

## DAVIS BACON LABOR STANDARDS – CDBG-DR for City of Columbia

- **Davis-Bacon Act (DBA).** The Davis-Bacon Act requires the payment of *prevailing wage rates* (which are determined by the U.S. Department of Labor-DOL) to all laborers and mechanics on Federal government and District of Columbia construction projects in excess of \$2,000.00. Construction includes alteration and/or repair, including painting and decorating, of public buildings or public works.
- **Prevailing wages or wage rates.** Prevailing wage rates are the wage rates listed on the wage decision for the project. The wage decision will list a minimum basic hourly rate of pay for each work classification. Some wage decisions include fringe benefits which are usually listed as an hourly fringe rate. If the wage decision includes a fringe benefit rate for a classification, you will need to add the fringe benefit rate to the basic hourly rate unless you provide bona fide fringe benefits for your employees.
- The **Contract Work Hours and Safety Standards Act (CWHSSA).** CWHSSA requires time and one-half pay for overtime (O/T) hours (over 40 in any workweek) worked on the covered project. The CWHSSA applies to both direct Federal contracts and to indirect Federally-assisted contracts except where the assistance is solely in the nature of a loan guarantee or insurance. CWHSSA violations carry a liquidated damages penalty (\$10/day per violation). Intentional violations of CWHSSA standards can be considered for Federal criminal prosecution.
  - CWHSSA does not apply to prime contracts of \$100,000 or less. In addition, some HUD projects are not covered by CWHSSA because some HUD programs only provide loan guarantees or insurance. CWHSSA also does not apply to construction or rehabilitation contracts that are not subject to Federal prevailing wage rates (e.g., Davis-Bacon wage rates, or HUD-determined rates for operation of public housing and Indian block grant -assisted housing). However, even though CWHSSA overtime pay is not required, Fair Labor Standards Act (FLSA) overtime pay is probably still applicable.
- Most HUD construction work is not covered by the DBA itself since HUD seldom contracts directly for construction services. Most often, if Davis-Bacon wage rates apply to a HUD project it is because of a labor provision contained in one of HUD's "Related Acts" such as the U. S. Housing Act of 1937, the National Housing Act, the Housing and Community Development Act of 1974, the National Affordable Housing Act of 1990, and the Native American Housing Assistance and Self-Determination Act of 1996. The Related Acts are often referred to as the Davis-Bacon and Related Acts or DBRA.
- The **Copeland Act (Anti-Kickback Act).** The Copeland Act makes it a Federal crime for anyone to require any laborer or mechanic (employed on a Federal or Federally assisted project) to kickback (i.e., give up or pay back) any part of their wages. The Copeland Act requires every employer (contractors and subcontractors) to submit weekly certified payroll reports (CPRs) and regulates permissible payroll deductions.
- The Fair Labor Standards Act (FLSA). The FLSA contains Federal minimum wage rates, overtime (O/T), and child labor requirements. These requirements generally apply to any labor performed. The DOL has the authority to administer and enforce FLSA. HUD will refer to the DOL any possible FLSA violations that are found on HUD projects.

## DAVIS-BACON APPLICABILITY

**All Laborers employed by primary or subcontractors on federally-funded construction work, in whole or in part, shall apply to the rehabilitation of residential property containing 8 or more units.**

Force account workers are exempt. Soft costs such as design, surveying, etc. do not trigger Davis-Bacon. Davis-Bacon applies to the units and not the building; therefore if a property contains 8 or more units, then Davis Bacon is applicable. Volunteers who are not compensated and do work voluntarily are exempt.

## CONSTRUCTION CONTRACT PROVISIONS

- Each contract subject to Davis-Bacon labor standards requirements must contain labor standards clauses and a Davis-Bacon wage decision. These documents are normally bound into the contract specifications.
- The labor standards clauses. The labor standards clauses describe the responsibilities of the contractor concerning Davis-Bacon wages and obligate the contractor to comply with the labor requirements. The labor standards clauses also provide for remedies in the event of violations, including withholding from payments due to the contractor to ensure the payment of wages or liquidated damages which may be found due. These contract clauses enable the contract administrator to enforce the Federal labor standards applicable to the project.

## DAVIS-BACON WAGE DECISIONS

- The Davis-Bacon wage decision (or wage determination) is a listing of various construction work classifications, such as Carpenter, Electrician, Plumber and Laborer, and the minimum wage rates (and fringe benefits, where prevailing) that people performing work in those classifications must be paid.
- Davis-Bacon wage decisions are established by the DOL for various types of construction (e.g., residential, heavy, highway) and apply to specific geographic areas, usually a county or group of counties. Wage decisions are modified from time to time to keep them current. In most cases, when the contract is awarded or when construction begins, the wage decision is “locked-in” and no future modifications are applicable to the contract or project involved. Wage decisions are modified from time to time to keep them current. In most cases, when the contract is awarded or when construction begins, the wage decision is “locked-in” and no future modifications are applicable to the contract or project involved. These “prevailing wages” are determined by construction area per DOL and are the required amount, at a MINIMUM, to be paid for work on that construction job.

Current Davis-Bacon wage decisions can be accessed on-line at no cost at: <http://www.wdol.gov>

- The **Primary Contractor or Prime** is responsible for ensuring the work is completed to the required wage determination; the prevailing wage rates; that the wage determination, along

with Notice to All Employees form (WH-1321) <https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/fedprojc.pdf> ), is posted within a well-seen and conspicuous place on or near the job-site where the workers for that job can see it. The Prime must be an eligible prime contractor and free from the GSA Debarment List. The Contract Administrator will review for potential debarment online at <https://www.sam.gov/SAM/> . The **Contract Administrator** for any eligibly deemed Davis-Bacon work has been designated as the Construction Coordinator with Landmark Consultants, LLC. Their responsibilities will include: Ensuring submission of certified payrolls; that onsite employee interviews are conducted using the form HUD-11; review and/or spot check payrolls and all related records; and ensure correction of underpayments to employees on the job.

- **Additional Wage Rates and Classifications** can be requested by the Prime to the Davis-Bacon Contract Administrator. This information will be supplied to the City of Columbia and in turn to HUD with DOL making the final ruling on the addition to the wage decision.

## CERTIFIED PAYROLL REPORTS

- A weekly certified payroll report (CPR) beginning with the first week that a company works on the project and for every week afterward until your firm has completed its work is required for submission to the Contract Administrator. Number the payroll reports beginning with #1 and to clearly mark your last payroll for the project “Final.”
- Payroll formats. The easiest form to use is DOL’s WH-347, Payroll. A sample copy of the WH-347 is included in the link below.
- Signature. All signatures must be in actual original ink signature to be deemed official payroll record.
- Payroll certifications. The weekly payrolls are called certified because each payroll is signed and contains language certifying that the information is true and correct. The payroll certification language is on the reverse side of the WH-347. If you are using another type of payroll format you may attach the certification from the back of the WH347, or any other format which contains the same certification language on the WH-347 (reverse).
- “No work” payroll. “No work” payrolls may be submitted whenever there is a temporary break in your work on the project, for example, if your firm is not needed on the project right now but you will be returning to the job in a couple of weeks. However, if you know that your firm will not be working on the project for an extended period of time, you may wish to send a short note to the contract administrator to let them know about the break in work and to give an approximate date when your firm will return to the project. If you number payrolls consecutively or if you send a note, you do not need to send “no work” payrolls.
- You are not required to use Payroll form WH-347. You are welcome to use any other type of payroll, such as computerized formats, as long as it contains all of the information that is required on the WH-347.
- DOL’s website has Payroll Instructions and the Payroll form WH-347 in a “fillable” PDF format at this address: [www.dol.gov/whd/forms/wh347.pdf](http://www.dol.gov/whd/forms/wh347.pdf)
- If the contractor numbers payroll reports consecutively, you do not need to submit “no work” payrolls.

**Payroll review and submission.** The prime contractor should review each subcontractor's payroll reports for compliance prior to submitting the reports to the contract administrator. The prime contractor is responsible for the full compliance of all subcontractors on the contract and will be held accountable for any wage restitution that may be found due to any laborer or mechanic that is underpaid and for any liquidated damages that may be assessed for overtime violations. All of the payroll reports for any project must be submitted to the contract administrator through the prime contractor.

**Payroll inspection.** In addition to submitting payrolls to the contract administrator, every contractor (including subcontractors) must make their own copy of the payrolls and other basic records available for review or copying to any authorized representative from HUD or from DOL.

**Overtime.** Overtime hours are defined as all hours worked on the contract *in excess of 40 hours in any work week*. Overtime hours must be paid at no less than one and one-half times the regular rate of basic pay plus the straight-time rate of any required fringe benefits.

**Deductions.** A contractor may make payroll deductions as permitted by DOL Regulations 29 CFR Part 3. These regulations prohibit the employer from requiring employees to "kick-back" (i.e., give up) any of their earnings. Allowable deductions which do not require prior DOL permission include employee obligations for income taxes, Social Security payments, insurance premiums, retirement, savings accounts, and any other legally-permissible deduction authorized by the employee. Deductions may also be made for payments on judgments and other financial obligations legally imposed against the employee.

**Proper designation of trade.** As the Contractor, you must select a work classification on the wage decision for each worker based on the actual type of work he/she performed on that job and you must pay each worker no less than the wage rate on the wage decision for that classification regardless of their level of skill. In other words, if someone is performing carpentry work on the project, they must be paid no less than the wage rate on the wage decision for Carpenters even if they aren't considered by you to be fully trained as a Carpenter. Remember, the only people who can be paid less than the rate for their craft are apprentices and trainees registered in approved programs.

**Split-classification.** If you have employees that perform work in more than one trade during a work week, you can pay the wage rates specified for each classification in which work was performed *only if* you maintain accurate time records showing the amount of time spent in each classification of work. If you do not maintain accurate time records, you must pay these employees the highest wage rate of all of the classifications of work performed.

## **COMPLIANCE REVIEWS**

The contract administrator or other inspector may visit the project site and interview some of the workers concerning their employment on the project. In addition, the contract administrator will review payrolls and related submissions, comparing the interview information to the payrolls, to ensure that the labor standards requirements have been met. The Prime will be notified by the contract administrator if these reviews find any discrepancies or errors. Instructions will be given about what steps must be taken to correct any problems.

**On-site Employee Interviews.** Every employer (contractor, subcontractor, etc.) must make their employees available for interview at the job site with the contract administrator or other agency representative, or HUD or DOL representative. The interviews are confidential and the employee will be asked about the kind of work they perform and their rate of pay. Every effort will be made to ensure that these interviews cause as little disruption as possible to the on-going work. The interviewer will record the interview information, usually on a form HUD-11, Record of Employee Interview, and forward the interviews to the contract administrator.

**Project payroll reviews.** The contract administrator will compare the information on the interview forms to the corresponding payrolls to ensure that the workers are properly listed on the payrolls for the days and hours worked on the job site, work classification and rate of pay. The contract administrator will also review the payroll submissions to make certain that the payrolls are complete and signed; that employees are paid no less than the wage rate for the work classification shown; apprentice and trainee certifications are submitted (where needed); employee or other authorizations for other deductions are submitted (where needed); etc.

### **RESTITUTION FOR UNDERPAYMENT OF WAGES**

Where underpayments of wages have occurred, the contractor will be required to pay wage restitution to the affected employees. Wage restitution must be paid promptly in the full amounts due, less permissible and authorized deductions. All wages paid to laborers and mechanics for work performed on the project, including wage restitution, must be reported on a certified payroll report.

**Notification to the Employer/Prime contractor.** The contract administrator will notify the employer and/or prime contractor in writing of any underpayments that are found during payroll or other reviews. The contract administrator will describe the underpayments and provide instructions for computing and documenting the restitution to be paid. The employer/ prime contractor is allowed 30 days to correct the underpayments. **Note that the prime contractor is responsible to the contract administrator for ensuring that restitution is paid.** If the employer is a subcontractor, the subcontractor will usually make the computations and restitution payments and furnish the required documentation through the prime contractor.

**Computing wage restitution.** Wage restitution is simply the difference between the wage rate paid to each affected employee and the wage rate required on the wage decision for all hours worked where underpayments occurred. The difference in the wage rates is called the adjustment rate. The adjustment rate times the number of hours involved equals the gross amount of restitution due. You may also compute wage restitution by calculating the total amount of Davis-Bacon wages earned and subtracting the total amount of wages paid. The difference is the amount of back wages due.

**Correction certified payrolls.** The employer will be required to report the restitution paid on a correction certified payroll. The correction payroll will reflect the period of time for which restitution is due (for example, Payrolls #1 through #6; or a beginning date and ending date). The correction payroll will list each employee to whom restitution is due and their work classification; the total number of work hours involved (daily hours are usually not applicable for wage restitution); the adjustment wage rate (the difference between the required wage rate and the wage rate paid); the gross amount of restitution due; deductions and the net amount actually paid. A properly signed Statement of Compliance must accompany the correction payroll.

## **DAVIS-BACON REPORTING TO HUD AND PAYROLL RETENTION**

The City of Columbia will provide a semi-annual report (HUD 4710) when Davis-Bacon eligible projects are underway. The reports cover the periods of October 1-March 31 and April 1-September 30. These reports are to be completed by the Contract Administrator and submitted by the City to the appropriate DOL Administrator.

**Payroll retention.** Every contractor (including every subcontractor) must keep a complete set of their own payrolls and other basic records such as employee addresses and full SSNs, time cards, tax records, evidence of fringe benefit payments, for a Davis-Bacon project *for at least 3 years after the project is completed*. The prime contractor must keep a complete set of all the payrolls for every contractor (including subcontractors) for at least 3 years after completion of the project.

For additional information to include links to required Davis-Bacon forms, please go to:

[https://www.hud.gov/program\\_offices/davis\\_bacon\\_and\\_labor\\_standards/olrform](https://www.hud.gov/program_offices/davis_bacon_and_labor_standards/olrform)