**INFORMATIONAL GUIDE FOR DAVIS-BACON ACT (DBA) COMPLIANCE METHODS.**

**INTRODUCTION**

This informational guide covers Davis-Bacon Act (DBA) compliance methods. The guide is divided into three sections: laws, compliance requirements, and enforcement. This publication is intended as a general informational guide, does not replace or modify contract clauses or regulations.

**SECTION I: LAWS, REGULATIONS, AND RESPONSIBILITIES**

**The Davis-Bacon Act (DBA).** The Davis-Bacon Act requires the payment of prevailing wage rates determined by the U.S. Department of Labor to all laborers and mechanics on federal construction projects in excess of $2,000. Construction includes alteration and/or repair, including painting and decorating, of public buildings or public works.

**The Contract Work Hours and Safety Standards Act (CWHSSA).** CWHSSA requires time and one-half payment on the basic hourly rate of pay for overtime hours worked (over 40 in any workweek) on a 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). CWHSSA does not apply to contracts of $100,000 or less.

**The Copeland Anti-Kickback Act.** The Copeland Act makes it a crime for anyone to require any laborer or mechanic (employed on a Federal or Federally-assisted project) to kickback any part of their wages. This includes reduction of wages through payroll deduction other than those specifically permitted by the Copeland regulations. The Copeland Act also requires every employer to submit weekly certified payroll reports.

**The Fair Labor Standards Act (FLSA).** The FLSA contains Federal minimum wage rates and overtime requirements. These requirements generally apply to any labor performed and may be pre-empted by other Federal standards such as the DBA prevailing wage requirements and CWHSSA provisions.

**Davis-Bacon Act Regulations**. The U.S. Department of Labor has published rules and instructions concerning the DBA and other labor laws in the Code of Federal Regulations (CFR). These regulations can be found in Title [29 CFR](http://www.dol.gov/dol/allcfr/ESA/Title_29/toc.htm) Parts 1, 3, 4, 5, 6 and 7. These regulations are used as the basis for administering and enforcing the laws.

**Construction Contract Provisions**. Each contract subject to federal DBA labor standards requirements will contain labor standards clauses and a DBA wage determination.

**The Labor Standards Clauses**. The labor standards clauses describe the responsibilities of the contractor concerning DBA 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 and/or liquidated damages that may be found due. The contractors may be suspended/debarred for up to three years for DBA violations.

**Davis-Bacon Act Wage Determinations**. The DBA wage determination is a listing of various construction work classifications. Each determination lists the minimum hourly wage rates and fringe benefits that employees performing work in those classifications must be paid for hours worked on that contract.

**Contract Administrator Responsibility**. The contract administrator is responsible for the proper administration and enforcement of the Federal Labor Standards provisions on contracts covered by DBA requirements. The contract administrator’s duties include monitoring labor standards compliance by conducting interviews of construction workers at the job site and reviewing payroll reports, and taking any enforcement actions that may be required.

**Prime Contractor Responsibility**. The prime contractor is responsible for the full compliance with the labor standards provisions applicable to the project by all employers (subcontractors at any tier). The questions regarding subcontractors should always be channeled through the prime contractor.

**SECTION II: COMPLIANCE WITH THE DAVIS-BACON ACT**

The Davis-Bacon Act requires all laborers and mechanics working under the contract to be paid the minimum wages and fringe benefits for the work performed.

**Certified payroll reports.** The contractor shall submit a certified payroll each week during the contract period. A separate payroll shall be submitted by each subcontractor. Number the payroll reports beginning with #1 and clearly mark the last payroll for the project "Final”. “No work performed” certified payrolls may be submitted for any weeks during which no work on the contract/project was performed.

**Payroll Forms.** The contractors report may be submitted on Payroll Form (WH-347), but its use is not mandatory. An electronic version of Payroll Form can be accessed through the following internet link: <http://www.dol.gov/esa/whd/forms/wh347.pdf>. It is acceptable to use another type of payroll format, such as computerized payrolls, as long as it contains all of the information that is required on the WH-347.

**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 be signed using blue ink by the agent who pays or supervises the payment to the laborers or mechanics. The payroll certification language is on the reverse side of the WH-347.

**Payroll Submission and Review**. All payroll reports must be submitted to the contract administrator through the prime contractor no later than the seven (7) calendar days after the regular payment date of the payroll week covered. If the contractor or subcontractors fail to submit required certified payrolls, the contracting officer may, after written notice to the prime contract, suspend any further contract payments pending correction by the contractor/subcontractors. The contractor should review each subcontractor's payroll reports for compliance prior to submitting the certified payrolls to the contract administrator. The 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.

**Permissible Payroll Deduction.** The following payroll deductions maybe made without requesting approval:

1. Any deduction may in compliance with the requirements of federal, state or local law.
2. Sums previously paid to the employee paid to the employee as a bona fide prepayment of wages when prepayment is without discount or interest.
3. Amounts required by court process to be paid to another.
4. Any deduction constituting a contribution on behalf of the person employed to funds established by the employer (ej. medical and hospital care, pensions, annuities on retirement, death benefits).

Additional deductions maybe withheld if they are voluntarily authorized in advance and in writing by the individual employee(s).

**Payroll Retention**. Every contractor and subcontractor must keep a complete set of their own payrolls and other basic records for at least 3 years after the project is completed. The prime contractor must keep a complete set of the payrolls for every subcontractor for at least 3 years after completion of the project.

**Payroll Inspection**. In addition to submitting payrolls to the contract administrator, every contractor and subcontractor must make their own copy of the payrolls available for review or copying by any authorized representative from the contracting agency or from DOL.

**Davis Bacon Related Act (DBRA) Interpretation and Application**

**Labor and Mechanics – Definition.** Are those persons performing manual or physical labor, including the skilled trades and apprentices.

**Non Covered Job Classifications.** The following job classifications are not subject to DBRA prevailing wage requirements: project superintendent, project engineering, project foreman, watchman, water carrier, messenger and clerical workers.

**Working Foreman.**  A working foreman is one who devotes more than 20% of his/her time during a work week to mechanic or labor duties and who must paid the applicable rate for the hours worked.

**Apprentices and trainees.** To be paid at an apprentice or trainee rate they must be individually enrolled in a program approved by DOL’s Office of Apprenticeship Training, Employer and Labor Services (OATELS) or Employment Training Administration (ETA) or approved state program.

**Helpers.** The use of helpers is not recognized on a DBRA contract unless they are contained in the wage determination or a conformable rate is approved by the Department of Labor. The helper classification cannot be used if it does not appear on the wage determination.

**Company Owners.** Those individuals who own at least 20 percent of the company and who perform the work of a laborer or mechanicare notdue Davis-Bacon wage rates and do nothave to appear on project payrolls.

**Relatives.** There are noexceptions from coverage under DBRA on the basis of family relationships, or for relatives who are performing the work of laborers or mechanics. They must be paid the appropriate Davis-Bacon wage for the job classification of work performed and must be included on the payroll.

**Cleaning.** Cleaning performed during the construction is subject to the wage provisions. In absence of a specific wage rate for cleaning classification must be paid the predetermined wage rate for labors.

**Piecework** **payment.** Is permitted if the average hourly rate in each week meets or exceeds the DBA wage and fringe benefit minimum. The contractor may establish a straight time piece rate and an overtime piece rate. An accurate record of all hours worked must be maintained for piecework employees. A common error made by contractors using this pay method is failure to maintain such a record this leaves them in a weak position to adequately document that their company has met the minimum rates of pay required by the DBRA.

**SECTION III: ENFORCEMENT**

**Payroll Reviews**

**Compliance Payroll Reviews.** The compliance monitor will review payrolls and related submissions, to ensure that the labor standards requirements have been met. Payrolls should be dated upon receipt and dated and initialed upon review. The incomplete payroll shall be returned to the contractor. Payrolls computations shall be spot checked to determine accurate. The deductions shall be reviewed for any no permissible deductions. The contract administrator will notify the prime contractor if these reviews find any discrepancies or errors and inform the contractor of what steps must be taken to correct problems.

**Restitution** Where underpayments of wages and/or benefits has occurred, the contractor will be required to pay restitution to the affected employees. The compliance monitor notifies the prime contractor in writing to make such adjustments. Restitution must be paid promptly in the full amounts due, less permissible deductions. Should the restitution not be made within thirty (30) calendar days of notification, the compliance monitor upon written notice to the contractor may withheld the amounts necessary to ensure payment.

**On-Site Compliance Checks**.

**Posting the Wage Determination**. The contractor is responsible for posting a copy of the wage determination and a copy of the DBRA poster (WH- 1321) titled “Notice to All Employees Working on Federal or Federally Financed Construction Projects” at the job site in a place that is easily accessible to all of the construction workers employed at the project. Posters are available on the DOL homepage at: <http://www.dol.gov/esa/whd/regs/compliance/posters/fedprojc.pdf.> In addition, Equal Employment Opportunity (EEO) posters and notices are required to be displayed at the project site. The project inspector should assure that the wage determination and the other required materials are posted by the contractor at the site of work.

**Interview.** The compliance monitor will visit the project site and interview a number of the workers concerning their employment on the project. Every contractor and subcontractor must make their employees available during working hours for confidential interview at the job site with the contract administrator, other agency representative or HUD representative. Employees will be asked about the kind of work they perform, their rate of pay, hours of work, and fringe benefits provided. Every effort is made to ensure that these interviews cause as little disruption as possible to the on-going work.

**Interview Form.** Employee interview be recorded on the form HUD 11, Record of Employee Interview. An electronic version of Interview Form can be accessed through the following internet link: <http://www.hud.gov/offices/adm/hudclips/forms/files/11.doc>. They must also be sufficient to establish the degree of compliance and to indicate the nature and the extend of violations, if any. Interviews must be representative of all classifications of employees on the project.

**Interview Comparisons**. The compliance monitor 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, work classification and rate of pay. If the comparison indicates any discrepancies (for example, the employee does not appear on the payroll for the date of the interview or the classification listed on the payroll is different from the duties observed by the on-site interviewer), the contractor will be asked to explain the discrepancies, make any necessary restitution and submit a corrected payroll report.

**Labor Standard Reporting**

**Semi-Annual Enforcement Report.** Department of Labor requires agencies administering programs subject to DBRA and CWHSSA to furnish a Semi-Annual Labor Enforcement Report to the Administratorof the Wage and Hour Division. The Semi-Annual Report is recorded on the form HUD 4710 and can be accessed through the following internet link: <http://www.hud.gov/offices/adm/hudclips/forms/files/4710.doc>. The reports periods run on a fiscal years basis. The first report for each year covers October 1 through March 31, the second report cover April 1 through September 30. Our staff will send a reminder about preparing the report and will inform the date your report is due.

**Sanctions.** Violations of the DBRA may result in: suspensions of the projects payment, withholding of insurance endorsement until deposit of fund, contract termination, suspension or debarment of the contractor or subcontractor (29 CFR Part 5).

For further information or assistance, contact either of the following:

Eng. José A. Ortiz Castillo

Director

Technical & Environmental Bureau

Phone: (787) 759-9407 ext.

Fax: (787) 751-7532

Dulce R. Díaz Campos

Labor Standards Compliance Monitor

Technical & Environmental Bureau

Phone: (787) 759-9407 ext. 3288

Fax: (787) 751-7532

Carol Ferrer Graniela

Labor Standards Compliance Monitor

Technical & Environmental Bureau

Phone/ Fax: (787) 805-0566