regulatory Information Number (RIN) 1235-AA40, Updating the Davis-Bacon and Related Acts Regulations

Dear Acting Administrator Looman:

On behalf of the American Council of Engineering Companies (ACEC) – the national voice of America’s engineering industry – I am writing to express our opposition to the proposed expansion of the Davis-Bacon and Related Acts Regulations to cover professional surveyors.

Founded in 1906, ACEC is a national federation of 52 state and regional organizations representing more than 5,600 engineering firms and 600,000+ engineers, surveyors, architects, and other specialists nationwide. ACEC member firms drive the design of America’s infrastructure and built environment.

On behalf of our member firms, we are deeply concerned about the proposed rule’s attempt to place surveyors in the Davis-Bacon category of “laborers and mechanics.” This designation would contradict decades of precedent and is an expansion that is not provided for in the Davis-Bacon Act or subsequent legislation.

In 1972, Congress approved the Brooks Act (TITLE 40 U.S.C. 1101-1104) which provides a federal definition of engineering and architectural services for the purpose of federal contracts:

(2) Architectural and engineering services. – The term “architectural and engineering services” means—

(A) professional services of an architectural or engineering nature, as defined by state law, if applicable, that are required to be performed or approved by a person licensed, registered, or certified to provide the services described in this paragraph;

(B) professional services of an architectural or engineering nature performed by contract that are associated with research, planning, development, design, construction, alteration, or repair of real property; and
(C) other professional services of an architectural or engineering nature, or incidental services, which members of the architectural and engineering professions (and individuals in their employ) may logically or justifiably perform, including studies, investigations, surveying and mapping, tests, evaluations, consultations, comprehensive planning, program management, conceptual designs, plans and specifications, value engineering, construction phase services, soils engineering, drawing reviews, preparation of operating and maintenance manuals, and other related services. [emphasis added]

As you can see in subsection C, surveying and mapping are considered under federal law to be professional services of an architectural or engineering nature and not building or construction work that would place them within the scope of Davis-Bacon. Like engineers and architects, surveyors fall under the exemption in the Davis-Bacon regulations for learned professionals (29 C.F.R. Part 541.301).

This is especially true given that survey workers are not engaged in building or construction work – Davis-Bacon applies only to mechanics, laborers, and other workers who engage in manual or physical labor (29 C.F.R. § 5.2(n)).

Survey work must be done by or under the direction of a professional surveyor licensed by a state licensing board. Surveyors interpret engineering designs and perform calculations that are essential to the implementation of the designs in a construction project. Routinely, the same licensed surveyor will complete both the office work and the field work that is required for a site to be ready for construction. While there are necessary components of survey work that take place on the site of construction, the substantial majority of survey work is not completed on the site of construction.

The work is clearly professional in nature and not that of a laborer or mechanic.

We urge the Department of Labor to remove this unwarranted expansion of Davis-Bacon from the proposed regulations. Thank you for your consideration and please let us know how we can assist in this matter.

Sincerely,

A handwritten signature in black ink that reads "Linda Bauer Darr". The signature is written in a cursive, flowing style.

Linda Bauer Darr
President & CEO