



August 20, 2013

Laura A. Fortman  
Principal Deputy Administrator  
Wage and Hour Division  
U.S. Department of Labor Frances Perkins Building  
200 Constitution Ave., NW  
Washington, DC 20210

Dear Ms. Fortman:

The Associated General Contractors of America (AGC) respectfully requests a withdrawal and reissuance of All Agency Memorandum (AAM) 212. The AAM, regarding the application of the Davis-Bacon Act to survey crews, was issued by the Wage and Hour Division (WHD) on March 23, 2013.

The Associated General Contractors of America (AGC) is the leading association for the construction industry. AGC represents more than 25,000 firms, including over 6,500 of America's leading general contractors, and over 8,800 specialty-contracting firms. More than 10,400 service providers and suppliers are associated with AGC through a nationwide network of chapters. These firms, both union and open shop, engage in the construction of buildings, shopping centers, factories, industrial facilities, warehouses, highways, bridges, tunnels, airports, water works facilities, waste treatment facilities, dams, water conservation projects, defense facilities, multi-family housing projects, municipal utilities and other improvements to real property. Many of these firms regularly perform construction services for government agencies under contracts covered by the Davis-Bacon Act (DBA). Most are small and closely held businesses.

AGC appreciates our longstanding, cooperative relationship WHD, particularly with regard to contractor training. As you may recognize, although the statute has not changed since its enactment, the DBA and its regulations are among the most complex and, in some cases, unclear laws with which construction contractors must comply. As a result, frequent training and education are imperative for the success of our members. Notably, both Natalie Boan, branch chief for the branch of construction wage determinations, and Timothy Helm, branch chief for the branch of government contracts enforcement, have regularly participated in AGC's DBA training programs and have been an invaluable resource to AGC on countless occasions in our efforts to help contractors understand and comply with the law. In furtherance of that relationship and our common interests in sensible, comprehensible legal standards, we offer our comments about AAM 212.

AGC has observed a great amount of confusion surrounding the AAM. Many in the contractor community believe that AAM 212 not only constitutes an unannounced change in enforcement but that WHD is taking a reverse approach to regulatory enforcement by implying that *all* surveyors are now covered under the DBA until proven otherwise. Providing evidence of non-coverage may require contractors to collect and maintain data regarding the amount of time survey crew workers spend performing physical or manual labor. To do so would require a new and highly burdensome level of reporting and recordkeeping. Such a new requirement should be subject to the formal rulemaking process.

While AGC does not interpret AAM 212 as imposing such a new requirement, due to the elevated level of confusion since issuance of the AAM, and in an abundance of caution, AGC requests that DOL withdraw AAM 212 and work with the contractor community to develop a revised version. The revised version should clarify that there is no presumption of coverage of survey crews and clarify any new information that contractors will be expected to collect, maintain and provide in the event of an audit.

