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Report to Commanding Officer, Western Div., Department of the Navy: Naval Facilities Engineering Command, Western Div., San Bruno, CA; by William N. Conrardy, Regional Manager, Field Operations Div.: Regional Office (San Francisco).

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Organization Concerned: Department of Labor; Trepte Construction Co., Inc.
Authority: Davis-Bacon Act. 29 C.F.R., subtitle A. A.S.P.R. ch. 18.

Among projects reviewed for compliance with minimum wage determinations of the Davis-Bacon Act in the Department of Labor's Region IX was the construction of bachelor enlisted quarters at the Naval Air Station, Miramar, California, at a cost of $2,421,392. Various deficiencies were found. Findings/Conclusions: The Resident Officer in Charge of Construction, San Diego Area, who administers such contracts, did not demand timely receipt of certified payrolls nor review them to assure that workers were properly compensated for hours worked, classified correctly for job performed, and that only authorized deductions were made. An inadequate number of employee interviews were performed. Daily reports of construction actions to the inspector were generally inaccurate. Apprentice certification and ratios were also deficient. Neither the construction representative nor the procurement clerk charged with enforcement had formal training in labor standards. More labor standard specialists are needed. Recommendations: A full labor standards compliance review should be performed for the Miramar project. The results of the review as well as steps planned to acquire and train the necessary resources to insure adequate enforcement of the Davis-Bacon Act should be furnished to GAO. (DJM)

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Commanding Officer, Western Division
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Dear Sir:

The General Accounting Office is performing a review of the Department of Labor's (DOL's) and Federal contracting agencies' administration and enforcement of minimum wage rate determinations used for Federal or federally-assisted construction projects subject to the labor standard provisions of the Davis-Bacon Act. Our review is being performed at DOL and other selected Federal contracting agencies and contractor sites in various regions, including DOL's Region IX in San Francisco, California.

One of the projects selected for review in Region IX was the construction of Bachelor Enlisted Quarters at the Naval Air Station, Miramar, San Diego County, California. The initial construction contract for this project was $2,421,392.

The Davis-Bacon Act requires that all workers employed on a Federal project costing in excess of $2,000 be paid minimum wages and fringe benefits, and that these be based on rates the Secretary of Labor determines as prevailing on similar projects in the area. Every construction contract subject to the Act must contain a provision stipulating that contractors and subcontractors must pay the workers at least once a week wages not less than those determined by the Secretary to be prevailing.

Enforcement efforts lacking on Miramar project

The Officer-in-Charge of Construction at Western Division Naval Facilities Engineering Command (WestDiv), acting as the Federal contracting agency, has appointed the Resident Officer-in-Charge-of-Construction (ROICC), San Diego Area, to administer all WestDiv contracts in the areas. As such, the ROICC is responsible for obtaining compliance with construction contract labor standards, which includes the minimum wage rate provisions of the Davis-Bacon Act. Guidance comes in the form of Subtitle A, title 29 of the Code of Federal Regulations--Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction, Armed Services Procurement Regulations (ASPR), chapter 18--Labor Standards for Contracts Involving Construction, and WestDiv Instructions.

Trepte Construction Company, Inc., of San Diego, was the prime contractor and employed 33 subcontractors on the Miramar T-Q project. The project was virtually complete at the time of our visit.

We performed a limited review of San Diego's enforcement responsibilities for the contract by review of certified payroll documents, employee interviews, daily reports to the inspector, and supporting payroll records of the prime contractor and 4 of the 33 subcontractors. We also held discussions with contractors as well as officials of the San Diego ROICC office. Deficiencies in San Diego's labor standards enforcement were found in the areas of certified payroll compliance checks, conformance of wage rates, apprentice certifications and ratios, employee interviews, and training of enforcement personnel. Findings in these areas are discussed below.

Certified payroll compliance checks

San Diego Area ROICC procedures do not assure timely receipt of certified payrolls. The date payrolls are received is not recorded; consequently, it cannot be determined how late the various payrolls are submitted. DOL regulations require that certified payrolls be received by the contracting agency within 7 days after the close of the pay period. Further, WestDiv instructions state that payrolls should be considered delinquent when they have not been received by the ROICC within 15 days following the end of the work week. The AROICC for Zone 1 considers payrolls current which are received 3 and 4 weeks after the end of the pay period.

Certified payrolls submitted to the San Diego ROICC office are not adequately reviewed to insure that workers are properly classified and that they receive the minimum wage rate for their classification included in the contract. Furthermore, payrolls are not adequately reviewed to insure that workers are properly compensated for hours worked including any overtime pay and that only authorized deductions are made. Following are examples of inconsistencies and discrepancies found:

--Trepte Construction Company's certified payrolls showed several inconsistencies that should have been pursued by enforcement personnel.

1. One employee, classified as a cement finisher, was earning $1.17 per hour less than prescribed in the contract. Trepte informed us that the employee had, in the past, worked both as a cement finisher and a laborer. On this job the employee worked as a laborer, and the office staff, not knowing he was working as a laborer, incorrectly listed his craft as a cement finisher.

2. One payroll showed employees working over 8 hours a day and over 40 hours a week at the regular rate. The labor standards provisions in the contract require work performed in excess of 8 hours a day and 40 hours a week be compensated at time-and-a-half the employee's regular rate. Trepte explained, and we verified, that in these cases hours from 2 separate weeks showed up on the same week's payroll. Trepte agreed to correct future payrolls to reflect only the hours worked during the payroll period.

3. The net wages, as shown on the certified payroll for laborers and cement masons, was incorrect. Trepte had deducted union dues from these employees and not shown this deduction on the certified payrolls. Trepte has agreed to correct the payrolls so that all deductions and actual net wages are correct.

4. One laborer worked 9 hours in 1 day, and was not compensated at the overtime rate as required by the contract. Trepte acknowledged the error, and the employee was correctly paid.

While our review found that, in most cases, Trepte had properly classified and compensated the employees, unless certified payrolls are adequately reviewed the potential exists for labor standards violations to go undetected.

--Bergelectric Corporation submitted a certified payroll that showed one employee had worked 24 hours on the project but had only been paid for 6 hours work. The company was contacted and stated that a clerical error had been made. A corrected payroll was submitted.

--B&H Masonry time sheets did not agree with the corresponding certified payroll. The number of hours worked on the project, as stated in the two documents, is indicated below.

Employee	Day	Certified payrolls	Time Sheets
B. E. Tidwell	Monday	1/2	
	Tuesday	8	8
	Wednesday	8	8-1/2
G. C. Ales	Monday	1/2	
	Tuesday	8	8
	Wednesday	8	8-1/2

The possible underpayments indicated from the discrepancies in the two documents would amount to a total of $5.28. Although the contractor provided a possible explanation, we noted that two other employees (neither working on the Miramar project) had not been paid overtime. Therefore, it appears that B&H Masonry does not pay overtime.

--Crown Contracting, Inc., certified payroll listed three plumbers working 5 consecutive 8-hour days, that were paid for only 32 hours. Our review of the company's time cards verified that each employee had only worked 32 hours that week and received proper compensation.

--Two subcontractors, Sim J. Harris Company and E. F. Brady Company, submitted payrolls that showed large unexplained deductions for which explanations had not been requested. At our request, these contractors supplied us with explanations and supporting documentation that these deductions were for profit sharing, bonds, vacation pay, and union dues.

None of the above, potential or actual labor standards violations had been identified or questioned by the San Diego ROICC personnel. Based on our limited review of the certified payrolls, employees could be misclassified, not paid for regular and overtime hours worked, or be paid less then the prevailing rate. These potential violations could go undetected because of inadequate review of certified payrolls.

Employee interviews

The WestDiv Instructions suggest, as normal procedure, at least one interview per contract should be conducted per week, and these interviews shall be distributed among all contractors' employees. In reviewing the interviews conducted by the construction representative, the following problems were found:

--During the 47 weeks this project has been under construction, only 34 interviews have been conducted covering 25 different work weeks.

--Only 12 of the 34 contractors were represented by these interviews, along with only 14 of the 28 crafts utilized on the project.

We believe that the number of interviews performed on this project were not adequate in relation to the total employees, contractors, and crafts. Greater coverage would have disclosed some of the errors we found in the certified payrolls.

Our review of the interviews conducted showed that the construction representative had interviewed two employees who did not show up on the appropriate certified payroll. While the construction representative identified this discrepancy, no further action was taken. We followed up this potential underpayment and determined that these employees had been properly paid but had been erroneously omitted from the certified payrolls.

The lack of adequate coverage and emphasis given employee interviews, and the failure to follow up on potential violations, permits contractors to violate, either knowingly or unknowingly, the labor standards provisions of the contract.

Daily reports to the inspector

Clause 93 of the General Provisions of construction contracts requires the contractor to submit a Daily Report to Inspector. The report should be an accurate record of construction activity. This recordation is needed in support of claims against the Government. The report is also useful in the enforcement of labor standards because it indicates the number of workers by craft at the project site on any single day. WestDiv Instruction 4330.27A states these reports are " * * * considered to be one of the most important records maintained * * *."

We randomly selected and reviewed six daily reports and found them generally inaccurate. Information on the daily reports and corresponding certified payrolls is not comparable. In nine instances, crafts reported on the payrolls as having worked on the project were not included on the daily reports.

Also, due to their inaccuracy and incompleteness, these reports cannot be used as a control record to insure receipt of all required certified payrolls. For example, Truly Nolen Exterminating did not appear on the daily report as being at the site. The Truly Nolen payrolls were not submitted. The procurement clerk, not having any indication that the subcontractor had been at the site, did not request certified payrolls. We found that this company had worked on the project because it submitted other required documents that were in the San Diego contract files.

Apprentice certification and ratios

DOL and ASPR regulations require that the contractor furnish written evidence of the registration of apprentices as well as the appropriate ratios and wage rates (expressed in percentages of the journeyman hourly rate) prior to using any apprentices on the contract. The RDICC is required to insure apprentices, when employed, are properly certified and work in proper ratios to journeyman. Our review of the contract files disclosed the following:

--Six of the 30 apprentices who worked on the project did not have certifications of their apprenticeship programs on file at San Diego. As a result, the ROICC did not know if these employees were being properly paid or if the journeymen/apprentice ratios were within limits. San Diego officials obtained five of the six missing apprenticeship certificates from the contractors. The sixth certificate is being mailed to us.

--None of the 24 apprentice certificates on file gave any indication of the proper journeymen/apprentice ratios. Many of these certificates were outdated and the wage scales, or employee's program period, were invalid.

--During our review we found several cases of apprentices working without journeymen on the project. We referred these cases to DOL for their review. DOL has tentatively determined that when an apprentice works unsupervised, or is supervised by a craft other than the craft for which the apprentice is certified, the apprentice should be paid the journeymen rate for the classification of the work he actually performed. DOL will notify San Diego with the final determination. Based on this tentative DOL decision and our limited review of selected certified payrolls, we estimate the underpayments due to improperly supervised apprentices are as follows.

Company	Apprentices affected	Hours improperly supervised	Underpayment
B&H Masonry	1	70	$298.20
S[illegible]id Insulation	3	80-1/2	359.60
Trepte Construction	2	40	168.04

We obtained a list of craft ratios from the California Department of Apprentice Standards, a program approved by DOL. We compared these ratios with the apprentice ratios on the project. Below are listed instances in which apprentices employed on the project worked in ratios higher than prescribed by the State.

Company	Crafts	State apprentice ratios (note a) R1	R2	Project ratio (note b)
Trepte	Carpenter	1:2	2:6	2:5
Asbestos Roofing	Roofers	1:1	2:4	3:2
B&H Masonry	Bricklayer	1:1	2:6	2:3 2:4
Bergelectric	Electricians	1:2	2:5	1:1 (12) 2:2 (2)
Fontana Steel	Ironworker	1:4	2:12	1:2 (2)
Schmid Insulation	Carpenter	1:2	2:6	1:1 3:2
Thorpe Insulation	Asbestos worker	1:4		1:1

a/R1 = journeymen ratio to one apprentice.
R2 = journeymen ratio to two apprentices.
The number before the colon equals apprentices, and the number after the colon equals journeymen.

b/( ) equals the number of weeks employees worked at this ratio.

To the extent that apprentices are working in excess of the prescribed ratios, the extra apprentices are entitled to the journeymen wage for the period of the excess ratio.

We are currently awaiting a DOL decision as to whether or not apprentices may work by themselves and to what extent ratios are to be enforced. The Davis-Bacon Act and regulations are not explicit in this area. Although the DOL handbook states that apprentices must always work with a journeyman, Region IX has referred this and other apprentice-related questions to its national office for interpretation. We have asked DOL to notify the San Diego ROICC when this decision has been made.

Administration and training

The San Diego Area ROICC office is divided into four contract administration zones. Miramar is in Zone 1. The Zone 1 Assistant ROICC (AROICC), assisted by a procurement clerk and construction representative, is responsible for contract administration and labor standards enforcement on the Miramar project as well as all other projects in the zone. The procurement clerk is generally responsible for maintaining various contract files, which includes maintaining a labor standards

enforcement file, reviews of certified payrolls, and obtaining the necessary information for that file. The construction representative's responsibilities for labor standards enforcement generally include on-site inspections, employee interviews, and reviews of certified payrolls. However, the construction representative's primary responsibility is to insure that construction progresses on schedule according to specifications. Labor standards enforcement is secondary.

Neither the construction representative nor the procurement clerk charged with enforcement have had any formal training in labor standards. Enforcement efforts are not coordinated and tend to fulfill procedural requirements rather than the intent of the law and regulations. The ARDICC stated that specialized training is needed by his enforcement people.

The San Diego ROICC feels that a minimum of five additional labor standards specialists (one per zone plus a team supervisor) are necessary to adequately enforce labor standards. The ROICC believes it is not possible to review payrolls in detail and follow up on questionable items with their current resources.

In view of the discrepancies found in our review, the lack of training and minimum enforcement effort, adequate assurance is lacking that the provisions of the Davis-Bacon Act were complied with in accordance with Department of Labor and Armed Services Procurement Regulations.

We believe that a full labor standards compliance review should be performed for the Miramar project. When this review is completed, we would appreciate being advised of the results. We would also like to know what steps are planned to acquire and train the necessary resources to insure that the Davis-Bacon Act is adequately enforced.

A copy of this letter is being sent to the Regional Administrator for Employment Standards, Department of Labor, Region IX, San Francisco, California.

Sincerely yours,

William N. Conrardy
Regional Manager

cc: Ms. Virginia Allee
Regional Administrator
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