

# GRANTS MANAGEMENT GUIDE

## FAIR LABOR STANDARDS AND DAVIS BACON



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## **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 applies to any construction project that is funded in whole or in part with federal funds that will cost more than \$2,000, or in the case of a housing project, any project that involves more than seven units. In these cases, you must 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:

### **1. Davis-Bacon Act - principal requirements**

- a) Grantees must include a copy of the current prevailing wage rate determination in each Request for Bid (RFB) or request for proposal (RFP);
- b) grantees may only award contracts to eligible contractors and subcontractors who 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.

## **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 employees 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. The contractor is required to maintain payroll records and to submit weekly certified payrolls documenting compliance. This requirement applies to all federally-assisted contracts, except where the assistance is solely in the nature of a loan guarantee or insurance.

### 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>. The rates are by county and type of structure – building/commercial or residential/housing up to four story apartment building.

In some cases, a particular category of worker may not be listed. In this case you must notify Agency staff as soon as possible to discuss a solution. Otherwise, complete the form to [Request for Wage Determination and Response to Request](#) and return to Agency staff to submit to HUD.

**The wage rate decision can take 45 days or longer, so it's important to start the process as soon as possible, and 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 websites: [www.sam.gov](http://www.sam.gov) and the [State Debarment Site](#). For further details, refer to the Grants Management Guide Chapter on Procurement and Contracts.

## **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.

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.

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 the Chapter on Procurement and the Agency Procedures, Chapter 10.

## **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;
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 is a sample form that provides all the necessary information, and a link to that form is 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.

### **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.

## **Forms and Sample Documents**

The documents below found on our "[Forms and Sample Documents](#)" page of our Agency's website are available to assist you through Fair Labor Standards and Davis Bacon process:

- [Sample Preconstruction Conference](#)
- [Notice to Proceed](#)
- [Sample Construction Contract](#)
- [Sample Payroll Form WH-347](#)