



FOUNDATION FOR FAIR CONTRACTING
Mid-Atlantic Region

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Re: Comments in response to Notice 2022-51

The Foundation for Fair Contracting – Mid-Atlantic Region (“FFC-MAR”) submits these comments in response to the Department of the Treasury’s (“Treasury Department”) plan to issue guidance implementing the prevailing wage requirements under the Inflation Reduction Act of 2022 (“IRA”), Pub. L. No. 117-169 (codified in various sections of 26 U.S.C.).

FFC-MAR is a non-profit, labor-management organization. Its purpose is to promote compliance with federal, state, and local prevailing wage requirements, particularly in the District of Columbia and Maryland. FFC works closely with several contractor associations – such as the Mechanical Contractors Association of Metropolitan Washington, the Mechanical Contractors Association of Maryland, the Sheet Metal & Air Conditioning Contractors National Association, the National Electrical Contractors Association, and others – and with several labor organizations, all of whom share an interest in encouraging compliance with prevailing wage laws.

FFC-MAR monitors compliance with prevailing wage laws by, among other things, using the Freedom of Information Act, 5 U.S.C. § 552, to obtain certified payroll reports (“CPRs”) from government contracting agencies to ensure that contractors and government contracting officers comply with their statutory and regulatory obligations. FFC also interviews workers to verify the accuracy of the information in CPRs and counsels those workers on how best to recover what they are owed. There is no other public interest organization in the District of Columbia, Maryland, or Virginia dedicated to monitoring public construction projects for prevailing wage law violations and finding ways to remedy those violations. To date, the FFC-MAR has helped workers recover nearly \$3 million in back wages.

FFC-MAR’s compliance efforts not only benefit workers, but also contractors in the construction industry by promoting fair competition and discouraging unscrupulous employers – employers that cut costs by cheating their workers out of wages – from underbidding and taking work away from those that comply with the law. FFC-MAR’s mission has taken on greater urgency with the passage of the Bipartisan Infrastructure Law (“BIL”), CHIPS Act, and the IRA – laws that will create hundreds of thousands of new construction jobs over the next ten years.

The majority of projects assisted by the BIL and CHIPS Act are automatically covered by Davis-Bacon wage protections. The labor protections in the IRA, however, do not become operative until 60 days *after* the Treasury Department issues guidance. *See, e.g.*, 26 U.S.C. §45(b)(6)(B)(ii). It is therefore critical that the agency give priority to the development and publication of the guidance.

FFC-MAR fully supports and adopts the comments and recommendations of North America’s Building Trades Unions (“NABTU”). FFC-MAR has an especially keen interest in NABTU’s worker notification recommendation. The single most valuable tool in FFC-MAR’s enforcement efforts is worker cooperation.

Unfortunately, many workers on Davis-Bacon projects are unaware of their rights. Although contractors and subcontractors are required to post a Davis-Bacon poster (WH-1321) "in a prominent and accessible place where it can be easily seen by the workers," 29 C.F.R. §5.5(a)(1)(i); FAR 52.222-6(a), our organization has found that these posters are often tucked away in the general or prime contractor's jobsite trailer. Such locations are problematic because, in practice, workers rarely have occasion to enter the trailers. In fact, based on our conversations with workers over the years, trailers can be an intimidating place. Such facilities are typically used to address sensitive personnel matters, including employee layoffs and reprimands. Pre-shift and shift meetings are typically conducted outside on the job site, and workers typically clock in and out of their shifts using their foreman's smart tablet or a time clock app on their phone. For these reasons, the Treasury Department must require taxpayers, contractors, and subcontractors on covered projects to place Davis-Bacon posters on every designated entrance of the jobsite.

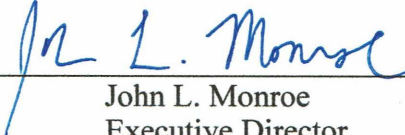
Equally important is NABTU's recommendation that construction employers (e.g., taxpayer, contractor, subcontractor) on covered projects provide each worker with a written notice identifying the worker's classification and the proper prevailing wage rate to which he or she is entitled. Such notices must be provided to each worker before he or she commences work on a covered facility, and each worker must sign the notice acknowledging receipt. As with CPRs, the employer should be required to retain copies of the notices for a period of three years following completion of the project. 29 C.F.R. §5.5(a)(3); FAR 52.222-8(a).

The poster and written notification provisions will be critical to construction workers and workers' rights organizations, such as FFC-MAR, seeking to protect and promote the IRA's labor standards. Without advance notice, it is unclear how workers will know that the project on which they are working is subject to the IRA's labor standards and that they are entitled to the prevailing wage. For workers, self-advocacy will be critical in this context given the Treasury Department's lack of experience in enforcing labor standards.

The Treasury Department should also make clear in its guidance that it will accept and respond to third-party complaints about prevailing wage violations. Third-party complaints – such as those FFC-MAR routinely files with federal and state agencies – are critical in high-risk workplaces where undocumented and migrant workers have a significant presence. Such workers are especially reluctant to complain about wage and hour violations out of fear that the employer will report them to the immigration authorities resulting in deportation. The Treasury Department should therefore clarify in its guidance that third-party complaints may be filed by labor organizations and other workers' rights groups.

The IRA offers tremendous opportunities for companies in the form of tax incentives that promote the construction of renewable energy projects. It is critical that such accelerated growth not come at the cost of construction workers and their families. If adopted, the above recommendations will ensure that the IRA's tax incentives create good, family-supporting construction jobs, and that contractors compete for construction contracts on the basis of merit, rather than on who can exploit the cheapest workforce.

Sincerely,
Foundation for Fair Contracting Mid-Atlantic Region

By: 
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Executive Director