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*BY THE COMPTROLLER GENERAL
OF THE UNITED STATES*

Use, Administration, And
Enforcement Of Davis-Bacon Act
And Service Contract Act
Labor Standards Provisions
By Selected Federal
Agencies In Colorado For
Carpetlaying Contracts

Department of Defense
Department of Labor
General Services Administration

The Department of Defense and the General Services Administration were defining contracts as nonconstruction, thereby eliminating Davis-Bacon Act requirements. Enforcement practices by the Departments of Defense and Labor and the General Services Administration were not effective in detecting cases where employees were paid less than the prevailing wages stipulated in contracts subject to both acts.

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NOV. 24. 1975



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-160725

C The Honorable Patricia Schroeder
House of Representatives

e Dear Mrs. Schroeder:

As requested in your September 13, 1974, letter, we reviewed how three selected Federal agencies in Colorado use, administer, and enforce Davis-Bacon Act and Service Contract Act labor standards provisions in contracts and purchase orders for carpetlaying. The three agencies were the Departments of Defense and Labor and the General Services Administration. 17

In your letter you stated that for the past several years the Carpet, Linoleum, and Resilient Tile Layers Local No. 419, an affiliate of the Brotherhood of Painters and Allied Crafts, has been protesting the following practices of the selected Federal procurement offices in Colorado: 17

- Denver
- Dividing carpet installation and similar contracts into a series of contracts or purchase orders for less than \$2,500 or \$2,000 in order to avoid the requirements of the Service Contract Act and the Davis-Bacon Act, respectively.
 - Defining carpet installation and similar contracts as nonconstruction to avoid requirements of the Davis-Bacon Act.
 - Allowing contractors to pay less than the prevailing wages stipulated in contracts subject to both acts.

Accordingly, you requested that we review a limited number of contracts and purchase orders awarded in Colorado to determine if

- procurement practices were violating the requirements of the Davis-Bacon Act and the Service Contract Act and
- the monitoring, surveillance, and enforcement practices of the three selected agencies were adequate.

93 Evans, Hunt
Ref.

In accordance with discussions with your office, our review was limited to work performed at regional offices of Labor and the General Services Administration in Denver and at the following Defense installations: Ent Air Force Base, Colorado Springs; Fitzsimons Army Medical Center, Denver; and Fort Carson, Colorado Springs. DLG02837

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We interviewed procurement officials and reviewed regulations, procedures, and records relating to the use, administration, and enforcement of labor standards provisions in carpetlaying contracts and purchase orders awarded under the two acts. We examined transactions (1) entered into during fiscal years 1973 and 1974 and the first half of fiscal year 1975, (2) related to projects completed in these periods, or (3) still current at the time of our fieldwork in early calendar year 1975. We also interviewed Labor officials in Denver and at the Washington headquarters and reviewed data on their enforcement responsibilities under both acts.

We found examples in which

- the General Services Administration's failure to consolidate total carpetlaying requirements on alteration projects resulted in orders being issued for less than \$2,000 each on a negotiated basis, thereby eliminating requirements of the Davis-Bacon Act and the Federal Procurement Regulations for formal advertising and competition, and
- purchase orders for carpetlaying which was an integral part of or in conjunction with new construction, alteration, or reconstruction of public buildings were incorrectly defined as nonconstruction and Service Contract Act labor standards provisions were followed instead of Davis-Bacon Act provisions.

We also found that the selected agencies' enforcement practices were not effective and were not detecting cases in which employees were paid less than the prevailing wage stipulated in contracts having labor standards provisions under either act.

We are recommending that the Secretary of Defense insure that contracting officials at Ent Air Force Base and Fort Carson apply the enforcement procedures for the Davis-Bacon Act issued to Federal agencies by Labor. We are also recommending that the Secretary of Labor have the allocation of resources and staff in the Denver region reviewed to assure that adequate resources are available for the direct enforcement program and for complaint servicing.

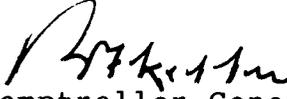
As your office requested, we did not submit copies of this letter or the appendix to Defense, Labor, or General Services Administration officials for their formal comments. However, we discussed the contents with them. The officials generally agreed with our conclusions and recommendations and corrective action was promised.

On April 4, 1975, we briefed a member of your staff and a Local No. 419 representative on the data we found. A summary of this data is presented in the appendix.

We believe that this report would interest committees and other Members of Congress.

As your office agreed, we are sending a copy of this report to Congressman Frank Evans, the Secretaries of Labor and Defense, and the Administrator, General Services Administration.

Sincerely yours,


Acting Comptroller General
of the United States

USE, ADMINISTRATION, AND ENFORCEMENT OF
DAVIS-BACON ACT AND SERVICE CONTRACT ACT
LABOR STANDARDS PROVISIONS BY SELECTED FEDERAL
AGENCIES IN COLORADO FOR CARPETLAYING CONTRACTS

BACKGROUND

The Davis-Bacon Act of 1931 (40 U.S.C. 276(a)) requires that prevailing wages be paid to employees engaged in Government construction projects. The Service Contract Act of 1965 (41 U.S.C. 351 et seq.) provides similar protection to employees of Government service contractors.

Davis-Bacon Act

The first legislation requiring the payment of minimum wages to laborers and mechanics employed under federally awarded contracts for constructing public buildings and public works was the Davis-Bacon Act of 1931. This act, as amended, requires that each contract in excess of \$2,000 to which the United States or the District of Columbia is a party--for construction, alteration, or repair (including painting and decorating) of public buildings or public works--state the minimum wages to be paid various classes of laborers and mechanics.

The act provides that the minimum wages be based on wages determined by the Secretary of Labor to be prevailing for corresponding classes of laborers and mechanics employed on similar projects in the city, town, village, or other civil subdivision of the State in which the contract work is to be performed. The minimum wage determination includes the basic hourly rates of pay and the amounts of fringe-benefit payments, if any.

The act further provides that there may be withheld from the contractor so much of accrued payments as may be considered necessary to pay employees any difference between wages actually paid and the prevailing wages. The act also provides that, if the contracting officer finds that any employee has been paid less than the stipulated wages, the Government may terminate all or part of the contract and have the work completed by other means. The contractor and its surety shall be liable to the Government for any excess costs and the contractor may be debarred from the award of any Government contracts for 3 years.

Enforcement and administration of these labor standards provisions has been vested primarily in the individual procurement agencies. Because no single agency had paramount authority under the act and because coordinated administration and consistent and more effective enforcement were needed, Reorganization Plan No. 14 of 1950 (5 U.S.C. app.) was enacted. The Plan authorized the Secretary of Labor to coordinate administration of labor standards legislation on federally financed or assisted projects by prescribing appropriate standards, regulations, and procedures for the enforcement activities of Federal agencies. The Plan also authorized the Secretary to make investigations as he deems desirable to assure consistent enforcement.

Subsequently, the Secretary issued regulations, standards, and procedures (29 C.F.R. 5) to be followed by all Federal agencies in contracting for constructing, altering, or repairing (including painting and decorating) public buildings or public works.

The regulations provide for a clause to be inserted in any contract subject to the provisions of the act stipulating that contractors must:

- Pay mechanics and laborers at least once a week wages not less than those determined by the Secretary to be prevailing.
- Post the determination prominently at the worksite.
- Maintain and preserve payrolls and related data during the course of the work and for 3 years afterward.
- Submit a certified copy of the payrolls to the contracting agency weekly.

The regulations require, as a minimum agency investigatory enforcement practice, that the submitted payrolls and statements be examined as may be necessary to assure compliance with the labor standards provisions. The agencies are to particularly examine the correctness of classifications and the proportionality of employment of laborers, helpers, and apprentices.

Other investigations, including interviews with employees to verify payroll data submitted, are to be made as may be necessary to assure compliance. Agencies are to report underpayments of \$500 or more and willful underpayments in any amount to the Secretary.

The Secretary of Labor also issued an investigation and enforcement manual to the agencies. The manual was intended to supplement the minimum procedures discussed above to aid agencies in discharging their responsibility to assure compliance with labor standards provisions.

Service Contract Act

The Service Contract Act of 1965 provides labor standards protection to employees of contractors and subcontractors furnishing services to Federal agencies. The act applies when the principal purpose of contracts in excess of \$2,500 is to provide such services in the United States by using service employees.

The act requires that service employees under Federal contracts receive minimum wages and fringe benefits. It also provides that these wages and benefits be based on those the Secretary determines as prevailing for service employees in the locality.

The term "service employee" is defined in the act as (1) a guard, watchman, or other person engaged in a recognized trade or craft; skilled mechanical craft; or in an unskilled, semiskilled, or skilled manual labor occupation; or (2) any other employee, including a foreman or supervisor, in a position having trade, craft, or laboring experience as the paramount requirement.

Contracts in excess of \$2,500 must contain provisions:

- Specifying the minimum wages to be paid the various classes of service employees performing under the contract, as determined by the Secretary of Labor. In no case can these be less than the minimum wages specified under the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 201).
- Specifying fringe benefits to be furnished service employees, as determined by the Secretary of Labor.
- Prohibiting any part of the services covered by the act from being performed in buildings or surroundings or under working conditions which are unsanitary or dangerous to the health or safety of employees.
- Requiring the contractor or subcontractor to notify its service employees of the minimum wages and fringe benefits applicable to the work.

Section 7 of the act specifically excludes from coverage under the act several types of contracts and work situations, including those which come under the Davis-Bacon Act provision relating to "any contract of the United States or District of Columbia for construction, alteration and/or repair, including painting and decorating of public buildings or public works."

The act also provides for the Secretary to make necessary rules and regulations to implement the act, to enforce its provisions, to hold hearings and make decisions on issues arising from it, to withhold payments due contractors because they have underpaid employees, to sue to collect underpayments, to debar contractors from Government contract awards for 3 years, and to cancel contracts for violations.

Enforcing minimum wage determinations is Labor's responsibility. The Secretary delegated to the Employment Standards Administration the responsibility for administering and enforcing the Service Contract Act.

ISSUING PURCHASE ORDERS UNDER \$2,000 EACH FOR CARPETLAYING

We examined 57 carpetlaying contracts and purchase orders, totaling \$71,746, awarded by the General Services Administration (GSA) and the selected Army and Air Force installations in Colorado during fiscal years 1973 and 1974 and the first half of fiscal year 1975. We found that only GSA was splitting awards and issuing purchase orders under \$2,000 for carpetlaying.

Carpetlaying requirements for two of nine alteration projects at GSA's Denver Federal Building were divided into orders under \$2,000 each, although total requirements for each project exceeded that amount. In addition, the award of these purchase orders was negotiated on a sole-source basis without advertising or competition.

We reviewed all purchase orders issued for carpetlaying for alteration projects at the Denver Federal Building during fiscal years 1973 and 1974 and the first half of fiscal year 1975. Nine job orders had more than one purchase order issued for carpetlaying--27 orders were issued overall for a total of \$34,651. In two of the projects, the total carpetlaying requirements were broken down into purchase orders of less than \$2,000 and awarded on the basis of a single quotation, as follows.

Job Order 62-03-105, approved June 12, 1972, involved an alteration project on the eighth floor of the Denver Federal Building, with carpetlaying requirements amounting to nearly \$3,000. Two purchase orders were awarded to the only contractor solicited in the amounts of \$1,729 on November 15, 1972, and \$1,267 on December 5, 1972.

Job Order 64-03-071, approved November 8, 1973, involved an alteration project on the 11th floor. Carpetlaying requirements of about \$2,100 were again split into two purchase orders of \$1,596 and \$506, respectively, on the basis of quotations from a single contractor.

Since each of the above orders was under \$2,000, Davis-Bacon Act labor standards provisions were not considered applicable. In addition, the Federal Procurement Regulations (41 C.F.R. 1-3.203 and 1-18.302) authorize, as one of several exceptions to procurement by formal advertising, the use of negotiation to procure construction when the aggregate amount involved does not exceed \$2,000 (referred to as small-purchase procurements). However, the regulations also specify that requirements totaling more than \$2,000 should not be broken down into several purchase orders of less than \$2,000 each merely for the purpose of permitting negotiations.

Conclusions

Dividing carpetlaying requirements for public building alteration projects through award of sole-source orders in amounts under \$2,000 not only eliminates the labor standards protection of the Davis-Bacon Act for contractor employees but also violates the Federal Procurement Regulations principles of reasonable competition and formal advertising.

Agency comments

We discussed our findings with the GSA regional director and his staff, who agreed that competition should always be obtained. They agreed to assure that procurement requirements would not be split in the future. The staff stated that agency job order request procedures during the period involved did not always assure that the total carpetlaying requirements would be provided initially. They believed, however, that new procedures just issued would require agencies to furnish this data at the outset and would preclude the dividing of orders in the future.

The regional commissioner, Public Buildings Service, GSA, later told us that labor standards and small purchase requirements had been discussed at some length at GSA's Annual Building Managers Training Conference, which was held after our

discussions. Each manager was instructed to obtain total carpetlaying requirements at the beginning of projects to assure compliance with procurement and labor standards regulations.

DEFINING CARPETLAYING AS
NONCONSTRUCTION--ELIMINATING
REQUIREMENTS OF THE DAVIS-BACON ACT

At three of the four procurement offices reviewed, Defense and GSA contracting officers were erroneously using contracts with Service Contract Act labor standards provisions for carpetlaying associated with construction, alteration, or repair of public buildings when Davis-Bacon Act labor standards provisions should have been used. Carpetlaying was generally excluded from the overall construction or alteration contracts and added later by purchase orders issued under a GSA Federal Supply Service term contract immediately before or shortly after completion of the construction, alteration, or repair.

This practice eliminates the requirement of the Davis-Bacon Act regulations that payroll data be sent by the contractor to the contracting officer for onsite inspection. Also such inappropriate contract provisions may present enforcement problems and could leave employees without labor standards protection under either act.

Federal Supply Service term contract

The GSA Region 8 Personal Property Division annually awards term contracts, after formal advertising, for the taking up, repairing, cutting, laying, or cleaning of carpet to contractors in designated service areas. These incorporate Service Contract Act provisions and minimum wage stipulations, when applicable.

These contracts provide for all requirements for carpeting to be filled within a specified period and for work to be scheduled by the timely placement of orders with the contractor by agencies in the service area. Such contracts are generally used when it is impossible to determine in advance the precise quantities of the supplies or services needed during a definite period of time. Agencies issue purchase orders to contractors on the basis of the data furnished in GSA Federal Supply Service price schedules, which include all applicable contractual details.

The scope of the contracts provides that the contractors are "obligated to furnish all services of the kind contracted for that may be ordered during the contract term, except:"

* * * * *

"(7) Davis-Bacon Act. Carpet laying performed as an integral part of, or in conjunction with, new construction, alteration or reconstruction of a public building or public work falls within the scope of the Davis-Bacon Act."

GSA's Washington office, on the basis of advice received from Labor, gave directions in March 1973 to include this exception in term contracts issued after that date. GSA said it conforms to an opinion of Labor's Solicitor, issued in June 1965 to the Brotherhood of Painters, Decorators, and Paperhangers of America, AFL-CIO, that laying carpet, linoleum, or soft tile, when performed as an integral part of a Federal or federally assisted construction project, is considered to be covered by the Davis-Bacon Act.

In addition, another paragraph in GSA term contracts exempts the Service Contract Act of 1965 from applying to:

"(1) Any contract of the United States or District of Columbia for construction, alteration, and/or repair, including painting and decorating of public buildings or public works."

Inappropriate use of Federal Supply
Service term contracts for carpetlaying
in conjunction with construction,
alteration, or repair of public buildings

Our review of purchase order files at Ent Air Force Base, Fort Carson, and GSA's Denver Federal Building showed that carpetlaying requirements were generally satisfied through purchase orders issued under term contracts. The requirements included carpetlaying in conjunction with new construction, alteration, or reconstruction of public buildings. Term contracts, with Service Contract Act rather than Davis-Bacon Act labor provisions, were used for the following projects.

Ent Air Force Base

A new chapel and a new library were constructed and turned over to the users in June and September 1973, respectively. A purchase order under a GSA term contract for \$1,122

for carpetlaying in the chapel was issued to the contractor in May 1973; another was issued for \$994 in October 1973 for the library.

Fort Carson

A new Army Community Service Center was occupied on December 27, 1974. A purchase order was issued to the GSA service contractor on February 6, 1975, to lay 1,925 square yards of carpet for \$3,092.

In March 1975 the procurement office received a purchase request for carpetlaying in a new library which was in the final phases of construction. The cost estimate for the request was \$3,712 and the suggested vendor was the GSA service contractor.

The procurement officer told us that he had planned to utilize the suggested vendor but, after discussing the scope of the term contract with us, was reconsidering this decision.

GSA

Seven of the nine job orders reviewed at the Denver Federal Building involved a similar work statement; i.e., remove and install fixed partitions; install acoustical floor coverings; install movable panels and partitions, telephone outlets, and electrical outlets; paint; and do other tasks incidental to relocation and renovation. When the work statement differed, terms such as "remodel" and "alterations" were used. These job orders, in all cases, represented a major alteration, or remodeling, effort at the Federal Building. The total cost of carpetlaying amounted to \$34,651, most of which was done under a GSA service contract.

Labor's enforcement problems because of improper labor standards provisions in contracts

We discussed with Labor officials in Denver the implication of enforcing Service Contract Act labor standards provisions and prevailing wage stipulations in contracts related to construction, alteration, or repair of public buildings. They told us that their current Service Contract Act enforcement program consists mostly of responding to complaints. Thus, if complaints of wage violations are received and found valid, enforcement procedures are followed; i.e., the contractor is directed to pay its employees prevailing wage rates and any back pay due them. However, if the contractor protests

that Service Contract Act labor standards provisions and wage stipulations are not valid in a contract for construction, alteration, or repair of public buildings, Labor officials will probably not pursue the case further. Thus in the absence of Davis-Bacon Act labor standards provisions, which are appropriate in construction contracts, contractor employees could be without labor standards protection under either act. (See p. 15 for other problems noted in Labor's enforcement of the Service Contract Act.)

Conclusions

Use of Service Contract Act labor standards provisions in contracts related to construction or alteration of public buildings shifts enforcement responsibilities from the contracting officer's onsite program under the Davis-Bacon Act to Labor's Service Contract Act program, under which action is initiated mostly on the basis of a complaint. Further, the inappropriate contract provisions may present enforcement problems and could leave employees without labor standards protection under either act.

Agency comments

Agency procurement officials at each location told us that they were not aware of the:

- Davis-Bacon Act scope exception in GSA term contracts under which carpetlaying is performed as an integral part of or in conjunction with new construction, alteration, or reconstruction of a public building and the
- Service Contract Act of 1965 clause exempting any contract of the United States or the District of Columbia for construction, alteration, and/or repair, including painting and decoration of public buildings, from coverage under the act.

GSA and Ent Air Force Base officials agreed that Federal Supply Service term contracts should not be used for carpetlaying associated with construction, alteration, or repair of public buildings. They promised appropriate corrective action. The contracting officer at Fort Carson disagreed, however, and told us he had submitted the question to Labor for an opinion. In June 1975 Labor replied that the Davis-Bacon Act contract provisions should be used. The contracting officer agreed to follow this guidance.

We also discussed the term contract with GSA officials at the Washington headquarters. They agreed that the Davis-Bacon Act should apply to all contracts involving carpetlaying associated with construction in Federal buildings. They also said a memorandum would be sent to all GSA regional offices telling them to revise their term contracts for carpetlaying to require that the Davis-Bacon labor standards provisions apply when the construction of Federal buildings is involved.

INEFFECTIVE ENFORCEMENT HAS ALLOWED
OR COULD ALLOW PREVAILING WAGE VIOLATIONS

Minimum investigative procedures prescribed by Labor for Federal agency enforcement of Davis-Bacon labor standards provisions in construction contracts were not always effectively followed at the Defense and GSA procurement offices we visited. Further, none of the contracting officers were aware that Labor had issued in 1952 and redistributed in 1974 supplemental enforcement procedures to help agencies assure compliance with labor standards provisions.

For service contracts for which Labor has enforcement responsibility, the Denver region's enforcement program consists primarily of investigating complaints; a routine, systematic enforcement program was established but the backlog of complaints has precluded full implementation with existing staff.

As a result, we found that the agencies' enforcement practices were not effective and had not detected cases in which employees had been paid less than the prevailing wage stipulated in contracts having labor standards provisions under either act. We found that prevailing wage violations had occurred in three of the four locations visited.

Enforcement of Davis-Bacon
Act wage determinations

Labor regulations (29 C.F.R. 5.6) guide Federal agencies in making examinations to insure that labor standards provisions, including prevailing wage determinations, in construction contracts are being followed. The regulations include such statements as:

"The Federal agency shall make such examination of the submitted payrolls and statements as may be necessary to assure compliance with the labor standards clauses required by the regulations.
* * * In connection with such examination particular attention should be given to the correctness of classifications and disproportionate employment of laborers, helpers or apprentices."

* * * * *

"Projects where the contract is of short duration (6 months or less) shall be investigated before the work is accepted, if feasible. In the case of contracts which extend over a long period of time the investigation shall be made with such frequency as may be necessary to assure compliance. Such investigations shall include interviews with employees and examination of payroll data * * *."

These requirements were incorporated into the Federal Procurement Regulations (for civil agencies) and the Armed Services Procurement Regulations (for defense agencies) and have been used by contracting officers as the basic criteria for their enforcement programs.

Recognizing that these were only minimum investigatory requirements, Labor issued a supplementary investigative and enforcement manual in 1952 to aid agencies in assuring compliance with labor standards provisions. While the manual was intended to serve only as a guide for the agencies, it discusses enforcement and investigative procedures in detail and emphasizes several actions not covered in the regulations. These include:

- Examining basic time and/or work records.
- Transcribing payrolls.
- Spot checking information on payrolls against daily time records.
- Checking on laborers and mechanics not listed in the wage determination decision.

These actions provide additional assurance that data obtained from employee interviews and payrolls will be correct.

In September 1974 the Secretary of Labor redistributed copies of Reorganization Plan No. 14 and the enforcement manual to all Federal Government contracting agencies. The Secretary said the copies were redistributed because of the continued increase in the number of serious complaints received by Labor from workers who were not receiving the wages to which they were entitled while working on construction jobs subject to the Davis-Bacon Act and related statutes. The related statutes consist of numerous acts, such as the State and Local Fiscal Assistance Act of 1972 (31 U.S.C. 1243(a)(6))--the Revenue Sharing Act--which require the pay-

ment of prevailing wages, as determined by the Secretary of Labor, to laborers and mechanics employed on construction financed in whole or in part by loans or grants from the Federal Government.

The Secretary urged all agencies to reexamine their policies and procedures in this area and to follow the investigation and enforcement manual guidelines so that the Plan could be fully and completely implemented.

Data on enforcement of the Davis-Bacon Act at the procurement offices included in our review follows.

Ent Air Force Base

Procedures called for officials to:

1. Review weekly payrolls submitted to
 - verify hourly wages against work classifications in the wage determinations,
 - verify computations, and
 - discover any disproportionate employment of laborers, helpers, or apprentices.
2. Interview employees, as necessary to assure compliance, to determine
 - hourly wages,
 - hours worked per day and week,
 - payment of time and a half for overtime,
 - hours worked on day before interview, and
 - work assigned and actually performed.

Data from each interview was compared to payroll data for the same period.

The Labor investigation and enforcement manual was never received at Ent Air Force Base; therefore, the enforcement program did not include routinely spot checking timecards. These were requested from the contractor only when violations were suspected on the basis of data developed in the interviews and reviews of payrolls.

A contract for constructing a family housing project on this base was awarded in March 1973 for about \$5 million. Notice to proceed was received by the contractor in April 1973 and completion was scheduled for June 1975. Appropriate Davis-Bacon Act labor standards provisions, including a wage determination, were incorporated in the contract.

In April 1974 two unions picketed the project, protesting substandard wages paid by two subcontractors. The contracting officer reported in the same month that Government labor interviews and payroll checks showed these subcontractors were paying at or above the minimum wage rate.

By June 1974 the contract administrator was not satisfied that the enforcement procedures he was using were adequate to identify wage violations. One weekend he informally interviewed two employees of one of the subcontractors. One employee stated he was not being paid the proper wage. Timecards were then requested on all employees of this subcontractor and comparison with payroll records data showed that some employees had worked more hours than were reported to the agency.

On this basis, the contracting officer recommended a formal investigation. However, no qualified person familiar with labor laws and their application to contracts was available at Ent to perform it. Therefore, assistance was requested and received from Labor.

The Labor investigation started in August 1974. By December the fieldwork had been completed, with 6 of the 10 subcontractors on the project charged with wage violations. Back wages found due employees totaled about \$47,000. Other findings involved:

- Falsification of payroll records by adjusting hours worked to show at least the minimum hourly rate paid.
- Misclassification and payment as a helper when the work performed was journeyman work.
- Misclassification as an apprentice when the firm had no approved apprenticeship program.

These practices occurred as early as August 1973, 4 months after the notice to proceed, and continued into the investigation period.

As of February 1975 one subcontractor had agreed with the findings and had paid back wages to its employees. The remaining subcontractors and the prime contractor disagreed

with the findings and the case was under review by Labor's Denver office in September 1975. Accordingly, the contracting officer is withholding \$55,000 in accrued payments from the prime contractor to pay any differences in wages which may be found due in the final settlement. Labor officials told us that final litigation of such cases can take as long as 2 years.

Fitzsimons Army Medical Center

The contracting officer told us that the Fitzsimons enforcement program followed procedures outlined in the Armed Services Procurement Regulations--procedures similar to those noted at Ent Air Force Base. The investigation and enforcement manual had not been received at Fitzsimons. Timecards were compared to related payroll records only when a violation was suspected. The contracting officer could not recall the last time any discrepancies had been found as a result of compliance investigations.

We examined 13 employee interview forms that were readily available in current contract files and verified them against the data in related payroll records. Discrepancies which potentially represented wage violations were found on three forms. On each, the employee's statement of hours worked on the day before the interview differed from the hours reported on the payroll. One form also showed a misclassification of work and related hourly rate of pay; the employee stated he was a laborer paid at an hourly rate of \$4.75, but he was classified on the payroll as a driver paid at \$5.20 per hour.

GSA

While the contracting officer has overall responsibility for enforcing labor provisions in construction contracts at GSA, enforcement is carried out mainly by the construction engineer on each project.

We discussed overall enforcement practices with the construction engineer on a project in the Denver area. He said GSA's program follows that set out in GSA's regulations and consists basically of interviewing workers and examining payroll data. In addition, a regional requirement for the minimum number of employees to be interviewed, based on project cost, has been established as follows:

<u>Project cost</u>	<u>Minimum number and interval of interviews</u>
\$0 - \$10,000	1 at 60% completion
\$10,000 - \$200,000	2 each at 25% and 75% completion
\$200,000 and up	3 each at 25%, 60%, and 80% completion

Labor's investigation and enforcement manual had never been received, and procedures did not include spot checking time-cards.

We examined a subcontractor's payroll for a project costing over \$200,000. We found no discrepancies; however, when we requested the employee interview forms, we were told that no interviews had been made to date although at least nine employees should have been interviewed by that time. The construction engineer said other administrative functions had left no time to conduct employee interviews.

Enforcing Service Contract Act wage stipulations

Labor has sole responsibility for enforcing labor standards provisions in contracts subject to the Service Contract Act. Contractors are required to maintain job classification, daily and weekly hours worked, and related payroll data on each employee for 3 years from the time the work is completed. The data is to be made available for inspection and transcription by authorized Labor representatives.

Labor investigations for compliance with Service Contract Act provisions are made for a variety of reasons including

- complaints,
- other information indicating noncompliance,
- improper practices found in a particular industry that need correction, and
- a general direct enforcement plan to investigate as many covered employers as possible with available staff.

To review the Denver region's enforcement efforts and to determine whether carpetlaying contractors with service employees were complying with contract wage determinations, we reviewed the GSA Federal Supply Service term contract activity in the Colorado Springs and Denver areas. Management officials at Fort Carson and at GSA's Denver Federal

Building furnished us with data on employees on each job, including names, types of work performed, and hours worked. Since contract provisions allowed access to the contractors' payroll data only to authorized Labor representatives, we furnished the data obtained to Denver regional officials with a request for investigations to verify that prevailing wages were being paid.

After completing the investigations, Labor representatives informed us that both contractors were paying employees less than the prevailing wages stipulated in their contracts.

Fort Carson

The investigation of the Colorado Springs area contractor in April 1975 showed, on the basis of interviews with employees who could be located, that four violations had occurred. One employee had worked in 1975 under the Government contract and had not been paid by the contractor; three others had worked during 1974 and received hourly wages varying from \$2.00 to \$2.25, although the prevailing wage determination in the contract during the period was \$7.85 per hour. Total unpaid wages due amounted to nearly \$1,100.

The investigation also found that a prior Labor investigation of this contractor had been made in June 1974 because of a complaint. At that time the contractor had refused to make any payroll and related records available to the Labor investigator. The investigator's report stated that the contractor was in compliance with Service Contract Act provisions. This conclusion was based primarily on discussions with the contractor and representatives of agencies where work had been performed.

In his April 1975 investigation report, the compliance officer recommended that the contractor be debarred from future Government contracts. The report indicated the recommendation was based on the misleading information the contractor provided in the investigation and its failure to allow the compliance officer to review its records in the previous investigation.

The Service Contract Act provides for debarment for any violation of the act, unless the Secretary of Labor recommends otherwise because of unusual circumstances. The recommendation for debarment was under review by the Denver region Labor officials as of September 1975.

GSA

The investigation report on the contractor at the GSA Denver Federal Building showed violations involving four employees. One employee had worked several hours but had not been paid, and three employees were paid at rates varying from \$3.50 to \$5.00 per hour under a Government service contract with a wage determination of \$8.91 per hour. A total of \$571 in back wages was due the four employees.

The investigation report also showed other violations by the contractor in failing to maintain a record of employees' hours worked though required by Labor's regulations and failing to pay an employee the wage rate specified by the contract for overtime work.

We also noted that data in GSA's files showed that the contracting office had told the contractor of the prevailing wage determination at the time of contract award in December 1974 and had requested wage data for any employee classifications not listed on the determination. The contractor never responded to the letter. Therefore, in February 1975, a month before Labor's investigation, the contracting officer called the contractor to obtain data on hourly wages paid to employees. The contractor told him that it paid its employees on a piecework basis which amounted to approximately \$10.00 per hour; that is, the contractor claimed the wages were in accordance with the requirements of the act.

In his report the Labor compliance officer said he discussed the violations with the contractor, who agreed to pay the four employees the prevailing wages due and said it would comply in the future. The compliance officer recommended the case be closed although no unusual circumstances were cited in the report to justify not recommending debarment. Regional officials agreed with the report and debarment was not recommended.

Direct enforcement program
in Labor's Denver region

Although the Denver regional office program plan provides for a significant portion of time to be spent on direct enforcement activities, very little time is actually spent directly enforcing the Service Contract Act.

For example, in submitting its fiscal year 1975 regional program plan to Washington, the Denver regional office estimated that 35 percent of its Service Contract Act enforcement time would be spent on planned direct enforcement and the remaining 65 percent on complaints. The narrative accompanying

the plan stated that program planning for the Denver area offices "has become more difficult because we are becoming captives of the complaint inflow." It stated further that 65 percent was set as the portion of compliance time to be spent on complaints in the hope and expectation that complaints would ultimately subside.

During fiscal year 1975, complaint servicing in the Denver region actually took more than 80 percent of the enforcement time. Nevertheless, the Washington office wrote the region that it should spend more time to clear up the complaints faster.

In an April 16, 1975, memorandum allocating field positions for fiscal year 1975, the Assistant Secretary for Employment Standards reminded the regions to carefully analyze the complaint inflow and inventory in their area offices when allocating new positions to them. The memorandum noted that the Denver area received an average complaint inflow but spent a relatively low proportion of time on complaints; as a result this office had a high complaint inventory per compliance officer. The Assistant Secretary emphasized that first priority for utilizing enforcement resources should be given to resolving complaints on a timely basis.

In his April 29, 1975, response, the Denver assistant regional director said:

- The biggest factor in the Denver area office's complaint handling is that its compliance officers are spread over a vast three-State area and that it is not unusual for a compliance officer to drive as far as 250 miles from his station to service a complaint.
- In order to conserve scarce travel funds, direct investigations in other program areas are made at the location of the complaint or along the route.
- The priority which had been given to direct investigations of equal pay and age discrimination cases may have delayed the servicing of some complaints.
- Since January 1975 all resources had been devoted exclusively to complaints in the Denver metropolitan and Colorado Springs areas.

Conclusions

Under construction contracts reviewed in Colorado, agency representatives were not performing reviews adequate to insure compliance with Davis-Bacon Act labor standards provisions.

Prevailing wage violations were occurring and potential violations were noted at the Defense procurement offices we visited.

Labor's enforcement program in the Denver region was not adequate to insure compliance with Service Contract Act labor standards provisions except in those cases where complaints were received. We believe that Labor's direct enforcement program helps assure compliance and could, in addition, reduce violations and related complaints.

Agency comments

We furnished copies of Labor's investigation and enforcement manual to contracting officials at each of the locations reviewed. Officials at GSA and Fitzsimons agreed that its supplemental procedures would help assure contractor compliance and stated they would incorporate the procedures into their enforcement programs for Davis-Bacon Act contracts. In addition the GSA official stated that he has now established procurement team leaders who will be responsible for assuring that all administrative activities on the region's construction projects are carried out, including the Davis-Bacon Act enforcement program and related employee interviews. Appropriate followup procedures have also been established.

The Fitzsimons official stated that he would initiate an investigation to resolve the discrepancies between employee interviews and related payroll data noted in our review. Also, he promised to develop procedures to insure that interviews and payroll data are always compared.

The contracting officials at Fort Carson and Ent Air Force Base contended that their resources were too limited for them to carry out more than the minimum enforcement program for Davis-Bacon Act contracts set forth in the Armed Services Procurement Regulations. Neither official intended to implement the supplemental procedures in the investigation and enforcement manual.

Because of increased violations of the Davis-Bacon Act and the need for more effective and vigorous enforcement by contracting agencies, the Secretary of Labor has urged agencies to reexamine their enforcement policies and procedures and to use the supplemental guidelines and procedures in the investigation manual.

These procedures are not so detailed or extensive, in our opinion, as to require a significant increase in the investigative resources and workload of contract administration personnel. We believe that the prevailing wage violations at

the installations we visited reveal a need to use more than the prescribed minimum enforcement procedures.

Officials in Labor's Denver region stated that their current program plan called for a large portion of time to be spent on direct enforcement of the Service Contract Act. However, their complaint backlog was so extensive that priority had been given to complaint investigations. When direct enforcement activities had been carried out the region had been criticized for not applying more resources to the complaint backlog, which the Washington headquarters had described as having first enforcement priority.

Regional officials could not cite any unusual circumstances which precluded a recommendation to debar the Denver area service contractor found violating the prevailing wage stipulations in its contract. Instead they said debarment was not recommended because (1) the amount involved was not large, (2) it was the contractor's first violation, and (3) the contractor had paid the back wages to the employees.

We informally discussed our findings with Washington Defense and Labor officials and they agreed with them. Defense officials said they would tell their contracting officials to supplement the enforcement procedures in the Armed Services Procurement Regulations with the procedures in Labor's investigation and enforcement manual. Labor officials said the Employment Standards Administration would review its allocation of resources to insure that the Denver region gets a fair and sufficient share for its Service Contract Act direct enforcement program as well as for its servicing of complaints under the act.

Recommendations

We recommend that the Secretary of Defense direct the Commanders at Fort Carson and Ent Air Force Base to insure that contracting officials carry out all Davis-Bacon Act enforcement procedures, including those in the investigation and enforcement manual, issued for Federal agencies by Labor.

We recommend that the Secretary of Labor have the Assistant Secretary for Employment Standards review the allocation of resources and staff in the Denver region to assure that adequate resources are available for a direct enforcement program as well as for investigating complaints.