U.S. Department of Labor Administrative Review Board
200 Constitution Ave. NW
Washington, DC 20210-0001

IN THE MATTER OF:

A&D CONSTRUCTION, LLC, **ARB CASE NO. 2026-0047**

PETITIONER. **DATE: July 31, 2026**

Appearance:

For the Petitioner:
Craig L. Holcomb, Esq.; *Holcomb & Straile, LLC*; Frederick, Maryland

Before KAPLAN and KIKO, Administrative Appeals Judges

ORDER OF DISMISSAL

On June 15, 2026, the Administrative Review Board (ARB or Board) received a letter from Craig L. Holcomb, Esq., on behalf of Petitioner A&D Construction, LLC, dated June 9, 2026 (Letter), along with attachments thereto. It appears that Petitioner is the subject of an investigation by the Department of Labor's Wage and Hour Division (WHD) regarding alleged violations of the Davis-Bacon Act (DBA)[1] relating to misclassification of workers, among other things.[2]

In the Letter, Petitioner stated that a WHD Investigator, Quyen Le, completed a preliminary investigation of Petitioner on or about March 20, 2026, and met with the Petitioner virtually on March 27, 2026 to relay her preliminary findings. Petitioner disagreed with those findings in part and articulated its disagreement in a letter to Le dated April 6, 2026. Sometime after April 6, Petitioner held a second virtual meeting, this time with Le's supervisor, Jorge Jamail-Gutierrez. Petitioner stated that after this meeting, Le sent a more detailed outline of her investigation and preliminary findings to Petitioner. On May 21,

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[1] 40 U.S.C. §§ 3141-3148; 29 C.F.R. Parts 1, 3, 5-7 (2026).

[2] Although Petitioner does not refer specifically to the DBA in the Letter, it appears from context and the factual allegations in the Letter that this case involves alleged violations of the DBA.

2026, Petitioner sent a letter to Jamail-Gutierrez articulating its disagreement with the findings.

Petitioner stated that Jamail-Gutierrez did not respond to the May 21 letter. Instead, Petitioner stated that Jamail-Gutierrez informed Petitioner's general contractor that the Department of Labor intends to request that further payment be withheld from the general contractor to satisfy the penalties assessed against Petitioner. According to Petitioner, "[t]his notice was sent even though the US Department of Labor has not issued a Final Determination or has allow[ed] [Petitioner] the chance to appeal, in part, the Department's determination." Petitioner stated that it "recognizes that it cannot appeal until a final determination has been issued," but it "***formally is noting [its] right to appeal for the reasons as set forth in its April 6, 2026 and May 21, 2026 letters***."

Petitioner's appeal to the ARB appeared to be premature, as Petitioner acknowledged in its Letter. In the event of a dispute of fact or law concerning the payment of prevailing wage rates, overtime pay, proper classification, and other enumerated issues, "the Administrator will notify the affected contractor and subcontractor, if any, by registered or certified mail to the last known address or by any other means normally assuring delivery, of the investigation findings."[3] Thereafter, the affected contractor or subcontractor may "request [ ] a hearing by letter or by any other means normally assuring delivery, sent within 30 days of the date of the Administrator's notification."[4] "The request must set forth those findings which are in dispute and the reasons therefor, including any affirmative defenses."[5]

Upon receipt of a timely request for a hearing from a contractor or subcontractor, the Administrator of WHD must then refer the case to the Department of Labor's Chief Administrative Law Judge for assignment to an Administrative Law Judge (ALJ) and a hearing.[6] After the ALJ issues a decision,

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[3] 29 C.F.R. § 5.11(a), (b)(1).

[4] *Id.* § 5.11(b)(2).

[5] *Id.*

[6] *Id.* § 5.11(b)(3).

any aggrieved party may file a petition for review "with supporting reasons" with the ARB within 40 days of the date of the ALJ's decision.[7]

It was not clear the status of WHD's investigation. However, it was apparent from Petitioner's submission that this case had not yet progressed to a hearing with an ALJ, let alone a final decision from an ALJ that is appealable to the Board. Therefore, it appeared that Petitioner's petition to the Board was premature.

On June 24, 2026, the Board issued an Order to Show Cause, ordering Petitioner to file a written brief explaining why the Board should not dismiss this appeal as premature.

In Response, Petitioner filed a Motion to Withdraw Appeal Request Without Prejudice, in which "Petitioner acknowledge[ed] that the appeals request was premature and formally request[ed] that the Appeal be withdrawn and/or dismissed WITHOUT PREJUDICE."

Accordingly, we **GRANT** Petitioner's request to withdraw the appeal request and **DISMISS** the appeal without prejudice.

SO ORDERED.

ELLIOT M. KAPLAN
Administrative Appeals Judge

PHILIP G. KIKO
Administrative Appeals Judge

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[7] *Id.* § 6.34. Additional information regarding how WHD conducts investigations and issues findings can be found in WHD's Investigative Procedures and Remedies on Davis-Bacon Contracts guidance document, available at https://www.dol.gov/agencies/whd/government-contracts/prevailing-wage-resource-book/dbra-investigative-procedures-remedies.