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**Fair Labor  
Standards  
and  
Davis Bacon**

**What are “Fair Labor Standards” and “Davis Bacon Wage Rates”?**

The Davis-Bacon Act is a federal law which requires that workers receive no less than the prevailing wages being paid for similar work in the locality. Prevailing wages are computed by the Department of Labor (DOL) and are issued in the form of a Federal Wage Decision. This decision includes a Wage Rate Determination for each work classification listed, by construction type for each county where work is performed. Each contractor and subcontractor you hire must sign a contract which includes the Federal Wage Decision listing a Wage Determination for its employees by worker classification. The law further requires that employees must be paid at least once a week and that all payments be in full with only those deductions permitted by the Secretary of Labor.

The law is triggered in cases where a construction project, funded in whole or in part with federal funds, will cost more than \$2,000, or in the case of a housing project, which involves more than seven units. In these cases, you are required to secure a Davis-Bacon wage rate determination specific to your grant.

**Labor Standards Administration**

You should be aware of the major labor standards requirements for VCDP projects. There are three principal laws that govern the labor standards as discussed below:

**1) Davis-Bacon Act - principal requirements**

- a) grantees must include a copy of the current prevailing wage rate determination in each Request for Bids (RFB);
- b) grantees may only award contracts to eligible contractors and subcontractors which have accepted the wage rate determination and signed a certification to pay wages on that basis and comply with other labor standards;
- c) contractors must pay the wage rate determined by the Secretary of Labor to be the prevailing rate in that labor market;
- d) contractors must pay wages at least once a week; and
- e) grantees are required to report all suspected, reported or confirmed violations of over \$100 and must require the contractor to prepare a supplemental payroll and make appropriate restitution to affected employees.

**Davis Bacon Act Triggers**

**Three Principal Laws Governing Labor Standards**

**Davis Bacon**

**The Law:**

*The information provided in this chapter is governed by a number of laws including the Davis-Bacon Act, Fair Labor Standards Act, the Contract Work and Hours Safety Standards Act, the Copeland Anti-Kick Back Act, and Equal Employment Opportunity Executive Orders. Davis-Bacon requires that workers receive no less than the prevailing wages being paid for similar work in their locality for a given category of work;*

*that the grantee must request a current prevailing wage rate decision; and that this applies to any project over \$2,000 or more than seven units of housing. Fair Labor Standards establishes standards for minimum wage, maximum hours, and child labor. Contract Work Hours and Safety Standards mandates standards and requirements for overtime; Copeland Anti-Kick Back requires that workers be paid at least once a week with only allowable deductions and that contractors maintain and submit payroll records; and EEO Executive Orders govern anti-discrimination practices.*

**Sanctions for Noncompliance:**

*Failure to comply with Davis-Bacon and EEO can lead to the termination of a contractor's right to proceed; prohibition from participation in future federal contracts and/or legal actions. Failure to comply with Fair Labor Standards, Contract Work and Hours and Safety Standards and Copeland Anti-Kickback can lead to fines, imprisonment, or both.*

Two special classes of employee may be employed on projects and may be compensated less than the Davis-Bacon prevailing wages. It is the contractor's responsibility to provide the documentation necessary to permit you to determine that there is compliance with the Davis-Bacon wage rate determination as stated under the listed classes:

- **Apprentices** - provided they are individually registered in a bona fide apprenticeship program in which the contractor participates, and which is approved by the DOL, and also satisfy other conditions as specified in the labor standards contract provisions;
- **Trainees** - provided they are in a DOL-approved training program and satisfy other conditions as specified in the labor standards contract provisions; and

**2) Copeland Anti-Kickback Act**

You must conduct confidential interviews with employees to assure compliance with the terms of this law, and the contractor is required to maintain payroll records, and to submit weekly-certified payrolls documenting compliance. This requirement applies to all federally-assisted contracts,

**Copeland  
Anti-Kickback**

except where the assistance is solely in the nature of a loan guarantee or insurance.

*Sample Employee Interview Form at the end of the Chapter.*

### 3) **Contract Work Hours and Safety Standards Act**

All construction contracts must comply with the following provisions of this law:

- a) contractors must compute the wages of each laborer and mechanic on the basis of a standard workweek of 40 hours;
- b) work in excess of 40 hours/week is permitted, provided that compensation for the amount in excess of the standard is calculated at a rate not less than 1-1/2 times the basic rate of pay; and
- c) contractors may not require any laborer or mechanic to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous to his/her health or safety as determined under construction, safety or health standards issued by the Department of Labor.

#### **How do you get started?**

First, identify the person or organization who will be responsible for the Fair Labor Standards throughout the grant period; make sure that person or organization has the capacity to administer these activities; get in touch with the Agency staff for a copy of the HUD guidebook entitled "Preconstruction Conferences" and to discuss your project.

Second, you must secure a Davis-Bacon wage rate decision to be included with your bid package. You can obtain the current wage rates from the following website: <http://www.wdol.gov/dba.aspx#0>. The rates are by county and type of structure – building/commercial or residential/housing up to four story apartment building. If you prefer, submit a completed LAB-1 to Grants Management staff to obtain the rates. Form LAB-1 appears on page 7-5.

In some cases, a particular category of worker may not be listed and will you will need to contact the Department of Labor. **The wage rate decision can take at least 45 days to be received so plan your schedule accordingly.**

**NOTE:** You must determine the debarment status of the contractors submitting bids to perform work on the project to be funded with the VCDP. You will need to review the prospective contractor status request, by checking the following website: <HTTP://epls.arnet.gov/epls/servlet/EPLSSearchMain/1>. For further details, refer to **Chapter 6 - Procurement and Contracts**.

**Contract Work Hours And Safety Standards**

**Getting Started**

**Securing Wage Rate Information**

**Determining Debarment Status**

**REQUEST FOR WAGE DETERMINATION**

**FORM LAB-1**

**Municipality:** \_\_\_\_\_ **Grant Agreement #** \_\_\_\_/\_\_\_\_/\_\_\_\_(\_\_\_\_)

**Address:** \_\_\_\_\_ **Date of Request:** \_\_\_\_/\_\_\_\_/\_\_\_\_

\_\_\_\_\_ **Phone:** \_\_\_\_\_

**Contact Person:** \_\_\_\_\_

**Project Location:**

**Municipality:** \_\_\_\_\_ **County:** \_\_\_\_\_

**Prior Wage Decision (if applicable):**

**Number:** \_\_\_\_\_ **Date Issued:** \_\_\_\_/\_\_\_\_/\_\_\_\_ **Expires:** \_\_\_\_/\_\_\_\_/\_\_\_\_

**Dollar Value of Construction (Estimated if necessary):** \$ \_\_\_\_\_

**Proposed Dates for Bids:**

**Advertisement of Bids:** \_\_\_\_/\_\_\_\_/\_\_\_\_ **Opening of Bids:** \_\_\_\_/\_\_\_\_/\_\_\_\_

**Project Description:** (Attach additional sheets as necessary)

Description of Proposed Work (Please be specific):

Projected Use of Project:

Miscellaneous Comments:

**For Agency Use:**

**Processed by:** \_\_\_\_\_ **Date:** \_\_\_\_/\_\_\_\_/\_\_\_\_

## How do you bid out and contract for the project?

When you receive the specific wage rate(s) for the construction project, you must insert them in all bid specifications along with notice to all potential bidders that the construction project is funded in whole or in part with federal funds, and that Davis-Bacon wage rates and other federal labor standards apply, such as the Copeland Anti-Kickback requirements and the Contract Work Hours and Safety Standards Act which applies to the payment of overtime. *The process for procurement of contracted services appears in Chapter 6 and **Agency Procedures, Chapter 10.*** Once you have chosen the contractor(s) you must hold a “Preconstruction Conference” to inform the contractor(s) about the various federal requirements on this project. The notice of Preconstruction Conference and the minutes from it will be reviewed for completeness at the monitoring visit. A suggested model for creating a handout for your Preconstruction Conference, patterned on one used by Lake Champlain Housing Development Corporation, appears beginning on page 7-7.

Wage rate determinations and labor standards requirements must be inserted in all contracts, and you must ensure that they are included by prime contractors in all subcontracts related to the construction project.

Construction contracts are governed by the procurement policies and contract requirements governing all VCDP-funded projects.

Please review Chapter 6 for the in-depth information regarding contracts and procurement and the **Agency Procedures, Chapter 10.**

A Sample Construction Contract appears at the end of Chapter 6, beginning on page 6-12.

**Bidding and Contracting –  
See Also Chapter  
6**

**Pre-Construction  
Conference**

## **SAMPLE PRECONSTRUCTION CONFERENCE HANDOUT**

4 Pages

### **LABOR STANDARDS**

A preconstruction conference is held to explain the Labor Standards Provisions to contractors. Minutes are to be recorded with the following information:

- Project name, location and description, wage decision number
- Name of contractor(s)
- Contract amount
- Date and place of conference
- Conference attendees
- Summary of items covered

This project is covered by Labor Standards Provisions because the rehabilitation work is funded with Federal dollars.

The **Davis-Bacon Act** covers contracts in excess of \$2,000 to which the United States federal government is party for the construction, alterations and/or repair, which involves the employment of laborers and/or mechanics. It contains provisions with respect to minimum wages, fringe benefits, and payments without deductions or rebates, withholding funds from contractors to ensure compliance with the wage provisions, and termination of the contract or debarment for failure to adhere to the required provisions.

The **Contract Work Hours and Safety Standards Act (CWHSSA)** applies to both direct Federal contracts and indirect Federally-assisted contracts. CWHSSA provides that work in excess of 40 hours per week will be compensated at rates not less than one and one-half times the basic rate of pay. The Act mandates that all contracts requiring the employment of laborers and mechanics (and watchmen and guards) in the performance of work in connection with such projects contain implementing provisions which will render the contractor and any subcontractor responsible for violation liable to the affected employees for their unpaid wages and to the United States for liquidated damages. The Act establishes an appeals procedure and makes intentional violations of the Act a Federal criminal misdemeanor.

The **Copeland Act (Anti-Kickback Act)** makes it a criminal offense for any person to induce, by any manner whatsoever, any person employed in the construction, prosecution, completion, or repair of any public building, public work, or building or work financed in whole or in part by loans or grants from the United States, to give up any part of the compensation to which he is entitled under his contract of employment. The Act also provides for the submission of weekly statements of compliance and weekly payrolls by all contractors in a format which meets the requirements of 29 CFR Section 5.5. The Copeland Act applies to both contractors and subcontractors. The Department of Labor Regulations, which implements the Act, indicates that the payroll statement requirements do not apply to any contract of \$2,000 or less.

## **Sample Preconstruction Conference Handout** (continued)

**Equal Employment Opportunity** - The contractor and subcontractors are required to conform to the EEO requirements of Executive Order 11246. The requirements include goals and timetables for minority and female participation. The EEO clause and requirements must be included in the contract and any subcontracts. Notice of contract award must be submitted to the Department of Labor.

**Federal Labor Standards Provisions** must also be included in all contracts, subcontracts, and any lower-tier subcontracts and in the bid documents. Inclusion by reference is unacceptable. It is the prime contractor's responsibility to ensure inclusion of wage rates and labor standards provisions in all subcontracts.

The prime contract and all subcontracts must contain certification of eligibility clauses. This certifies that the prime contractor and any subcontractors are eligible for award of a contract in connection with Federal assistance. Only eligible subcontractors who have certified eligibility in written contracts may be used. By entering into the contract, the contractor or subcontractor certifies that they are eligible for award. You can insure that a contractor is certified and registered with the Vermont Secretary of State by calling (820) 828-2363.

A **Wage Determination** outlining wages and fringe benefits to be paid on this project has been requested. This determination must be included in all contracts, subcontracts, bid documents and invitations for bids. The wage rates listed in the Determination are the minimum wage rates to be paid under such contracts by contractors and subcontractors on the job.

A copy of the Wage Determination shall be posted by the contractor at the site of work in a prominent place readily accessible to the workers. Publication WH-1321 Notice to Employees must also be posted.

If the Wage Determination does not contain some of the classifications for the construction activities to be undertaken, contact the Agency staff, request form HUD- 4230A, "Report of Additional Classification and wage rate, needed for work classifications not included within the scope of classifications listed in the DOL wage determination.

### **Weekly Payrolls**

Each contractor and subcontractor and any lower-tier subcontractors must submit (through the prime contractor) weekly payrolls for each work week from the time work is started on the project until it is completed. If no work is performed on the project during a given work week, weekly payrolls must state none. Weekly payrolls are numbered sequentially and the final payrolls marked "Final." Payrolls must contain each worker's address and social security number on the first payroll on which his/her name appears. On subsequent payrolls with hours for that employee, the address and social security number is not required. The employee's name must be reported exactly as reported on earlier payrolls. Changes of address must be included. The Statement of Compliance on the back page of the payroll sheet must be signed by the owner, officer, or designated employee of the contractor. Written authority must be furnished by the owner or officer of the contractor where a designated employee signs the payrolls. The Department recommends the standard US Department of Labor Wage and Hour Contractor Payroll Form (WH-347) as a model. This is available from Associated General Contractors in Montpelier and Grants Management staff.

**Sample Preconstruction Conference Handout** (continued)

If a subcontractor has no employees and performs the work himself, a Subcontractor's Certification must be completed and an initial payroll. The payroll must include the subcontractor's Federal ID number, state he is a subcontractor and self-employed, and what his contract price or hourly rate of pay is.

**Sample Preconstruction Conference Handout** (continued)

**Prime Contractor's Report Requirements**

What		When		Where	
Send This Many Copies	Of This	One Time	Periodic	Direct Questions to	Send to
	Prime Contractor's Certified Payroll Form (WH-347)	The first week after work on project begins	Every week until project is officially complete		
	Certified copies for all subcontractors		Every week until project is officially complete beginning the week after sub becomes active		
	Names, other than owner or officer, authorized to sign payrolls for contractor (if any)	The first week after work on the project begins			
	Names, other than owner or officer, authorized to sign payrolls for subcontractors ( if any)	The first week after work on the project begins (whether active or not)			
	Preconstruction Conference Minutes (copy signed by owner or officer)	Prior to the first week when work on the project begins			
	Weekly Report of Subcontractors on site	The first week after work on the project begins	When new sub-contractors begin work		
	Decision to hire new sub- contractor not yet approved for work on this contract	Immediately			
	Decision to hire classification of worker not on Wage Determination	Immediately			
	Need for a decision on cash value of fringe benefits	Immediately			
	Disputes from workers regarding wages, fringes, or classification	As soon as problem occurs, notify the Agency in writing			

The following forms, which appear in the HUD Handbook available from the Agency staff, should also be included:

- 1) WH-1321 Notice to All Employees Working on Federal or Federally Financed Construction Projects;
- 2) the Wage Rate determination received in answer to submission of LAB-1;
- 3) a blank and a completed sample form WH-347, Certified Payroll;
- 4) copies of How to Complete Payroll Forms and How to Report;
- 5) Form WH-348, Statement of Compliance; and
- 6) HUD-11(5-93) Record of Employee Interview.

## What are the requirements for a “Preconstruction Conference”?

After the contract award, but before any work is performed, you, your architect or engineer, and any technical advisors to the municipality should hold a preconstruction conference with the contractor to explain contract requirements.

The contractor(s) should be notified in writing of the time and place for the conference. The invitation may also require the attendance of subcontractors expected to undertake major portions of the work. Documentation required from the contractor at the time of the meeting should be identified. Contractors may be requested to produce a performance bond for the amount of the contract as well as labor and materials payment bond.

It is your responsibility to clearly present the Federal statutory compliance requirements, as well as the performance expectations of the grantee.

The contractor and subcontractors should be told how they will be monitored for compliance with all federal labor standards (on-site visits and interviews are among these). *Environmental considerations must also be discussed at the preconstruction conference.* If contractors are added during the course of the project, additional conferences are required.

It is recommended that the following topics, at a minimum, be discussed at the preconstruction conference:

- 1) review the technical aspects of the project;
- 2) identify the laws applicable to the contract and establish the documentation, reporting and performance which will constitute “compliance”;
- 3) explain the municipality’s obligations to monitor labor standards and the procedures which will be employed;
- 4) establish specific contractor-to-municipality reporting requirements;
- 5) accept bonds and securities for performance and payment of labor and materials;
- 6) review the contract provisions including all attachments regarding labor standards, civil rights, job safety standards, and environmental protection;
- 7) explain the objectives of Executive Order 11246 and require a copy of the contractor’s Affirmative Action Plan and the specific affirmative action strategy to be employed on this contract;
- 8) provide the contractor with forms, job-site posters and other materials;

## Requirements Of The Preconstruction Conference

- 9) return the contractor's bid bonds;
- 10) provide for a record of the pre-construction conference to be prepared and, subsequently, signed by the parties to the agreement; and
- 11) issue a Notice to Proceed to the Contractor. (See the following page)

**How do you ensure compliance once the contract is signed?**

The contractor will provide certified weekly reports on wages and fringe benefits paid and hours worked for each employee. The Grant Administrator must interview employees during the course of the project to verify this information and confirm that workers have been categorized appropriately and are receiving the correct wages and benefits. The U.S. Department of Labor Payroll Form WH347 appears at the end of the Chapter. You may use a form of your choosing as long as it includes all required information. Reports will be reviewed by the Grant Administrator and returned if they are wrong or incomplete for corrections. If mistakes in payments to workers are found, these must be corrected as well.

**Labor Standards  
Compliance  
During  
Construction**

**Are there any exceptions? Can we use volunteers?**

Section 955 of the ***Cranston Gonzalez National Affordable Housing Act*** amended section 110 of the ***Housing and Community Development Act*** (HCD) to exempt volunteers from Davis-Bacon requirements. This applies to any person serving as a volunteer that does not receive compensation for such services or is paid expenses, reasonable benefits, or a nominal fee for such services, and is not otherwise employed at any time in the construction work for the project. This amendment applies to any volunteer services provided before, on, or after the date of enactment (November 28, 1990), except that it may not be construed to require the repayment of any wages paid before the date of enactment for services provided before that date.

A Sample Construction Contract can be found on our website on the Forms and Sample Documents page.

**Using Volunteer  
Labor**