



CITY OF SAINT PAUL FEDERAL LABOR STANDARDS

LABOR STANDARDS REQUIREMENTS

Developers, general contractors, subcontractors and lower-tier subcontractors shall comply with any of the following regulations as may be applicable:

Davis-Bacon Act, 40 U.S.C. 276(a) – 276(a)(7)
Davis-Bacon Related Acts, 29 CFR Part 5
Copeland Act, 40 U.S.C. X276C and 18 U.S.C. § 874
Contract Work Hours and Safety Standards Act, 40 U.S.C. § 327-333
Minnesota Statutes § 177.41 - 177.44
Minnesota Rules 5200.1000-5200.1120
City of Saint Paul § 82.07

Davis-Bacon compliance requirements include, but are not limited to, the following:

- 1) All workers performing labor on site must be paid the minimum prevailing wages established by the U.S. DOL and/or MN/DLI. Payment shall be paid on a weekly basis to all onsite workers. The developer and/or prime contractor is responsible to ensure that all onsite workers are compensated according to the U.S. DOL federal wage decision, and (if applicable) the MN/DLI state prevailing wage determination, incorporated into and found elsewhere in this contract, **whichever is greater.**
- 2) A contractor shall not permit or require a worker to work longer than the prevailing hours of labor unless the worker is paid for all hours in excess of the prevailing hours at a rate of at least 1½ times the base hourly rate of pay. The prevailing hours of labor is defined as not more than 40 hours per week (and 8 hours per day if applicable).
- 3) Apprentices/trainees are the only workers allowed to work at a lesser rate if registered in an approved apprenticeship/training programs. Proof of apprenticeship must be provided before an employee begins work on site.
- 4) The prime contractor and all applicable subcontractors are required to **submit certified payroll reports electronically through LCPTracker.**
- 5) The following must be physically attached to all bid documents and contract agreements pertaining to this project:
 - Labor Standards Requirements
 - Federal Labor Standards Provisions (HUD 4010)
 - Apprentice/Trainee Guidelines
 - Wage Decision(s)
- 6) The Labor Standards posters and Wage Decision(s) must be posted at the construction site in a visible location and be protected from the elements.

Please contact the Labor Standards Specialist with Davis Bacon questions:
Alex Dumke | 651-266-8969 | alexander.dumke@ci.stpaul.mn.us



CITY OF SAINT PAUL FEDERAL LABOR STANDARDS

LABOR STANDARDS FACT SHEET

- Applicable projects in excess of \$2,000 require weekly payment of the prevailing rate (wage + fringes) to all on-site workers, based on the actual type of work performed and regardless of skill
- Contracts cannot be awarded to businesses debarred or suspended by federal, state, or city authorities
- Payrolls must be certified and submitted using LCPTtracker. Payroll reports are due within seven (7) days after the payroll period.
- Business owners working with their crew must report their wage information and can certify the payroll. Business owners working alone cannot certify payment of their own prevailing wage; instead, they are reported on a weekly payroll prepared and certified by their engaging contractor (wage information must be reported). **There are no Davis-Bacon exceptions for owners of businesses, sole proprietors, salaried employees, self-employed owners, partners, corporate officers, or others.**
- Workers must be paid overtime (time and one-half times the basic rate of pay plus the fringe benefit amount) for all hours worked in excess of 40 per week, and over 8 hours in a day (**if applicable**).
- Apprentices/trainees registered in approved programs may be paid less than the wage rate in the wage decision for their work classification. Apprentice program ratio requirements are applied hour-for-hour to the project site. Out-of-ratio apprentices must be paid the prevailing wage rate for the classification of work performed.
- Developer/prime contractor submits ID of Prime and Subs which is to be kept current
- General contractor/subcontractors/lower-tier subcontractors must submit the Contractor Profile prior to starting work
- Verification of employee wage receipt may include contacting the trade local, benefit fund administrator, submission of cancelled paychecks, stubs, time cards and interview responses
- Employers shall permit authorized representatives to interview workers at the project site (on company time) to verify payment of the prevailing rate for the classification of work they are performing
- Cleaning performed during construction is subject to prevailing wage provisions. In the absence of a specific wage rate for cleaning classification, the cleaners must be paid the predetermined wage rate for laborers. Demolition related to the project is also subject to prevailing wage provisions.
- Contractors must keep a complete set of their project payrolls and other basic records (tax records, time cards, work logs, payroll checks and stubs, evidence of fringe payments, etc.) for a period of 3 years after project close-out

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**CITY OF SAINT PAUL
FEDERAL LABOR STANDARDS**

APPRENTICES/TRAINEES

WAGES	An Apprentice/Trainee can be paid less than the wage rate listed in the wage decision for his/her work classification if he/she is registered in an approved apprenticeship/training program.
PROGRAMS	Approved programs are registered with the Department of Labor (DOL) or a DOL recognized State Apprenticeship Agency (SAC). Apprentices/trainees are paid wage rates in accordance with the wage schedule in the approved program.
REQUIREMENTS	<p>If using apprentices as part of your on-site workforce, submit the following to your engaging contractor or other designee:</p> <ul style="list-style-type: none"> • A copy of the Apprenticeship Agreement; • The current level of advancement (include “apprentice” and the hour or percentage level with the work classification on your payroll reports); and • A copy of YOUR registered/approved program wage rates and ratios.
LIMITATIONS	The maximum number of apprentices/trainees you can use on the job site cannot exceed the ratio of apprentices/trainees to journey workers allowed in the approved program. Ratios are applied hour-for-hour at the project site. You will be required to pay wage restitution for ratio violations.

PROBATIONARY APPRENTICES

Probationary Apprentices can be paid as an apprentice **if**:

- The DOL or SAC has certified that the person is eligible for probationary employment as an apprentice; and
- verification is submitted to the city.

PRE APPRENTICES (an individual not registered in a program)

A Pre-apprentice must be paid the full journey worker rate on the wage decision for the classification of work they perform.

HELPERS/ASSISTANTS

Helpers are not allowed to work at a lesser rate of pay on State and Federally-funded projects.

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Applicability

The Project or Program to which the construction work covered by this contract pertains is being assisted by the United States of America and the following Federal Labor Standards Provisions are included in this Contract pursuant to the provisions applicable to such Federal assistance.

A. 1. (i) Minimum Wages. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section I(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible, place where it can be easily seen by the workers.

(ii) (a) Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(b) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB control number 1215-0140.)

(c) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

(d) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(ii)(b) or (c) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part

of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

2. Withholding. HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee or helper, employed or working on the site of the work, all or part of the wages required by the contract, HUD or its designee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased. HUD or its designee may, after written notice to the contractor, disburse such amounts withheld for and on account of the contractor or subcontractor to the respective employees to whom they are due. The Comptroller General shall make such disbursements in the case of direct Davis-Bacon Act contracts.

3. (i) Payrolls and basic records. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section 1(b)(2)(B) of the Davis-bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5 (a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been

communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (Approved by the Office of Management and Budget under OMB Control Numbers 1215-0140 and 1215-0017.)

(ii) (a) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i) except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this subparagraph for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to HUD or its designee. (Approved by the Office of Management and Budget under OMB Control Number 1215-0149.)

(b) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under 29 CFR 5.5 (a)(3)(ii), the appropriate information is being maintained under 29 CFR 5.5(a)(3)(i), and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR Part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(c) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by subparagraph A.3.(ii)(b).

(d) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under subparagraph A.3.(i) available for inspection, copying, or transcription by authorized representatives of HUD or its designee or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the contractor, sponsor, applicant or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and Trainees.

(i) **Apprentices.** Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who

is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) **Trainees.** Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by

the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under 29 CFR Part 5 shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR Part 3 which are incorporated by reference in this contract

6. Subcontracts. The contractor or subcontractor will insert in any subcontracts the clauses contained in subparagraphs 1 through 11 in this paragraph A and such other clauses as HUD or its designee may by appropriate instructions require, and a copy of the applicable prevailing wage decision, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this paragraph.

7. Contract termination; debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act Requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract

9. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and HUD or its designee, the U.S. Department of Labor, or the employees or their representatives.

10. (i) Certification of Eligibility. By entering into this contract the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be

awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001. Additionally, U.S. Criminal Code, Section 1 01 0, Title 18, U.S.C., "Federal Housing Administration transactions", provides in part: "Whoever, for the purpose of . . . influencing in any way the action of such Administration..... makes, utters or publishes any statement knowing the same to be false..... shall be fined not more than \$5,000 or imprisoned not more than two years, or both."

11. Complaints, Proceedings, or Testimony by Employees. No laborer or mechanic to whom the wage, salary, or other labor standards provisions of this Contract are applicable shall be discharged or in any other manner discriminated against by the Contractor or any subcontractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or relating to the labor standards applicable under this Contract to his employer.

B. Contract Work Hours and Safety Standards Act. The provisions of this paragraph B are applicable where the amount of the prime contract exceeds \$100,000. As used in this paragraph, the terms "laborers" and "mechanics" include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which the individual is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in subparagraph (1) of this paragraph, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in subparagraph (1) of this paragraph, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the clause set forth in subparagraph (1) of this paragraph.

(3) Withholding for unpaid wages and liquidated damages. HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contract, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act which is held by the same prime contractor such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph (2) of this paragraph.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in subparagraph (1) through (4) of this paragraph and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in subparagraphs (1) through (4) of this paragraph.

C. Health and Safety. The provisions of this paragraph C are applicable where the amount of the prime contract exceeds \$100,000.

(1) No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.

(2) The Contractor shall comply with all regulations issued by the Secretary of Labor pursuant to Title 29 Part 1926 and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act, (Public Law 91-54, 83 Stat 96). 40 USC 3701 et seq.

(3) The contractor shall include the provisions of this paragraph in every subcontract so that such provisions will be binding on each subcontractor. The contractor shall take such action with respect to any subcontractor as the Secretary of Housing and Urban Development or the Secretary of Labor shall direct as a means of enforcing such provisions.



CONTRACTOR PROFILE

Project Name: _____

Business Name: _____ Federal Tax ID #: _____

Address: _____

Phone #: _____ Fax #: _____

Our agreement/contract dated _____ is with _____ in the amount of \$ _____

For _____
(Identify specific contract work)

Will you sub out any of your contract work? _____ If yes, please identify subs: _____

Person authorized to certify (sign) payroll reports: _____

Person submitting electronic payroll reports: _____ Email: _____

Identify work classifications (as listed in project wage decision) you anticipate using, base rate of pay, and total wage payment:

<u>Work Classification</u> (Group #, if applicable. Add pages if necessary)	<u>Base Rate of Pay</u>	<u>Total Wage Payment</u> (base +fringes)
_____	\$ _____	\$ _____
_____	\$ _____	\$ _____
_____	\$ _____	\$ _____

Check (A), (B) or (C) identifying how fringe benefits are paid to your workers:

- (A) _____ included with pay check in the amount of \$ _____;
- (B) _____ funded (with trustee or third party) fringe benefit plan in the hourly amounts indicated below:
- (C) _____ unfunded* (company-paid) fringe benefit plan in the hourly amounts indicated below
(identify for each employee working on the project, include: hourly fringe amounts, provider/company name if applicable, & how often contribution is made):

<u>*Holiday</u>	<u>*Vacation</u>	<u>*Sick Leave</u>	<u>Health</u>	<u>Dental</u>	<u>Life</u>	<u>Pension</u>	<u>Other</u> (identify)	<u>TOTAL HOURLY FRINGE RATE</u>
\$ _____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____ =	\$ _____
\$ _____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____ =	\$ _____

Benefit funds are deposited into Account #(s) _____ and are maintained by (agency name & address):

_____ Phone #: _____

IF FUNDS ARE MAINTAINED BY A THIRD PARTY FRINGE BENEFIT PLAN, PLEASE ATTACH A CURRENT LETTER FROM THE FUND ADMINISTRATOR.

Owner/Principal Officer & Title (PLEASE PRINT) _____ Owner/Principal Officer Signature _____ Date _____

IS THIS A SOLE PROPRIETORSHIP OR PARTNERSHIP BUSINESS? Yes No

IDENTIFICATION OF PRIME CONTRACTOR AND SUBCONTRACTORS (INCLUDING MATERIAL SUPPLIERS)



Form required for Labor Standards, AA/EEO, HUD Section 3, and Vendor Outreach

Submit completed form to: Contract Compliance & Business Development

15 West Kellogg Blvd, Room 280

Saint Paul, MN 55102-1681

Phone: 651-266-8900, Fax: 651-266-8919

Email: contractcompliance@stpaul.gov

Project: _____ Bid #: _____ Est. Construction Cost: _____ VOP Goal: \$ _____ %

Please identify all sub-contractors (including material suppliers) you intend to utilize on this project. Identify all suppliers with an (S). Identify Minority Owned, Women Owned, Small, and Section 3 businesses with **MBE, WBE, SBE, or Sec 3** respectively. Please identify Certified Vendors. **Form must be updated and submitted when you add, delete, or make other changes to the list.**

	Name, Address, Contact Person, and Phone Number	CERT W/M/S/BE Vendor	Section 3 Certified Vendor	Nature of Work	Date Work to Begin	Date Work Completed	Contract Amount
PRIME:	_____	_____	_____	_____	_____	_____	_____
	_____	_____	_____	_____	_____	_____	_____
SUBS: 1	_____	_____	_____	_____	_____	_____	_____
	_____	_____	_____	_____	_____	_____	_____
2	_____	_____	_____	_____	_____	_____	_____
	_____	_____	_____	_____	_____	_____	_____
3	_____	_____	_____	_____	_____	_____	_____
	_____	_____	_____	_____	_____	_____	_____
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MAR 22 2013

MEMORANDUM NO. 213

TO: ALL CONTRACTING AGENCIES OF THE FEDERAL
GOVERNMENT AND THE DISTRICT OF COLUMBIA

FROM: 
MARY BETH MAXWELL
Acting Deputy Administrator

SUBJECT: Application of the Davis-Bacon and Related Acts requirement that wage rates for additional classifications, when “conformed” to an existing wage determination, bear a “reasonable relationship” to the wage rates in that wage determination

This Memorandum is notification from the Department of Labor’s Wage and Hour Division (WHD) of the proper application of the Davis-Bacon and Related Acts (DBRA) requirements for wage rates for additional classifications that are “conformed” to an existing wage determination by agency contracting officers. The regulations at 29 C.F.R. § 5.5(a)(1)(ii)(A) provide that contracting officers shall approve an additional classification and its proposed wage rate in conformance with an existing wage determination only when the work to be performed by the proposed classification is not performed by a classification in the wage determination and the proposed wage rate bears a “reasonable relationship” to the wages rates in the wage determination. Although this Memorandum primarily focuses on the “reasonable relationship” requirement, it is essential at the threshold to reiterate that a conformance is not appropriate when the work of the proposed classification is already performed by a classification on the wage determination. The conformance process is narrow in scope and has the limited purpose of establishing a new classification when it is necessary to do so because work needed to perform the contract is not performed by an existing classification. *See Cambridge Plaza*, ARB Case No. 07-102 (ARB Oct. 29, 2009). Accordingly, the WHD will not add a new classification through a conformance action unless the first criterion for issuance of a conformance is satisfied, i.e., the proposed work in question is not performed by any classification in the existing wage determination. 29 C.F.R. § 5.5(a)(1)(ii)(A)(1).

In those circumstances in which the duties of the proposed classification are not performed by any classification in the existing wage determination, the WHD will consider whether the proposed wage rate bears a “reasonable relationship” to the wage rates in the wage determination. In the past, WHD has generally approved proposed wage rates for a conformed skilled craft and a power equipment operator when such rates were not less than the rate for the lowest classification in the respective category on the contract wage determination. The practice of using the lowest rate in the relevant category as a benchmark also occurred on occasion with laborers and truck drivers. In keeping with the remedial purpose of the DBRA and the governing

regulations, the wage rate of the lowest skilled craft, laborer, power equipment operator, or truck driver classification on the contract wage determination has no longer been an automatic benchmark when reviewing conformance requests. WHD's approach of not using the lowest wage rate as a benchmark has been progressively implemented over the last year.

The Conformance Process

In accordance with 29 C.F.R. § 5.5(a)(1)(ii)(A), the contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and a wage rate (including fringe benefits) for the classification only when the following criteria have been met:

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

Further, if the contractor, the laborers or mechanics (if known) to be employed in the classification or their representatives, and the contracting agency agree on the classification and wage rate proposed, a report of the action taken is sent by the contracting officer to the Administrator of WHD for approval, denial, or modification. The Administrator (or an authorized representative) shall respond within 30 days of receipt, or the contracting officer will be notified that more time is necessary. *See* 29 C.F.R. § 5.5(a)(1)(ii)(B). In the event that the contractor, the laborers or mechanics (if known) to be employed in the classification or their representatives, and the contracting agency do not agree on the classification and wage rate proposed, the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator of WHD for determination. The Administrator (or an authorized representative) shall issue a determination within 30 days of receipt and so advise the contracting officer, or the contracting officer will be notified that more time is necessary. *See* 29 C.F.R. § 5.5(a)(1)(ii)(C).

"Reasonable Relationship"

WHD previously typically approved conformance requests from contracting officers for wage rates (including fringe benefits) for skilled classifications and power equipment operators by automatically using as a benchmark the lowest rate for a skilled classification or power equipment operator, respectively, in the applicable wage determination. The practice of using the lowest rate in the relevant category as a benchmark also occurred on occasion with laborers and truck drivers. WHD has concluded, however, that it better reflects the regulatory requirement that "the proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination" to consider the entirety of the rates within the relevant category on the wage determination and to not generally use as a benchmark the lowest rate within that category. The regulation at 29 C.F.R. §

5.5(a)(1)(ii)(A)(3) requires that the proposed wage rate bear a reasonable relationship to the “wage rates” on the wage determination and not to a particular rate or the lowest rate.

The category in which the requested additional classification falls is relevant to the reasonable relationship analysis. As background, classifications in wage determinations fall into four general categories: skilled crafts, laborers, power equipment operators, and truck drivers. To determine a “reasonable relationship,” the requested additional classification is compared to the classifications on the applicable wage determination within the same category. A proposed skilled craft classification is compared to skilled classifications in the wage determination; a proposed laborer classification is compared to existing laborer classifications; a proposed power equipment operator classification is compared to existing power equipment operator classifications; and a proposed truck driver classification is compared to existing truck driver classifications. See *Mistick Construction*, ARB Case No. 02-004 (June 24, 2003); *Tower Construction*, WAB Case No. 94-17 (Feb. 28, 1995).¹ Thus, when considering a conformance request for a skilled classification, WHD generally considers the entirety of the rates for the skilled classifications on the applicable wage determination and looks to where the proposed wage rate falls within the rates listed on the wage determination. Occasionally, however, a wage determination may contain some wage rates for laborer classifications that are higher than some wage rates for the skilled classifications or power equipment operators (likely because the laborers’ rates reflect union prevailing rates and the skilled crafts’ or power equipment operators’ rates reflect weighted average prevailing rates). On such occasions, the contracting officer should look to those skilled classifications whose rates are higher than the laborer classifications’ rates. See *M.Z. Contractors Co.*, WAB Case No. 92-06 (Aug. 25, 1992). If, however, most of the skilled classifications’ or power equipment operators’ rates are lower than the laborer classifications’ rates, then it may be reasonable to propose a rate that reflects the skilled classifications’ rates even if they are lower than the laborer classifications’ rates.

Additionally, whether the wage rates in the applicable category (skilled craft, laborer, power equipment operator, truck driver) in the wage determination are predominantly union prevailing wage rates or predominantly weighted average prevailing wage rates should be considered when proposing rates for an additional classification. For example, if a wage determination contains predominantly union prevailing wage rates for skilled classifications, it typically would be appropriate to look to the union sector skilled classifications in the wage determination and the rates for those classifications when proposing a wage rate for the additional classification. Conversely, if a wage determination contains predominantly weighted average prevailing wage rates for skilled classifications, it typically would be appropriate to look to the weighted average/non-union sector skilled classifications in the wage determination and the rates for those classifications when proposing a wage rate for the additional classification. If the wage rates in the applicable category are roughly half union prevailing rates and half weighted average prevailing rates, it would typically be appropriate to look to the lowest union rate and the highest weighted average rate (assuming the union rates are higher than the weighted average rates) when proposing a wage rate.

¹ Copies of Administrative Review Board (ARB) and Wage Appeals Board (WAB) decisions can be obtained from: www.oalj.dol.gov/libdba.htm.

While the majority of conformance requests are within the skilled classification category, the governing regulations and the principles outlined in this Memorandum apply to the other categories of workers – laborers, power equipment operators, and truck drivers. To meet the “reasonable relationship” test for a conformed power equipment operator or truck driver classification, the proposed wage rate should bear a reasonable relationship to the entirety of rates within the respective classification, and in particular to the union or weighted average rates in the classification (assuming union or weighted average rates prevail for the classification). When a conformance for a laborer classification is requested, WHD generally continues to use the common laborer rate already existing in the wage determination as a benchmark for the proposed rate.

Each conformance request and corresponding wage determination involves particular circumstances and therefore should be evaluated as such. The full range of wage rates on the wage determination for the appropriate category should be reviewed in the manner discussed above. When seeking conformed classifications and wage rates, the contractor and the contracting officer should not rely on a wage determination or conformance granted to another party regardless of the similarity of the work in question. *See, e.g., Inland Waters Pollution Control, Inc.*, WAB Case No. 94-12 (Sept. 30, 1994). Moreover, the contractor and the contracting officer should not prospectively rely on WHD’s prior approval of rates for application to a contract performed at the same location. *See E&M Sales, Inc.*, WAB Case No. 91-17 (Oct. 4, 1991). Although atypical, use of the “lowest skilled” rate may of course be appropriate when that rate in fact bears a reasonable relationship to the wage rates contained in the wage determination for the appropriate category. *See, e.g., Tower Construction*, WAB Case No. 94-17 (Feb. 28, 1995) (conformed wage rate, which equaled lowest skilled rate on wage determination, was reasonable).

In sum, contracting agencies should take the following steps when proposing a wage rate for a classification to be conformed to an existing wage determination:

- First, the contracting agency should determine the category (skilled crafts, laborers, power equipment operators, or truck drivers) of the classification which is being conformed.
- Second, the contracting agency should determine for that category whether union or weighted average/non-union sector rates prevail in the existing wage determination.
- Third, after reviewing the entirety of the rates within the appropriate sector in the applicable category, the contracting agency should determine a rate that bears a reasonable relationship to those rates on the wage determination.
- Fourth, the contracting agency should determine whether any of the considerations identified in this Memorandum apply (or whether any other relevant considerations apply). For example, if the classification being conformed is a skilled classification and some of the wage rates for skilled classifications in the wage determination are lower than the rates for laborer classifications, then the contracting agency should use those existing skilled classification rates that are higher than the laborer rates to determine the

proposed rate. And if the classification which is being conformed is a laborer classification, the proposed wage rate should generally use the existing common laborer wage rate as a benchmark.

Conclusion

The WHD Administrator has historically maintained broad discretion under the regulations to make determinations regarding proposed wage rates for additional classifications that are conformed to existing wage determinations. This broad discretion has been confirmed by the ARB and its predecessors, as illustrated by the decisions cited in this Memorandum, among others. In exercising that discretion, WHD ensures that wage rates (including fringe benefits) for the classification to be conformed bear a reasonable relationship to the range of rates for the classifications in the wage determination in the same category (skilled classifications, power equipment operators, laborers, and truck drivers), and not automatically to the lowest rate in the applicable category. Consistent with the governing regulations, contracting agencies should ensure that they request wage rates (including fringe benefits) for additional classifications in accordance with the principles set forth in this Memorandum. By following the guidance in this AAM, contracting agencies and contractors will benefit by receiving approvals from WHD that ensure consistency in conformed wage rates and increase efficiencies in government.

In conjunction with the guidance provided in this AAM, WHD has posted on www.dol.gov/whd/govcontracts/dbra.htm a series of frequently asked questions that include examples which will provide additional guidance regarding the reasonable relationship requirement in the conformance process. WHD also is updating its Prevailing Wage Resource Book and will provide compliance assistance on DBRA conformances at future Prevailing Wage Conferences. In addition, WHD's Branch of Construction Wage Determinations is available to assist with any questions.

EMPLOYEE RIGHTS UNDER THE DAVIS-BACON ACT

FOR LABORERS AND MECHANICS EMPLOYED ON FEDERAL OR FEDERALLY ASSISTED CONSTRUCTION PROJECTS

THE UNITED STATES DEPARTMENT OF LABOR WAGE AND HOUR DIVISION

PREVAILING WAGES

You must be paid not less than the wage rate listed in the Davis-Bacon Wage Decision posted with this Notice for the work you perform.

OVERTIME

You must be paid not less than one and one-half times your basic rate of pay for all hours worked over 40 in a work week. There are few exceptions.

ENFORCEMENT

Contract payments can be withheld to ensure workers receive wages and overtime pay due, and liquidated damages may apply if overtime pay requirements are not met. Davis-Bacon contract clauses allow contract termination and debarment of contractors from future federal contracts for up to three years. A contractor who falsifies certified payroll records or induces wage kickbacks may be subject to civil or criminal prosecution, fines and/or imprisonment.

APPRENTICES

Apprentice rates apply only to apprentices properly registered under approved Federal or State apprenticeship programs.

PROPER PAY

If you do not receive proper pay, or require further information on the applicable wages, contact the Contracting Officer listed below:



Federal Labor Standards Compliance
City of Saint Paul
651-266-8900
www.stpaul.gov/federallaborstandards

or contact the U.S. Department of Labor's Wage and Hour Division.



For additional information:

1-866-4-USWAGE

(1-866-487-9243) TTY: 1-877-889-5627



WWW.WAGEHOUR.DOL.GOV

DERECHOS DEL EMPLEADO BAJO LA LEY DAVIS-BACON

PARA OBREROS Y MECÁNICOS EMPLEADOS EN PROYECTOS DE CONSTRUCCIÓN FEDERAL O CON ASISTENCIA FEDERAL

LA SECCIÓN DE HORAS Y SUELDOS DEL DEPARTAMENTO DE TRABAJO DE EEUU

SALARIOS PREVALECIENTES

No se le puede pagar menos de la tasa de pago indicada en la Decisión de Salarios Davis-Bacon fijada con este Aviso para el trabajo que Ud. desempeña.

SOBRETIEMPO

Se le ha de pagar no menos de tiempo y medio de su tasa básica de pago por todas las horas trabajadas en exceso de 40 en una semana laboral. Existen pocas excepciones.

CUMPLIMIENTO

Se pueden retener pagos por contratos para asegurarse que los obreros reciban los salarios y el pago de sobretiempo debidos, y se podría aplicar daños y perjuicios si no se cumple con las exigencias del pago de sobretiempo. Las cláusulas contractuales de Davis-Bacon permiten la terminación y exclusión de contratistas para efectuar futuros contratos federales hasta tres años. El contratista que falsifique los registros certificados de las nóminas de pago o induzca devoluciones de salarios puede ser sujeto a procesamiento civil o criminal, multas y/o encarcelamiento.

APRENDICES

Las tasas de aprendices sólo se aplican a aprendices correctamente inscritos bajo programas federales o estatales aprobados.

PAGO APROPIADO

Si Ud. no recibe el pago apropiado, o precisa de información adicional sobre los salarios aplicables, póngase en contacto con el Contratista Oficial que aparece abajo:



Las Normas Laborales Federales
La Ciudad de Saint Paul
651-266-8900
www.stpaul.gov/federallaborstandards

o póngase en contacto con la Sección de Horas y Sueldos del Departamento de Trabajo de EEUU.



Para obtener información adicional:

1-866-4-USWAGE

(1-866-487-9243) TTY: 1-877-889-5627



WWW.WAGEHOUR.DOL.GOV

THE FOLLOWING WAGE DECISION(S) SHALL BE USED FOR BIDDING OF THE PROJECT. WAGE RATES ARE SUBJECT TO CHANGE.

WAGE DECISION(S) MUST BE UPDATED UP TO CONTRACT SIGNING WITH DEVOLPER.

WAGE DECISION(S) IN EFFECT ON CONTRACT SIGNING, WILL BE LOCKED IN FOR PROJECT DURATION, PROVIDED CONSTRUCTION BEGINS WITHIN 90 DAYS OF CONTRACT SIGNING.

IF CONSTRUCTION BEGINS AFTER 90 DAYS OF CONTRACT SIGNING, WAGE DECISION(S) WILL BE UPDATED UP TO CONSTRUCTION START DATE.

THIS WAGE DECISION MAY OR MAY NOT BE LOCKED INTO THE CONTRACT.