

Not clear if this would apply  
to work prior to execution  
of PCA. We will need to  
request interpretation from Office  
of Counsel.

**DAVIS-BACON ACT GUIDEBOOK  
FOR NON-FEDERAL SPONSORS**

**PERFORMING WORK-IN-KIND UNDER CERTAIN  
PROJECT COOPERATION AGREEMENTS WITH  
THE U.S. ARMY CORPS OF ENGINEERS**

**U.S. Army Corps of Engineers  
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## **Introduction.**

This Guidebook was developed as part of USACE's commitment to promote labor standards compliance within the "work-in-kind" program. In particular, this Guide has been prepared to assist non-Federal sponsors undertaking Civil Works water resources projects for which reimbursement or credit toward the non-Federal share is contemplated. The Department of Labor (DOL) has determined that these projects, undertaken through Project Cooperation Agreements (PCAs) entered into by USACE with non-Federal sponsors, are subject to the Davis-Bacon Act (40 USC Sections 276a-a(7)). Accordingly, this Guide is designed to provide an outline of the overall labor standards compliance mission and the respective roles and responsibilities of UACE and non-Federal sponsors in that mission. The sections that follow, therefore, highlight the key objectives of the labor standards compliance mission.

## **Key Labor Standards Mission Objectives**

- 1. Apply Davis-Bacon requirements properly.** Make certain that labor standards, including Davis-Bacon prevailing wage rates, are applied where required. Ensure that any exemptions or exceptions are identified.
- 2. Through education and advice, support contractor compliance with labor standards.** Provide basic training and technical support to contractors to ensure that they understand their obligations under prevailing wage and reporting requirements.
- 3. Monitor contractor performance.** Perform reviews of certified payroll submissions and other information to help ensure contractor compliance with labor standards provisions and the payment of prevailing wages to workers.
- 4. Investigate probable violations and complaints of underpayment.** Thoroughly explore any evidence of violations, especially allegations of underpayment.

## **Non-Federal Sponsor Responsibilities for Davis-Bacon Labor Standards**

Non-Federal sponsors performing Non-federal work-in-kind pursuant to a PCA agree to administer and enforce Davis-Bacon requirements as a condition for receiving USACE program assistance. Non-Federal sponsors have the following responsibilities:

1. Designate appropriate staff before the start of construction to ensure compliance with all applicable labor standards requirements and to act for, and in liaison with, USACE. Provide the name(s) of the staff to the appropriate USACE District Labor Relations Advisor.
2. Ensure that all bid documents, contracts and subcontracts contain Federal labor standards provisions and the applicable Davis-Bacon wage decision.
3. Ensure that no contract is awarded to a contractor that is ineligible (e.g., debarred) for Federally assisted work.

4. Conduct on-site inspections including interviews with laborers and mechanics employed on the construction project. Ensure that the applicable Davis-Bacon wage decision and the Department of Labor's "Notice to Employees" are posted at the job site.

5. Review certified payroll reports and related documentation. Identify any discrepancies and/or violations. Ensure any needed corrections are made promptly.

6. Maintain full documentation of Federal labor standards administration and enforcement activities.

7. Refer potential criminal or complex investigations to USACE, in addition to Contract Work Hours and Safety Standards Act (CWHSSA) liquidated damages assessments for overtime violations and debarment recommendations.

8. Comply with all USACE requirements concerning special statutory, program and/or other labor standards requirements.

9. Prepare Federal labor standards enforcement reports as required in Department of Labor (DOL) regulations (29 CFR, Part 5, §5.7).

#### **Labor Relations Reference and Guidance Materials Available to Non-Federal Sponsors**

In addition to basic knowledge about labor standards administration and enforcement, Non-Federal sponsors need basic reference and guidance materials. Many of these materials are available on-line. Also, the USACE District Labor Relations Staff can assist Non-Federal sponsors in obtaining hard copies of any materials offered in the Labor Relations Library on the USACE Homepage.

**DOL Regulations:** 29 CFR; Parts 1, 3, 5, 6 & 7. These regulations contain policy guidance and instructions for all agencies, including local contracting agencies, in the administration and enforcement of Davis-Bacon wage and reporting requirements. These DOL regulations are available on-line at the DOL homepage at: [www.dol.gov/esa/public/regs/cfr/whdcfr.htm](http://www.dol.gov/esa/public/regs/cfr/whdcfr.htm).

**Federal Acquisition Regulation (FAR).** Part 22 of the FAR provides guidance with respect to the application of labor standards to federal acquisitions. Subpart 22.4 provides specific guidance with respect to labor standards for contracts involving construction. These sections of the FAR may be accessed through the FAR website at <http://www.arnet.gov/far/loadmain.html>.

**USACE Regulations:** Engineer Regulation 1180-1-8, Labor Relations. This publication is available on-line at <http://www.usace.army.mil/inet/usace-docs/eng-regs/er1180-1-8/toc.htm>.

**Contractor Industrial Relations (CIR) Information Letters.** This is a special directives series designed to provide current and thorough guidance on CIR issues including application of the Davis-Bacon Act as it relates to various USACE programs. Among the topics included therein DOL All Agency Memoranda and Rulings on issues such as "site of the work" and the use of

“semi-skilled helpers.” These letters may be obtained through local USACE District Labor Relations offices.

## **The Basic Elements – Labor Standards Administration and Enforcement**

### **Labor Standards Administration**

Involves the activities that take place primarily before construction begins. Administration sets the stage for the enforcement activities that occur during the construction phase.

1. Determine Davis-Bacon applicability. The first and sometimes most difficult step is determining whether and to what extent Davis-Bacon wage standards apply to a particular contract or project. In most cases, the determination as to the applicability of the Davis-Bacon Act will have been made as the proposed PCA is developed. In this regard, the USACE District Labor Advisor is a key member of the District’s PCA team and will generally be most familiar with DOL regulations and guidance relating to applicability.

2. Prepare the bid documents/contract. The contract for construction is the vehicle to ensure contractor compliance and Davis-Bacon wage enforcement. Assuming that a determination has been made that Davis-Bacon wage rates are applicable, the bid specifications and/or the contract for each project subject to Davis-Bacon wage rates must contain both a Davis-Bacon Act wage decision and its own labor standards clauses. These are usually bound into the contract specifications.

a. Davis-Bacon Wage Decisions. The Davis-Bacon wage decision is a listing of various construction work job classifications (such as Carpenter, Electrician, Plumber, Laborer, etc.) and the minimum wage rates (and fringe benefits, where prevailing) that people performing work in those classifications must be paid. Davis-Bacon wage decisions can generally be obtained from the USACE District Labor Relations Staff. In view of the requirements relating to the timeliness and effectiveness of these wage determinations, the Non-Federal sponsor must carefully monitor changes to the wage determinations from solicitation through contract award.

b. The labor standards clauses. The labor standards clauses obligate the contractor to comply with Davis-Bacon wage and reporting requirements and provide for remedies and sanctions should violations occur. USACE has standard forms that contain the labor standards clauses appropriate for projects undertaken under the PCA program.

3. Verify contractor eligibility. Once the Non-Federal sponsor has selected the contractor for contract award, the Non-Federal Sponsor must verify that the contractor is not ineligible (e.g., debarred) from participation in Federal programs. The Sponsor only needs to verify the eligibility of the prime contractor. The U.S. General Services Administration maintains a list of debarred contractors that can be accessed on-line at: <http://www.epls.arnet.gov/>. In addition, the proposed contractor is required to have filed a VETS-100 report if the firm has previously performed under Government contracts. Information regarding the prospective contractor’s filing status is available on-line at: <http://www.vets100.cudenver.edu/>. The proposed contractor must also have been determined to have complied with the EEO/Affirmative Action requirements of Executive Order 11246 which is enforced by the Department of Labor’s Office of Federal

Contract Compliance Programs (OFCCP). OFCCP's National Pre-Award Registry provides information concerning Federal Contractors that have been reviewed by the OFCCP. These Federal Contractors have been found to be "In Compliance" with the Equal Employment Opportunity (EEO) regulations that the OFCCP is mandated to enforce. This Registry may be searched on-line at: <http://www.dol-esa.gov/preaward.htm>.

4. Provide contractor training. The Non-Federal sponsor must ensure that the contractor understands its responsibilities for Davis-Bacon compliance: The prime or general contractor is responsible for the full compliance of all employers (the contractor, subcontractors and any lower-tier subcontractors) with the labor standards provisions applicable to the project.

### **Labor Standards Enforcement**

Involves the activities that take place during construction to ensure contractor compliance.

1. **Posting the wage decision.** The contractor is required to display on the job site a copy of the applicable Davis-Bacon wage decision and the form WH-1321, Notice to Employees. The purpose of this posting is to provide information to the construction laborers and mechanics working on the project about their entitlement to the prevailing wage rate for their trade and to inform them of who to contact (the contract administrator) if they have any questions or want to file a complaint.

2. **Conduct on-site interviews with laborers and mechanics.** The Sponsor's contract administrator or a designee (such as a construction inspector) must periodically conduct interviews with the construction workers on the job site. The purpose of the interviews is to capture observations of the work being performed and to get the workers' views on the hours they work, the type work they perform and the wages they receive. Information gathered during the interviews is recorded on Standard Form 1445, Labor Standards Interview. The Interviews are compared to the corresponding contractor and subcontractor certified payrolls to test and verify the accuracy of the payroll information.

3. **Review contractor and subcontractor certified payroll reports.** In addition to comparing SF 1445's to the certified payroll reports, the Non-Federal Sponsor's contract administrator will be responsible for reviewing the payroll reports to ensure that all laborers and mechanics are being paid no less than the wage rates contained on the applicable Davis-Bacon wage decision for the type of work they perform. The Sponsor's contract administrators should be particularly alert for indications of payroll falsification – misinformation on payrolls to conceal underpayments. Falsification on payrolls indicates an employer (contractor or subcontractor) is aware of their obligations, is knowingly underpaying their employees and is attempting to avoid detection of the violations.

a. Discrepancies and/or underpayments on the payrolls. Some underpayments and other errors can appear on the face of the payroll (i.e., do not involve falsification). In these cases, the contract administrator contacts the prime contractor and provides instructions as to what steps should be taken to correct the payroll and to pay any back wages that may be due to the affected workers.

b. Indications of falsification on payrolls. Information reported on payrolls that indicates falsification suggests much more serious violations in terms of the amount of back wages that may be due and the number of employees affected. Such cases most often warrant investigation which can include on-site interviews with the workers, mailing questionnaires to employees, taking written statements or complaints, and other methods to gather and assess the facts of the case.

**4. Investigate probable violations and complaints of underpayment.** The Sponsor's Contract administrators must investigate probable violations – particularly involving falsification of payrolls and complaints alleging underpayments. The USACE District Labor Advisor will be available for assistance in addressing the appropriate methods for resolving violations.

**5. Recommend debarment against repeat violators.** USACE emphasizes strict adherence to labor standards obligations and particular attention is devoted to contractors who repeat violations of Davis-Bacon labor standards. The first time an employer is found in violation, the employer is required to pay full restitution to all affected workers and to pay any CWHSSA liquidated damages (for overtime violations) which may be assessed. In addition, the employer must provide a written assurance of future compliance. If the employer promptly completes these corrective actions, USACE will not object if the local contracting agency does not recommend debarment against the employer unless there are extenuating circumstances that warrant debarment. If the employer is found in violation again, the local contracting agency must require full correction of any underpayments and payment of CWHSSA liquidated damages computed and a debarment recommendation made by the agency against the employer is expected.

**6. Prepare and submit enforcement reports.** In accordance with DOL regulations (29 CFR, Part 5, §5.7), the Sponsor's contract administrator must prepare enforcement reports on any case where an employer (contractor or subcontractor) has underpaid its employees by \$1,000 or more or where there is reason to believe the violations are aggravated or willful; and semi-annually concerning all Davis-Bacon labor standards administration and enforcement activities involving all Federal agencies and programs.

a. Employer-based enforcement reports. These enforcement reports are used for three general purposes. First, to report to the Secretary of Labor on Davis-Bacon enforcement actions successfully completed in the field by all Federal and local agencies. Secondly, we use an enforcement report to refer to the Wage and Hour Administrator investigative findings which are in dispute (e.g., where the employer contests findings of underpayment made against it and requests a hearing to appeal the findings). Third, we use an enforcement report to make recommendations for debarment and other sanctions and for recommendations concerning liquidated damages computed for CWHSSA overtime violations.

b. Semi-annual Enforcement Reports. All Federal agencies and Non-Federal sponsors administering programs covered by Davis-Bacon wage requirements must report to DOL on all covered contracts awarded, and on all enforcement actions taken, each six months. USACE will collect the reports from Non-Federal Sponsors and compiles a comprehensive report to DOL covering all USACE-funded and USACE-assisted Davis-Bacon construction activity. A copy of the

Semi-Annual Report form and instructions for Non-Federal sponsors are included in the Appendix (Exhibit I).

### **Key Labor Standards Compliance Considerations Under USACE-Non-Federal PCAs**

1. Non-Federal Sponsors do not have to obtain wage decisions from USACE.

USACE recognizes that Non-Federal sponsors may obtain Davis-Bacon Act wage decisions from any source available to them. For example, Non-Federal sponsors can subscribe directly to the Davis-Bacon wage decision database. Or the Sponsors can use a copy of the wage decision they already may have on file (**provided the copy is still current**). Non-Federal sponsors that wish to continue obtaining wage decisions from USACE can make the request by telephone, fax, mail or e-mail. USACE can send the applicable wage decision back to the Sponsors by any of these means also. In most cases, depending on the form of delivery requested by the Sponsor (e.g., e-mail), they should be able to obtain wage decisions from USACE within 24 hours.

2. Preconstruction Conferences for labor standards purposes are recommended.

USACE recognizes that there are many items that are typically addressed at a preconstruction conference such as discussing construction inspections, progress and contractor payment requirements, and other issues particular to the project. Further, it is recognized that many contractors have prior Davis-Bacon Act contract experience and have demonstrated successful performance. These contractors don't require the repetitive basic training such as provided in most preconstruction conference presentations. However, in view of the unique relationships established under the work-in-kind program, it is strongly recommended that particular attention be devoted to the labor standards obligations associated with the PCA.

3. A Non-Federal Sponsors should develop its own enforcement file system.

USACE believes that Non-Federal sponsors can best determine how to maintain their files provided that certain minimum requirements are met. The minimum requirements include compliance with DOL regulations that certified payrolls and basic records relating to the payrolls are preserved not less than three years after completion of the project and the resolution of any enforcement actions which may carry over after completion. In addition, the files must be maintained in such a way that the Non-Federal sponsor can utilize them to demonstrate its own compliance with its labor standards administration and enforcement responsibilities. For example, the Sponsor should be able to demonstrate to a USACE monitor where it is documented that the eligibility of the prime contractor was verified for each contract.

4. Non-Federal sponsors can target on-site interviews with laborers and mechanics.

Perhaps the most effective means of detecting labor standards violations is through the conduct of labor standards interviews. These interviews are essential to the detection of employee misclassification or other common violations. Accordingly, the construction contract should provide that the contractor will permit such interviews during working hours on the job; however, the responsible Labor Standards Compliance Representative shall, at the start of the work, inform the contractor's representative that he is required to and will conduct interviews during working hours. They should be held at such times and places as to cause the least possible

interference with the performance of the employee's job. Interviews shall not be held in the presence of the employer, a supervisor, another employee, or any other person. The employee should be advised that pursuant to the Privacy Act (5 USC 552a) the information being furnished is confidential and that his identity will not be disclosed to the employer without the employee's consent. USACE is much more interested in using on-site interviews as a proactive enforcement tool than as a means to meet a "representative sampling" quota. Rather than conducting interviews randomly for the sake of assembling a sample, Non-Federal sponsors are encouraged to focus interviews to projects or groups of workers where violations are suspected or alleged. In this way, on-site interviews can be used to support a specific ongoing investigation.

#### 7. Payroll reviews limited to spot-checks and Labor Standards Interview comparison.

USACE has found much more serious violations involving more underpaid workers and significantly more wage restitution could be missed because the contract administrator had placed undue emphasis upon payroll minutiae. USACE recognizes that it is not possible to conduct 100% payroll reviews, therefore, it is not possible to identify and correct every discrepancy and underpayment. It is also the case that the violations disclosed behind falsified payrolls are much more egregious (both in terms of affected workers and the amount of underpayment) than violations that appear on the face of the payroll. Accordingly, USACE has prioritized payroll reviews so that the objective is to detect systematic and deliberate underpayments so that our enforcement activities will yield the greatest impact. USACE has developed guidance on how to detect systematic and willful violations through spot-checks and Labor Standards Interview comparison. See Payroll Violation Indicators in the Appendix (Exhibit 2).

#### 8. Routine payroll review results can be communicated to the prime contractor by telephone and documented with a record to the file.

Many times, the types of deficiencies which come to the attention of the contract administrator can be handled more efficiently and just as effectively with good informal communication (e.g., a telephone call, etc.) with the prime contractor rather than with formal letters. Examples of the types of issues that could easily be addressed informally – assuming the cooperation of both sides – include a missing payroll report or missing apprenticeship certificate, requests for employee authorizations for deductions, small underpayments that appear on the face of the payroll, and similar matters. With the prime contractor's cooperation, these matters can be disposed of quickly with a telephone call and a brief note to the contract file documenting the call. If the prime contractor does not respond appropriately to this type of communication, it may be necessary to resort to more formal means.

#### 9. Strenuously enforce Davis-Bacon requirements aiming enforcement activities at willful violators.

USACE has made it a priority to target labor standards enforcement activities at willful violators (i.e., employers that falsify certified payrolls) and to recommend debarment against repeat violators. Barring aggravated circumstances, such as requiring kickbacks of wages from employees, contract administrators that issue findings of underpayment against a willful violator for a first offense will require from the employer a written statement assuring future compliance

in addition to full wage restitution for all underpaid employees. If the employer is found in violation of labor standards again, contract administrators will recommend debarment based in part upon the assurance of future compliance secured after the prior violation.

### **Davis-Bacon – Related Acronyms and Symbols**

CFR – Code of Federal Regulations  
CPR – Certified Payroll Report  
CWHSSA – Contract Work Hours and Safety Standards Act  
DBA – Davis-Bacon Act  
DBRA – Davis-Bacon and Related Acts  
DOL – Department of Labor  
FLSA – Fair Labor Standards Act  
LCA – Local Contracting Agency  
O/T – Overtime  
S/T – Straight-time  
SAC – State Apprenticeship Council/Agency  
§ – Section  
¶ – Paragraph  
USACE – United State Army Corps of Engineers

## (Exhibit 1)

### **Semi-Annual Enforcement Report Instructions – Agency Report**

Please follow these instructions while compiling the Semi-Annual Labor Standards Enforcement Report for Non-Federal Sponsors (USACE Work-in-kind Programs Subject to DBA).

#### **Introduction**

Department of Labor (DOL) Regulations 29 CFR §5.7(b) require Federal agencies administering programs subject to Davis-Bacon and Related Act (DBRA) and Contract Work Hours and Safety Standards Act (CWHSSA) labor standards to furnish a Semi-Annual Labor Standards Enforcement Report to the Administrator of the Wage and Hour Division. These reports are due to the DOL on April 30 and October 31 of each year. As determined by the DOL, some USACE programs are administered by Non Federal sponsors local contracting agencies for Davis-Bacon labor standards compliance. It's important to collect information from Non-Federal sponsors so that these enforcement activities are incorporated within the Consolidated USACE Program Report to the DOL. The report is divided into two Parts: the first part concerns contracting activity and the second part concerns enforcement. The appropriate District USACE Labor Relations staff will send a reminder to the Non-Federal sponsors about the preparation and submission of the report to the District Labor Advisor. Non-Federal sponsors are encouraged to use the USACE Report forms attached.

#### Definitions and Guidance

Report periods run on a fiscal year basis. The first report for each year covers October 1 through March 30; the second report covers April 1 through September 30.

#### Part I – Contracting Activity

This part concerns only contracts that were awarded during this period. Do not include contracts that were awarded prior to this period even though the contract may still be underway.

1. Enter total number of prime contracts subject to DBRA/CWHSSA awarded during this period. Track contracts by award date or start of construction – do not track by bid opening date.
2. Enter the total dollar amount of the contracts reported in #1.
3. List individual project/contract names, numbers, amounts, the wage decision and modification numbers in the contract and the wage decision effective date (bid opening date, contract award date or start of construction, as appropriate) relating to Items 1 & 2.

#### Part II – Enforcement Activity

This part concerns all enforcement activity no matter when the contract was awarded or construction began.

4. Enter the number of employers (contractors, subcontractors, lower-tier subcontractors) against whom complaints were received during the report period. List the names of the employers against whom complaints were received and the projects involved.

5. Enter the number of employers that were referred to USACE Labor Relations or DOL staff for compliance investigations, or for §5.11 and/ or debarment hearing. List the employer, project, and agency to which the case was referred, and the reason for referral – investigation, §5.11 and/or debarment (§5.12) hearing.

6. Enter information relative to wage restitution that was collected and/or disbursed. This includes restitution disbursed by the agency; restitution reported on certified payroll correction reports, amounts collected but not disbursed because workers could not be found. Also list liquidated damages collected for Contract Work Hours and Safety Standards Act (CWHSSA) overtime violations.

## (Exhibit 2)

### Payroll Indicators of Willful Violations

Certified payroll reports are fairly straightforward records of employees, work classification, hours worked, rate(s) of pay, gross earnings, deductions and net wages paid. The information required for certified payrolls involves no more than the information any responsible employer must maintain concerning its basic business operations. Davis-Bacon compliance basically involves three factors:

1. The type (classification) of work performed;
2. The number of hours worked; and
3. The prevailing wage rate for that classification.

A fourth factor involves the actual payment of wages by check and/or cash. In order to conceal underpayments, a willfully violating employer may falsify the payroll report as it pertains to one or more of these factors. There are four falsification indicators that are easy to detect on certified payrolls in a "spot check":

1. Ratio of laborers to mechanics. Look for excessive use of laborers over mechanics. Generally there should be no more than one laborer for each mechanic (1:1) except for landscaping, or cement or other paving work. Indicative of: Misclassification. Workers are performing higher-paying mechanic duties but are misclassified and paid at lower Laborer wage rates.

2. Too few or irregular hours. Look for employees that never work 40 hours per week; for crews that work in a scattered fashion; for hours reported in tenths or hundredths (e.g., 13.6 hours). Most people work a 40-hour workweek. Most crews work together on a job site. Most employers and employees track work hours by whole, half and quarter hours not by tenths or hundredths. Indicative of: Reduction of Hours. Actual hours worked are reduced to "fit" in a fabricated calculation:  $(\text{Reduced hours}) \times (\text{Rate required on wage decision}) = \text{Substandard wages actually paid based upon a lower rate of pay.}$

3. Discrepancies in wage computations. Look for gross wages paid in "round" numbers (e.g., \$700) that don't agree with the product of reported hours multiplied by the rate of pay. For example, a payroll showing 20 hours times \$33.68 (the rate on the wage decision) and gross wages of \$700. (20 hours times \$33.68 equals \$676.60 not \$700.) Indicative of: Falsification of rate of pay such as piece work or lower (but more even) rate. For example, the wage decision requires \$33.68/hour for the type of work performed but the employer chooses to pay \$17.50 per hour. (40 hours times \$17.50 equals \$700.) The employer can't make the fabricated calculation "fit" precisely because the Davis-Bacon wage rate is not an even figure.

4. Extraordinary deductions. Look for unidentified or disproportionate deductions, for example, an employee whose savings account deduction is nearly as much or more than the weekly take-home pay. Indicative of: Kickbacks or basic underpayment. The employer takes his "cut" from the back end of the computation (after gross earnings) rather than the front end

(falsifying the classification, hours or wage rate). If these indicators appear on payrolls you will want to take preliminary steps to test whether the payrolls are accurate or false. For example, you can target on-site interviews or send questionnaires to the affected workers to get their perspective and compare the interview and/or questionnaire statements to the payroll reports. If an investigation is warranted, you will want to learn what information on the payrolls is false and what is true. (Employers rarely falsify all of the information on payrolls.) Eventually, you will need to compute the amounts of backwages that are due and knowing what information on the payroll is true can be critical to making these computations.