Davis-Bacon Streamlining and Labor Compliance:
Electronic Reporting Systems

<u>**Overview**</u>

<u>**Electronic Reporting Systems**</u>

Electronic reporting systems (ERS) offer enormous benefits that accrue to employers (contractors and subcontractors), prime contractors and agencies. This paper focuses on payroll and related reporting associated with construction work covered by the Davis-Bacon Act or its Related Acts. However, these benefits likewise accrue to parties involved in construction work subject to similar state and local prevailing or living wage and reporting requirements.

There are several vendors offering ERS services. LCPtracker can't speak, definitively, to the capacities and utility of other vendors' products.   LCPtracker offers this general assessment based on its own capabilities and extensive knowledge of the industry.

This paper addresses the methods and efficacy of paper-based reporting systems versus electronic reporting systems; the benefits derived from use of an ERS; contrasts with PBS; the current "state-of-play" in the federal and federally-assisted construction arenas; and the courses LCPtracker recommends to overcome the disconnect between the federal sector and the use of electronic reporting systems.

    I.   <u>**Living in the past, in the here and now:**</u> **The enormous responsibilities, tasks, liabilities and burdens** borne by employers, prime contractors and agencies dealing with paper-based reporting systems.

    II.   <u>**Living in the present and beyond:**</u> **The measurable and countless advantages** of electronic reporting systems.

    III.   <u>**Current state-of-play:**</u> **The obstacles confronting greater expansion** of the use of electronic reporting systems.

    IV.   <u>**What we advocate:**</u> **The steps LCPtracker seeks to promote, educate and acclimate** agencies and contractors to the effectiveness, efficiency and fiscal advantages of electronic reporting systems.

Davis-Bacon Streamlining and Labor Compliance:
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I.   Living in the past, in the here and now:

The responsibilities, tasks and liabilities borne by employers, prime contractors and agencies relating to Davis-Bacon wage and payroll requirements and other reporting have been managed with paper reports, staff review and paper, email and/or telephone communications between the parties.

Paper-based reporting systems are *extremely time-consuming, inefficient and, often, largely ineffective*.

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Employers complete payrolls and send them to the prime contractor who, in turn, submits them to the agency. All await the agency's review to learn of any discrepancies, violations or underpayments. All are dependent on the speed of the agency's review and communication of the results. The timeliness of the agency's review is impacted by its resources and competing priorities. Agency staff resources have been in a state of decline for some time, whereas workload and priorities have increased; trends that will likely continue. As a result, all parties are in jeopardy; vulnerable to substantial, unanticipated financial and other demands when the agency is unable to complete its reviews and communicate results timely.

Additional burdens involve the retention and production of documents. All employers, prime contractors and agencies must preserve, secure and be able to retrieve on request, a copy of any payroll and related document for not less than three years after project completion. The retention requirements involve an enormous amount of physical space, not to mention staff time.

At times, outside parties request copies of labor standards documents under the Freedom of Information Act (FOIA). In such cases, personal identifiers must be redacted from the copies of any documents released. Again, involving significant staff time.

These paper-practices, cumbersome and necessary in the past, have been overtaken by technology in the form of electronic reporting systems (ERS). These systems offer relief from burdensome paper record generation, review, production and retention, and offer other functionalities that streamline and automate employer compliance and agency oversight functions.

Unfortunately, ERS have not been universally embraced.

II. **Living in the present and beyond:**

A. Universal access and security

Electronic reporting systems (ERS) offer features and functionalities that substantially streamline employer, prime contractor and agency processes and greatly support labor compliance and enforcement. ERS are *agile, mobile* and *portable*. Since ERS are web-based, no special software is needed and users don't need to watch for, download/install updates. And users can access the system on any device that can connect to the internet. These features are especially important as more agencies and contractors allow telework for administrative staff and as a significant amount of critical reporting is best done directly from the job site. While access is universal, the documents and data are secure. No one can access the system / data without user log-on privileges; user access levels are controlled such that each user may only access the data and functions appropriate for their role(s).

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Contrast: PBS are based on physical documents and locations, are far less flexible and present far greater vulnerabilities for security breaches. Contractor and agency staff are constrained to working at the physical office or, if teleworking, may be transporting sensitive documents from and to the physical office location. Payrolls and related documents are transmitted by mail or other delivery service and are vulnerable to unintended or other misdirection. Documents can be misplaced or left unattended in an area accessible to other staff or visitors in the office or at the telework site. Even storage facilities can pose a security hazard. Even if comprehensive measures are taken, such as locking office doors or securing documents in locked file cabinets when not in use, the sensitive information on the documents is still at risk of exposure.

B. Multiple reporting functionalities

Electronic reporting systems provide *multiple reporting capacities*. In addition to certified payrolls, these systems can manage a wide variety of attendant reporting requirements such as minority business utilization; local hiring; use of apprentices; and employment of, and contracting with businesses owned by veterans
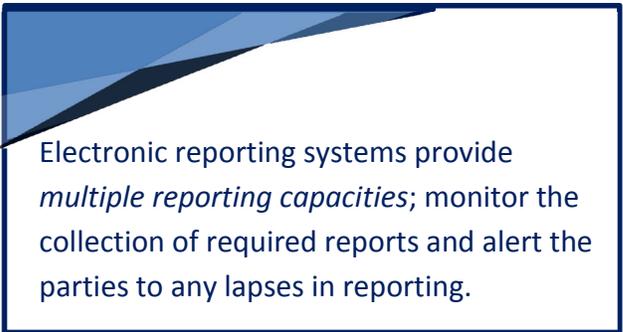
> Electronic reporting systems provide *multiple reporting capacities*; monitor the collection of required reports and alert the parties to any lapses in reporting.

and by low- and moderate-income persons. ERS monitor the collection of required reports and alert the parties to any lapses in report submission.

Contrast: PBS require employers/prime contractors to collect and maintain various data points needed to prepare payrolls and numerous other reports. There is no direct correlation between the various data collected for one report to another; comprehensive/correlative analyses are arduous, if possible at all. It's fundamentally impracticable to regulate the collection of *all* required documents.

C. Protections for all parties:

    1. Compliance assistance for employers

Electronic reporting systems assist employers (contractors and subcontractors) to *perform self-audits* protecting against inadvertent errors. ERS automatically execute *100% payroll reviews* meaning that each payroll is evaluated against a full complement of compliance validation codes involving

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such matters such as improper work classification, insufficient wage rates and overtime compensation, mathematical errors, missing apprentice certifications, etc.   LCPtracker scans each payroll against *more than 60 validations* to assess employer compliance. Employers are alerted to any discrepancies and can make corrections prior to submission to the prime contractor/agency. Avoiding missteps saves time for the employers and all others in the "chain of command".

Contrast: PBS can't compete with ERS. PRS can't perform 100% payroll reviews, there simply is not enough staff and/or other resources necessary to accomplish that measure in quantity or quality, employers are also vulnerable to the harmful impacts of misunderstanding and human errors. The employer is unaware of such errors until notified by the prime contractor or the agency (most often by the agency). During the interim – three months? six months? longer? - the detrimental impact of the errors compound. If the problem is only reporting, the employer is faced with the inconvenience of resubmitting multiple payroll reports. If the errors resulted in wage underpayments, the employer may be faced with a substantial back wage assessment.

2. Compliance oversight for prime contractors

Electronic reporting systems equip prime contractors with the means to *monitor the performance of all subcontractors.* The results of the validation scans alert the prime contractor to any deficiencies that a subcontractor overlooked or failed to correct in its submissions. The prime

> Electronic reporting systems allow prime contractors to *monitor the performance of all subcontractors.*

contractor can act promptly to request full correction by the subcontractor and to protect itself from financial and other liabilities should the subcontractor fail to rectify its violations.

Contrast: Similar to the PBS disadvantages to the employer, a prime contractor may be unknowingly exposed to mounting liabilities because it's unaware of violations on the part of its subcontractor(s). However, the danger to prime contractors is multiplied by the number of subcontractors it engaged on the project. The prime contractor may be faced with an enormous financial culpability that it may or may not be able to recoup from the subcontractor(s) involved.

3. Compliance audits / enforcement for agencies

Electronic reporting systems perform *automatic audits in real-time* identifying deficient wage and reporting performance. Agency staff can readily dispense with such deficiencies by bringing these to the prime contractor's attention. Virtually all

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types of prevailing wage and reporting discrepancies can be detected by an ERS *except* for some forms of falsification.
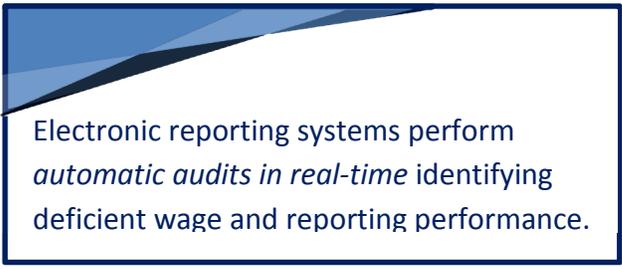
Payrolls are falsified when an employer knows what it's supposed to do, isn't doing it and attempts to conceal the violations through deception. Since ERS streamline the discovery and correction of human and inadvertent errors, staff resources can be devoted to the much more difficult task of exposing and combatting falsification.

Contrast: For agencies, PBS create weaknesses and vulnerabilities that may be caused by the agency, itself. If the agency fails to supply or replenish adequate resources, reviews will not be performed timely, violations will be overlooked or discovered too late for any meaningful

enforcement action. Agency staff may only have time for a cursory review, if any review at all. Falsification may go unnoticed. There may not be sufficient time to conduct a needed investigation, or there may not be sufficient funds remaining on the contract to satisfy wage restitution determined to be due. In short, the agency will fail to fulfill its obligations to ensure that laborers and mechanics employed on the site of the work receive no less than the wages determined to be prevailing as provided by statute.

D. Record creation, retention and production

Electronic reporting systems can generate *electronic records that can be effortlessly populated, retained and retrieved.* ERS can create certified payrolls from data uploaded by the employer from its existing payroll system. Employers, prime contractors and agencies can copy documents to the electronic media of

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choice. An employer can supply pertinent records immediately to the Department of Labor (DOL) in case of a DOL audit. The ERS can also produce redacted copies of certified payrolls suitable for responses to FOIA requests.

Contrast: Agency/prime contractor requirements may differ somewhat but, in general, PBS require employers to build a paper payroll; each payroll must be endorsed with a "wet" signature of an authorized person. All employers must retain and be able to produce copies of all payrolls and related documents for no less than 3 years after project completion. Typically, employers send payrolls and related document to the prime contractor via a mail service.

Prime contractors must retain and be able to produce copies of its own and all subordinate contractor's payrolls and related documents for no less than 3 years after project completion, and so on.

Agencies responding to a FOIA request for payrolls must locate the payrolls involved and make copies of the payrolls while redacting personal identifiers. From time-to-time, agencies send older documents to the Federal Records Center. If the FOIA request involves older records, the agency may need to petition the Records Center for the return of the documents.

Obviously, these responsibilities involve manual work, detailed organization strategies, substantial storage space and staff time. In addition, documents carrying sensitive information are traveling through a mail service increasing the vulnerability of exposure during transit.

III.   Current state-of-play:

It's undeniable that the industry is moving to electronic reporting systems. Unfortunately, ERS have not been universally embraced. Factors that seem to be impeding the transition to ERS primarily involve misperceptions, misinformation and lack of training. Some are described below.

A. **"Electronic payrolls aren't acceptable for Copeland Act purposes."** DOL responded to the USACE in 2004 with a firm endorsement on the adequacy of properly executed electronic payrolls for certified payroll purposes. Since then, DOL has publically and strongly endorsed and encouraged the use of ERS for several years. DOL has also required noncompliant/negligent prime contractors to use an ERS as a condition in agreements settling the resolution of back wage assessments.

B. **"ERS require special hardware/software."**   ERS are web-based and require no additional hardware or software. ERS only require internet access.

C. **"ERS are too complicated."** ERS are generally intuitive in structure and processes. Extensive training and technical support is usually available from the vendor, if needed.

D. **"ERS costs are prohibitive."**   The cumulative value of savings to an agency and any prime contractor or employer using an ERS far outweighs the costs of a PBS. Use of an ERS dramatically diminishes the consumption of resources in numerous aspects: staff time
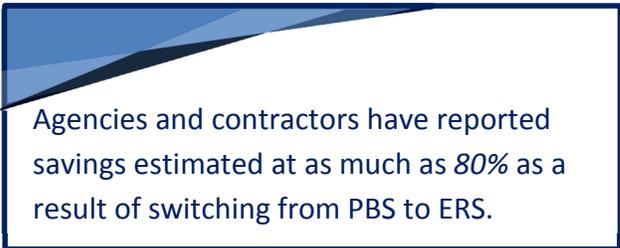
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and physical resources (paper, printing, copying, shipping, storage, etc.). Some of the agencies that have converted to ERS with LCPtracker include the Chicago Housing Authority, the City of Philadelphia, Los Angeles County, the Arizona, Illinois, Michigan and Nevada Departments of Transportation, and the California State University System; general contractors include Turner, Clark-McCarthy and Kiewit. USACE, NAVFAC, HUD and other defense/federal staff have had hugely successful experiences with ERS. Labor compliance has been successfully managed with ERS on massive projects such as the New Orleans Veterans' Administration hospital and the Camp Pendleton hospital. In short, agencies and contractors consistently express enormous satisfaction and describe significant cost savings derived from the use of an ERS. While no specific cost data are available, numerous agencies and contractors have reported substantial savings estimated at as much as 80% as a result of switching from PBS to ERS.

E. **Resistance to change – "We've always done it this way."** An opinion understandable on so many levels. However, with proper exposure and orientation to ERS, agencies' management and staff and contractor staff will no doubt find assurance and feel empowered with the tools available to them via ERS.

IV. **What we advocate:**

LCPtracker is seeking greater exposure for electronic reporting systems (ERS) beginning with a more prominent endorsement from the federal level; education for agencies, prime contractors and employers; and opportunities for agencies, prime contractors and employers to experience the benefits of ERS.

A. **Promote.** The most likely federal agency to advocate for ERS is the Department of Labor. Most federal support for ERS thus far has been voiced by career staff with DOL and various other agencies. However enthusiastic the staff at these agencies may be, a more prominent, broader and effective vehicle might be a DOL All Agency Memorandum (AAM) signed by the Wage and Hour Administrator, a political appointee, and directed to all federal agencies and the District of Columbia. The AAM (or other appropriate communique) could:

1. Describe the benefits of ERS;
2. Reassure that ERS satisfy Davis-Bacon and Related Acts recordkeeping and submission requirements, and properly executed ERS signatures are acceptable for Copeland Act payroll certification purposes;
3. Encourage federal agencies (and the District of Columbia) to explore whether requiring an ERS would be advantageous to their contracting operations;
4. Encourage federal agencies that don't contract directly for construction work, e.g., Housing and Urban Development, to promote the use of an ERS;
5. Prohibit a federal agency and the District from rejecting ERS submissions, as these are deemed adequate;
6. Prohibit federal agencies and he District from requiring paper submissions from employers that use an ERS and, finally,
7. Offer a list of criteria that EMS vendors must meet in order to be acceptable (*most ERS on the market today are DOL/DBRA/CA compliant but there may be those that are not*) and/or provide a list of vendors that have been vetted and found acceptable.

Also, DOL regularly issues an email newsletter in which it covers a variety of topics of interest to employers and agencies. An article in the newsletter describing the new technology offered by ERS for payroll creation, submission and audits would communicate to an audience outside of the federal agency sector. This could tie-in to DOLs Compliance Assistance tool for government contracts (http://www.dol.gov/whd/govcontracts/) under *FAQs* and *Compliance Assistance by Law* (Copeland Act and Davis-Bacon and Related Acts).

B. **Educate.** DOL includes ERS in its Prevailing Wage Seminar (PWS) curricula (seminars held frequently at various locations during the fiscal year); certified payrolls and electric signatures are also covered in DOLs Prevailing Wage Resource Book. These are very constructive steps, of course; yet, real "education" needs to be more specific and delve deeper into the many elements and benefits offered by ERS. Many federal agencies and the District offer training for program participants; a module on ERS could be developed/delivered to better explain the features, values and advantages of an ERS. LCPtracker is prepared to contribute to and participate in a general, generic ERS education program in conjunction with DOLs PWSs or another approach designed to reach a broad range of industry participants.

C. **Acclimate.** Resistance is often the product of unease, and unease the product of inexperience. ERS product demonstrations, perhaps as part of a hands-on training or on its own, could assuage resistance on many fronts. In recent years, LCPtracker has offered to perform "generic" demonstrations, not tied to a specific product, for agencies and/or contractors to familiarize them with ERS processes and capabilities. That offer remains on the table.

LCPtracker looks forward to continuing this conversation and commits its resources to support swift progress toward these ends.

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