Hi Mike,

I agree with your assessment that the whole Davis/Bacon wage rate and regulation issue is difficult to deal with because of the heavy ties to powerful interest groups, its long term establishment at the Federal level, and its use as a social engine. It would be so much better if it could be evaluated as a stand-alone set of rules with a clear purpose of providing equitable living wage commensurate with skill and hazard, and ground rules for doing business with the federal government, while fostering a sustainable business environment. The system has been broken for a while, and the sudden expansion and reach of the Davis/Bacon rules due to the ARRA funding has brought it more attention. That said, here are some suggestions about streamlining the process:

1. **Issue:** Federal Wage Rates applied to non-federal funds by EPA - State Funds like Wisconsin DNR Environmental Improvement Funds, Clean Water Fund and Safe Drinking Water Loan Program because the Federal Funds 'touch' the state funds.

   **Fix:** Remove the Federal requirements for Davis Bacon when working through state programs. (Remove the requirements from any contract that is not specifically a Federal contract, where the Federal government is the owner.)

   **Reason:** Inefficiencies, additional paperwork, tracking, compliance issues are created at every level, costing strapped municipalities and companies additional funds that are not then available for their infrastructure needs.

   **1. Related Issue:** Federal Wage rate requirements applied to a large project because a small aspect received federal funds.

   **Fix:** If D/B can't be removed entirely from the project, then it should only be applicable to the portion of the job it paid for if it can be segregated. (Not appropriate for a job where it is paying say 30% across the project, but quite practical where the federal funds are being used for the solar panels on the building but not the whole construction.)

   **Reason:** Increased costs for everything from labor to monitoring with no funding to offset it. Even if the funding were to be provided to offset, it would be a waste of funds.

2. **Issue:** D/B requires workers be paid weekly and payrolls be submitted weekly, rather than on the normal business schedule.
Fix: Allow companies to pay workers on their regular pay schedule, but not less than once per month.

Reason: Most employers have gone to bi-weekly payroll and it is a significant and unnecessary hardship to pay weekly, especially since so much has become a part of complex software programs. Most accounting departments are not 'just' a bookkeeper with paper records that can manually cut a check at the end of the week. Plus it adds unproductive man-hours (even for that overworked bookkeeper!). This has become more of an issue as Federal dollars and therefore Davis/Bacon has expanded its reach into more and more areas and types of work.

3. Issue: **Weekly payroll monitoring reports, submission to Owner, liability to owner, quarterly reports to agencies, court decisions requiring garnishments, apprenticeship paperwork and other items required to be confirmed by Owner.**

Fix: Have the construction company maintain the records and the liability. If absolutely necessary, then have the payrolls submitted on the same schedule as the paychecks (weekly, bi-weekly, monthly), but the contractor retains the liability, and only require the owner to do initial and spot checks for compliance of the prime (see related below). When job is completed have sign-off of all parties rather than quarterly updates.

Reason: The level of paperwork is unnecessary. It does not appreciably increase compliance. Those who are unwittingly paying less will be discovered with initial checks and spot checks. Those who are determined to be dishonest will still manage to find ways around the system. The system essentially punishes those who are trying to do due diligence. It also creates a premise of distrust.

3.A. Related Issue: Require only Owner monitoring of the prime, not subs.

Fix: Primes are supposed to be responsible for collecting payroll information from subs and passing it along with their information, but because the liability for project compliance has been transferred to the owner, monitoring responsibility also follows.

Reason: A large amount of time is spent doing the checking and follow-up compared to the dollar amount of the contracts.

3.B. Related Issue: **Disparity between the reporting requirements for Union shops versus Open or Non-Union shops.** There is a very large difference in the reporting requirements between the types of shops. A union shop only needs to check a box and that is the satisfaction of the requirements. A non-union shop has to report everything every week and every benefit must be verified.

Fix: Equalize the reporting requirements between the two types of work situations.

4. Issue: **Overlapping Jurisdictions for Prevailing Wages - State vs. Federal (and others) including separate classifications, wage requirements, reporting, liabilities.**

Fix: If the state has prevailing wages in place then use those, rather than Federal AND State with the
requirement to use the higher of the two. Likewise, any state reporting should be sufficient.

**Reason:** 1. Chances are the states have better data, and have a better ability to be able to respond to a situation on the ground. 2. Reporting twice, on two types of forms and to two separate agencies is excessive. Trying to keep both sets of regulations is also difficult, and two governmental units trying to regulate the same thing at the same time has always been more than the taxpayers should bear. Related to the observation you made below related to the Federal prerogative on how to spend ‘their’ funds, maybe the focus should be Federal STEWARDSHIP rather than OWNERSHIP of the funds they collect. 3. This Issue also goes toward the larger issue of Federal Powers versus State Powers. When there is not coordination, the losers are the very people, municipalities and projects the funds are meant to help. 4. Also, have the most appropriate agency do the data collection. If the state has prevailing wages, then they should collect the data and provide anything needed to the federal agency, not both collecting.

5. **Issue:** *Wage Decisions that do not adequately fit the work.* The Federal Categories include "Building", "Heavy" (has two separate categories), "Highway", and "Residential". Building and Residential are further split into decisions by counties. Some jobs have two or more types of 'decisions' and you have to keep track of whether the workers are on the building or the street or the sewer line, and which county they are in if more than one is involved. Also, if your project does not fit Building, Highway, or Residential, it is automatically put in Heavy. For instance: if you are installing a number of grinder pump stations in small community with small diameter pressure sewers that are essentially plowed in, that is treated equally with a major metro sewer/deep tunnel system project.

**Fix:** 1. The Federal threshold for Davis-Bacon regulation of projects is only $2,000. The threshold should be more appropriately $250,000 or perhaps $500,000 before Davis Bacon wage rates and regulations are applied and enforced. That would allow much of the basic small-scale and fix-it type work to be done more competitively for communities. 2. When the DOL was questioned about the applicability of the Heavy Decision for a job, and the possibility of establishing a more appropriate set of wage rates for a type of work, we were told they couldn't do that within their rules and they would need to be directed to create new decisions. Have Congress or the Head of DOL or the President direct them to do that. 3. Allow additional tiers within the decisions to accommodate work that is at a different skill level. The IBEW Union has separate agreements for High Voltage Line workers and Low/No Voltage Fiber-optic workers. The IUOE has separate operating engineer pay levels and agreements for heavy versus fiber-optic work, Laborers also. Yet the Decisions have one classification, for instance, for an operating engineer running a cable plow, and does not reflect the industry prevailing wages for the work.

**Reason:** A primary stated purpose of Davis Bacon is to make sure prevailing wages are paid on federal jobs. That purpose should not be violated by the application of ill-fitting Wage Decisions.

6. **Issue:** *Currently the rules state that if a worker does more than one job classification the work must be either recorded separately or the highest wage rate must be paid for it all.*

**Fix:** If the decisions are appropriate, allow situations where there are several prevailing wages to be done using the least costly classification appropriate or an average amount, rather than expecting that there will be a record of ‘an hour here and three hours there’. The classification represents the minimum to be paid and the employer can pay more, but simplifies the paperwork at every level from
the worker up to the agency.

**Reason:** The purpose of the D/B rules is that *at least prevailing wage* must be paid. However when the system is rigid, it creates situations where anything BUT prevailing wage is paid, and money is wasted. The DOL already has rules in place that state that a conformance on one job cannot be appropriated for another job, so they can actually take things on a case by case basis and make decisions on the merits.

**7. Issue: Job Classifications that do not adequately fit the work.** If you are building a treatment plant with some fiber-optic for the telemetry between processes or from the system lift stations to the plant, and a fiber-optic installer with a small plow could handle it, you are looking at paying High-Voltage Electrician wages to a low/no voltage worker that does not have the same training or risk. The actual PREVAILING WAGE for that worker would be half to a third, and be considered a good wage in that field. However when a conformance request is filed, the DOL reviewer rejects the request because somewhere along the way, ’splices cables’ has been tacked on to the electrician's description. It is rejected despite the difference in the work or the wage data provided to support it. (Does a brain surgeon have to cut hair on the patient? Sometimes. Does it take a brain surgeon to cut hair and should all people who cut hair be paid as a brain surgeon?)

Even the unions have multiple agreements, including IBEW and IUOE that separate the work, but the DOL will not recognize and allow it. It is also true that if a classification exists in another decision and the briefest reference can be found in the current decision, the more appropriate classification will not be allowed in the conformance process.

**Fix:** Make conformances more available and approvable to properly reflect the actual prevailing wage for that job description. One size does not fit all. Suspend the rule that says if a description seems to be contained in another classification the conformance must be rejected.

**Reason:** The purpose of the D/B rules is that at least prevailing wage must be paid. However when the system is rigid, it creates situations where anything BUT prevailing wage is paid, and money is wasted. The DOL already has rules in place that state that a conformance on one job cannot be appropriated for another job, so they can actually take things on a case by case basis and make decisions on the merits.

**7.A. Related Issue:** Insufficient or non-existent data to properly determine the prevailing wage.

Collection of data is insufficient in many rural areas so projections are made based on larger data pools. Or, one data point is used alone and does not reflect the actual wages for that area.

**Fix:** Allow additional data to be submitted to adjust the prevailing wage determination, especially where insufficient data was filed.

**Reason:** True prevailing wages should be applied to the work.

**8. Issue: Conformances not available before contract is awarded.** Because a municipality must bid work to determine the contractor to use, and because the Federal rules do not allow conformances to be obtained before a contract is awarded, the community is put in a position of obtaining bids and
awarding on the maximum wage rates without knowing if conformances can be obtained. Some projects cannot proceed under this scenario or must scale back the project needed.

**Fix:** Allow conformances to be obtained by the owner before bidding or awarding so all parties have access to the decision and the community or other entity can properly plan the work.

**Reason:** The Owner is aware of the types of work on the job and must provide the Decision as part of the contracting and bidding process. If the owner knows there is a conformance issue, it is in the best interest of the owner and the contractor(s) to obtain this key information before the bid is submitted. It creates a better bidding environment, and prevents failed projects that cannot be awarded because the bids came in too high because of the wage rate uncertainty, and the expense due to the preliminary work done for the project that could not proceed.

9. Other Issues:

**A. Inability of people within DOL to answer the questions and referral/deferral to unions:** In ferreting out how to best comply with many of these issues and trying to get definitions, it is apparent that virtually nobody who answers the phones at DOL is authorized to make a decision or stand behind their answer. Further, when asked for clear definitions for job classifications, I was several times referred to the various Union headquarters to find out what the definition should be, ‘because they are the ones determining the definitions’. Many of the wages are based on the union decisions, some solely.

**B. Threshold for underpayment - chasing pennies!** There have been multiple instances of having to go back because something was off by a few cents one week and therefore a check for the amount had to be cut and documented, an auxiliary payroll report for that week issued, records updated and filed, etc. There needs to be a threshold of at least $20.00 - $50.00 before such additional work is required (rather than just adding it to the next check). Also if an employee cannot be located to restore those pennies, the contractor must actively look for that employee for 3 years and keep that money separate in an account.

It is interesting that even organized labor is finding it difficult to deal with the Decisions in some situations. For instance the current ARRA Broadband Initiative (BIP) program is being harmed by the application of Davis Bacon wage rates and the unions and industry reps for this sector are trying to make some headway with the regulations so that this program does not end up 'failed' like the weatherization initiative did. The BIP program is being harmed because there is no truly representative 'decision' for the telecommunications industry and the existing rules prevent adequate response to that. The situation is causing some projects to be retracted so instead of providing good work for a significant number for several years while improving an infrastructure needed by businesses and education, many of those objectives are being left unfilled.

Please call me with any questions or concerns,