

## VDH Drinking Water Funding Program Guidance Package #11

### **Davis-Bacon Act Compliance (Wage Determination and Payroll Review)**

All Virginia Drinking Water State Revolving Fund projects must comply with the Davis-Bacon Act (DBA). Federal minimum wage laws are applicable to all construction contracts which are part of the project in excess of \$2,000. This applies to all prime contractors and sub-contractors. The Davis-Bacon Act stipulates that all laborers and mechanics employed by the contractor or subcontractors on federally assisted projects shall be paid wages at rates not less than those prevailing on similar construction in the area as determined by the Secretary of Labor. The Department of Labor website can be accessed at <http://www.dol.gov/>. The wage determinations can be accessed at <https://sam.gov/content/wage-determinations>. The Department of Labor website provides details on other rules and regulations applicable to projects utilizing federal funding as well. This guidance attempts to explain the requirements but in no way supersedes those requirements.

#### **Funding Recipient Responsibilities**

The funding recipient must monitor all aspects of the project but in the case of Davis-Bacon Act, the funding recipient has specific responsibilities:

1. Include the latest VDH Drinking Water State Revolving Fund contract inserts in the contract documents.
2. Determine which wage determination or determinations are needed for the type of construction and geographic area and include with the contract inserts.
3. Address the requirements of the Davis-Bacon Act and payroll review at the preconstruction conference.
4. Assign funding recipient personnel or contracted personnel to determine what subcontractors are being used on the job and collect weekly payrolls from the contractor for his laborers and mechanics and those of his subcontractors. Examine weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage requirements.
5. The funding recipient or agent shall periodically (at least quarterly):
  - a. Verify that contractors and subcontractors include covered employees in fringe benefit plans as provided for in the Department of Labor Wage determinations.
  - b. Review contractors and subcontractors use of apprentices and trainees to verify registration in Department of Labor approved programs, and those contractors and subcontractors are not using disproportionate numbers of trainees and apprentices.

6. Ensure all EEO, OSHA, Davis-Bacon, Wage Determinations, and any other required postings are displayed on each work site.

The VDH Financial and Construction Assistance Program or EPA may monitor the performance of the funding recipient in its enforcement and compliance of the minimum wage rules and regulations. Payrolls and basic records shall be maintained by the contractor and each subcontractor for a period covering three years from the date of completion of the contract for all laborers, mechanics, apprentices, trainees, watchmen, helpers, and guards working at the site of the work. The funding recipient shall also maintain their records of payrolls, payroll reviews, on-site subcontractors, and compliance actions for at least three years after completion of the work.

### **Preconstruction Conference**

The funding recipient should attempt to reduce the possibilities of labor standards violations by taking preventative measures to minimize misunderstanding of what is required. The funding recipient shall hold a Preconstruction Conference. One purpose of the Preconstruction Conference is to apprise the contractor and all available subcontractors of their responsibilities and obligations concerning compliance with the minimum wage laws.

### **Wage Determination(s)**

The funding recipient is responsible for obtaining a wage determination or determinations for the proper construction category and geographic area from the Department of Labor (DOL) (see Wage Determinations online at <https://sam.gov/content/wage-determinations>) and incorporating the appropriate wage determination into the construction specifications. The Wage Determinations website allows you to select your state and county and then provides a list of wage determinations by construction category. Some contracts will include multiple types of construction such as "Heavy (water and sewer lines)" and "Building". DOL defines Building as construction, rehabilitation, and repair of sheltered enclosure with walk-in access for the purpose of housing persons, machinery, equipment, or supplies. Water and Sewer is a subsection of heavy construction that relates only to laying or repairing lines. In the case of a force main and pump station contract both a "Building Construction" and a "Heavy Construction" wage determination must be included in the specifications. The contractor must either separate payroll hours out by construction category and pay the minimums required for each category or pay the highest applicable rate between the two for all work done.

In the special case that a project extends across the geographic boundaries of two or more wage determinations, a wage determination for each separate area in which work is done must be included in the specifications. Again, as in the case above, the contractor must either pay the higher rate or separate work hours out according to the geographic district in which the work is done.

Prior to publishing the Invitation to Bid, the funding recipient shall download the proper wage determination(s) for their city or county and construction category. The DOL periodically amends wage determinations. **Ten days prior to opening bids, the funding recipient must check the DOL website to ensure their wage determination has not been amended.** If it has been amended, the recipient must issue a specification addendum to include the latest wage determination in the specifications. As long as bids are opened within the ten-day period, the wage determinations will remain in effect for the life of the contract.

### **Payroll Review**

The funding recipients are required to monitor contractor compliance. Once construction begins, the funding recipient must enforce payment of pay scales. The funding recipient will be responsible for the weekly review of payrolls and a determination that all contractors and subcontractors did submit payrolls as required. Special attention should be paid to claimed apprentices and trainees, deductions, work hours, and pay rates according to job classifications and re-determined fringe benefit rates. *The payrolls should be examined within seven days of receipt in order to resolve problems promptly and undertake any corrective actions before they become serious and while workmen are still available.*

**Payroll Submittals:** Each contractor and subcontractor shall furnish to the funding recipient each week a copy of their weekly payrolls for the preceding work week or partial work week. The payroll submittal shall set out accurately and completely all of the following information for each employee: their name, his or her correct classification; hourly rates paid as wages including fringe benefits or a cash equivalent thereof; daily and weekly number of hours worked; deductions made; and actual wages paid. All mechanics and laborers employed upon the site of the work will be paid unconditionally and not less than once a week.

The contractor and funding recipient are responsible for determining which subcontractors worked “on site” during the payroll period. It is recommended that the funding recipient require the contractor to keep a log on all subcontractors on site each week and submit that log to the funding recipient with their payroll submittals (Attachment #11-2).

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

- 1) that the payroll for the payroll period contains the information noted above and that such information is true and complete,
- 2) that such laborer or mechanic employed on the contract during the payroll period has been paid the full weekly wage 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 regulation, and

3) that each laborer or mechanic has been paid not less than the applicable wage rate and fringe benefits or cash equivalent for the classification of work performed, as specified in the applicable wage determination.

Attachment #9 of the DWSRF Contract Inserts is a suggested certification DOL Form (WH347). The form also includes a sample payroll form. These forms can be downloaded from the DOLs Withholding Divisions website as well. Other forms may be used that contain all of the required information.

**Deductions:** The weekly payment shall be computed at wage rates not less than those contained in the wage determination included in the contract specifications regardless of any contractual relationship alleged to exist between the contractor or its subcontractors and such laborers and mechanics. No deduction or rebates are allowed except those included in the Copeland Act. The DOL website addresses the types of deductions such as garnishments and dues which may be legally deducted. All deductions will be shown on the payroll form with adequate description of each deduction.

**Fringe Benefits:** Whenever the minimum 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 classification or pay another bona fide fringe benefit or an hourly cash equivalent thereof. If the contractor does not make payment 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, provide 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 sufficient assets to meet obligation under the plan or program.

Contributions made or cost reasonably anticipated for bona fide fringe benefits under the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions above. Regular contributions made or costs incurred for more than a weekly period (but not less 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.

If a contractor pays fringe benefits to approved plans, funds, or programs in lieu of cash they shall continue to show on the face of the payroll the basic hourly rate and overtime rate paid to their employees. Such a contractor shall indicate on the payroll form what they are paying to approved plans, funds, or programs for each craft and indicate the fringe benefit amounts are not less than were determined in the applicable wage decisions.

Contractors who offer no actual fringe benefits shall pay to the employee and insert in the straight time hourly rate column of the payroll, an amount not less than the predetermined rate for each classification plus the amount of fringe benefits determined for each classification in the applicable wage decision. When overtime is paid, it is not necessary to apply the overtime

multiplier to cash paid in lieu of fringes. The rate shall be the normal overtime rate plus the amount of fringe benefits determined for the employee's wage classification.

### **Job Classification and Related Issues**

Laborers and mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the actual time worked therein, provided, that the employee's payroll records accurately set forth the time spent in each classification in which work is performed. This includes work in multiple categories on the same Wage Determination or work in classifications on two more Wage Determinations applicable to the same contract.

**Any class of laborers or mechanics employed under the contract, which is not listed in the wage determination, shall be classified in conformance with the wage decision.** Additional classifications shall be requested from the Department of Labor as specified in 29 CFR 5.5 or as amended. The Department of Labor will review additional classifications, and associated wage rates and fringe benefits, 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.

The Secretary, Department of Labor, has sole authority to approve or disapprove additional wage classifications. Upon issuance of an additional classification, the new wage rate including fringe benefits where appropriate shall be paid to all workers performing the work in the additional classification from the first day on which work is performed in the classification.

### **Enforcement and Corrective Actions**

The contractor or subcontractor shall make the records required available for inspection, copying, or transcription by authorized representatives of the owner, VDH, EPA, or the department of Labor and shall permit such representatives to interview employees during working hours on the job. Failure to submit the required records upon request or to make such records available may be grounds for debarment action.

The funding recipient should initiate an investigation when apparent violations are discovered. These would include valid complaints from an employee or other knowledgeable party, habitual contract violations which indicate carelessness on the part of the contractor, discrepancies in time or payroll records, and conditions which evidence apparent falsifications. If these matters cannot be resolved through informed actions, then VDH and DOL would be notified.

If violations resulted in underpayment of wages, actions shall be taken to ensure proper restitution. The contractor should be informed in writing of required wage adjustments and the

number of payments to be made in back wages to affected employees. *The contractor shall provide evidence of such restitution by submitting a supplemental payroll containing amount paid and copies of both sides of cancelled checks issued to the affected employees.* Should the contractor fail to make full restitution and correct violations within a reasonable period of time, funds should be withheld in amounts necessary to ensure proper restitution.

The governing body may withhold from the contractor under this contract 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 and subcontractor, the full number of wages required by the contract.

A breach of these contract clauses or those contract clauses continued in 29 CFR 5.5 may be grounds for termination of the contract. Falsification of a payroll certification 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.

The wage determination(s) shall be posted on the work site and monitored to assure that they remain posted throughout the project.

**RECORD OF EMPLOYEE INTERVIEW**

GRANTEE/CONTRACT: #					
NAME OF PROJECT:					
CONTRACTOR <input type="checkbox"/> OR SUBCONTRACTOR <input type="checkbox"/>					
1. NAME OF EMPLOYEE:					
2. EMPLOYEE'S PERMANENT HOME ADDRESS:				LOCATED IN PROJECT AREA?	
				YES <input type="checkbox"/>	NO <input type="checkbox"/>
3. LAST DATE WORKED THIS PROJECT:			NUMBER OF HOURS WORKED THAT DATE:		
4. HOURLY PAY RATE: \$					
5. WHAT IS YOUR JOB CLASSIFICATION:					
6. WHAT ARE YOUR DUTIES:					
7. TOOLS OR EQUIPMENT USED:					
8. PAID AT LEAST TIME AND HALF FOR ALL HOURS WORKED OVERTIME				YES <input type="checkbox"/>	NO <input type="checkbox"/>
9. EVER THREATENED, INTIMIDATED OR COERCED INTO GIVING UP PART OF PAY?				YES <input type="checkbox"/>	NO <input type="checkbox"/>
10. DUTIES/JOB CLASSIFICATION OBSERVED BY INTERVIEWER:					
11. MINORITY STATUS	YES <input type="checkbox"/>	NO <input type="checkbox"/>	GENDER	MALE <input type="checkbox"/>	FEMALE <input type="checkbox"/>
12. DATE (month/year) HIRED:			OR	RECALLED (if applicable):	
_____ Signature of Payroll Interviewer			_____ Date of Interview		
<b>PAYROLL EXAMINATION</b>					
REMARKS:					
_____ Signature of Payroll Examiner			_____ Date		

OWNER'S CERTIFICATION OF COMPLIANCE WITH DAVIS-BACON PROVISIONS

DWSRF PROJECT NUMBER: \_\_\_\_\_

PROJECT: \_\_\_\_\_

LOCATION: \_\_\_\_\_ Virginia

OWNER / RECIPIENT: \_\_\_\_\_

<i>CONTRACTOR/SUBCONTRACTOR:</i>	<i>PAY DOCUMENTS FOR THE PERIOD OF:</i>

In accordance with the requirements of the Davis-Bacon Act, all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government are being paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of Chapter 31 of title 40, United States Code.

In addition, the owner/recipient must conduct adequate oversight for compliance with Davis-Bacon and related Acts through (a) the review of payrolls and associated certifications, (b) conducting of employee interviews, if necessary (include Attachment 11- 1), and (c) the posting of the Davis-Bacon Poster, all wage determinations, and additional classifications (as appropriate) on the work site.

***To the best of the Owner's knowledge, the pay documents for the above referenced period(s) and this project are in compliance with the Davis-Bacon requirements.***

Certification By:

\_\_\_\_\_  
*Owner/Recipient Signature*

\_\_\_\_\_  
*Printed Name/Title*

\_\_\_\_\_  
*Date*