

Oklahoma Department of Transportation

Monitoring the Davis-Bacon Act Construction Control Directive No. 20160418

January 7, 2020

Scope: To establish the procedure for monitoring payrolls submitted by the contractor and performing the periodic wage rate interviews.

The purpose of this Directive is to offer guidelines for monitoring the requirements of the Davis-Bacon Act. The primary purpose of this act is to ensure that persons working on Federally funded contracts (Federal aid contracts on the Federal aid highway system) are paid at least the minimum hourly wage rate for their job classification. Specific information concerning the Davis-Bacon Act can be found on the U.S. Department of Labor, Wage and Hour Division's website at www.dol.gov. The applicable federal regulations are found in 29 CFR Part 1 and Part 5.

Contracts containing projects designated as Local Roads or Rural Minor Collectors exempt the contractor from submitting weekly payrolls. Additionally, the Residency office administering the contract will not be required to perform the wage rate interviews of the contractor's employees on these projects. ODOT identifies Local Road or Rural Minor Collector projects by placing a "D" in the project number, just before the "hole number" (i.e. BRO-144D(33)CO). All other contracts containing a project which is Federally funded, all or in part, will require that the contractor submit weekly payrolls and will require the performance of the wage rate interviews by the Residency. For contracts that contain Federally funded projects tied with projects that are exempt, all of the projects in the contract will require both the submittal of weekly payrolls by the contractor and the performance of the wage rate interviews by the Residency.

1. Contractor Payrolls

The prime contractor and all approved subcontractors performing work on a Federally funded contract are required to submit weekly payroll records to the Residency. All payroll records from the prime contractor or subcontractor shall be received within two weeks of the end of the payroll reporting period. Payrolls for periods of "no work in progress" will not be required. The Residency will be required to stamp all payrolls indicating the date on which they were received.

The Residency must monitor the payroll records received weekly and should notify the prime contractor in writing for any failure to submit the required payrolls or to submit a record with the necessary information (as detailed below) within the two week period. The written notification to the prime contractor may state actions that could be taken by the Residency, including holding future progressive payments until the contractual requirement has been satisfied. Any such correspondence must be stored in the project's payroll files.

2. Wage Rate Interviews

The Residency employees shall conduct systematic spot interviews of the prime contractor's and approved subcontractor's employees to identify whether the minimum wage and other labor standards of the contract are being fully complied with and that there is no misclassification of an employee. Only those employees, laborers and mechanics whose classifications are subject to the Davis-Bacon Act will be interviewed. Examples of exempt classifications include supervisor, foreman, salaried employees and survey crews. A minimum of one employee of the prime contractor or subcontractor shall be interviewed each month during the duration of the original contract time. A minimum of two employees shall be interviewed on a specific contract. The Residency should ensure that interviews of subcontractors' employees are done as well as the prime contractor's employees. When performing a CUF Review in accordance with CCD No. 20000105 of a DBE subcontractor on the project site, the Residency shall also perform an interview of one of the DBE's employees. An employee shall not be interviewed more than once per contract. The Wage Rate Interview form can be found at the following link https://www.ok.gov/odot/Doing_Business/ODOT_Forms/index.html. This form shall be used to record the information obtained from the interview.

Once an employee is interviewed, the results of the interview should be checked against the information contained in the weekly payroll record for that date and the payroll record should be reviewed for completeness.

The Residency shall monitor and review the weekly payroll records. Monitoring and reviewing of payrolls include verifying classifications, wage rates and hours worked. The prime contractor shall be notified in writing for any failure to submit the required payrolls or to submit a record with the necessary information within the two week period. The written notification to the prime contractor may state actions that could be taken by the Residency, including holding future progressive payments until the

contractual requirement has been satisfied. Any such correspondence must be stored in the project's payroll files.

There is no mandatorily prescribed format for the contractor's or subcontractor's payroll records, however, payroll records received by the Residency shall contain, at a minimum, the following information:

- a) Each employee's full name and individual employee identification number. Employee's home address and full social security number shall not be used,
- b) Each employee's classification,
- c) Each employee's hourly wage rate and, where applicable, overtime hourly rate,
- d) The daily and weekly hours worked in each of the employee's classification, including actual overtime hours worked,
- e) The itemized deductions made for each employee. Any deductions listed as "Other" deductions, shall be explained on page 2 of the payroll form, and
- f) The net wages paid to each employee per job and gross wages per week.

During the Residency's review of the payroll record from the prime contractor or subcontractor for whom the interviewed employee works, the Residency will review the record and note any deviations from the following:

- a) The employee was paid, at least, 1 ½ times the regular hourly rate for every hour worked beyond 40 hours per week,
- b) The employee was paid, at a minimum, the rate specified in the contract for the associated classification,
- c) The itemized deductions for the employee listed as "Other", are described in detail per the Department of Labor requirements for Certified Payroll,
- d) The record contains a certified statement executed by the person who supervises the payment of wages by the contractor or subcontract with respect to the wages paid during the payroll period, and

e) The contractor is paying the employees on a weekly basis.

Any deficiency discovered during the Residency's review shall be brought to the appropriate contractor's attention for their corrective action. All corrections should be reflected on revised and/or supplemental payrolls submitted to the Residency.

3. Personnel Providers

Contractors or subcontractors may use workers from a provider firm. The payroll submittal and interview requirements are the same as in any contract utilizing Federal funding. Payrolls must be submitted and certified by the provider on behalf of the contractor. The certified payrolls must show the actual wages paid to the employees, regardless of the employer, whether a labor finder or contractor.

4. Deficiency Reporting

The residency shall report all cases of classification or wage rate violations discovered during the residency review or received by complaint to ODOT's Civil Rights Division.

5. Request for Authorization of Additional Classification and Wage Rate Form (SF-1444)

Davis Bacon Act (DBA) wage determinations (WDs) do not contain every craft needed for all DBA work performed on every contract. When this occurs DBA provisions contain a conformance procedure for the purpose of establishing a DBA-enforceable wage and benefit rate for missing job classifications. Contractors are responsible for determining the appropriate craft necessary to perform the contract work. In situations when the Residency personnel becomes aware and/or notices that a prime contractor or subcontractor is using a classification on a payroll that is not on the wage determination, the following is required. The Residency will provide the contractor with the Standard Form (SF) 1444. The prime contractor is responsible for the completion of the SF-1444. Once completed by the prime contractor, the form is to be submitted to the Civil Rights Division, which then will be forwarded to the Department of Labor (DOL). The Civil Rights Division will notify the prime contractor and Residency once DOL has made a decision on the addition of the classification. The Residency will include a copy of the SF-1444 and DOL's decision in the project's payroll folder.

6. Trucking Firm Status

All firms performing work on highway projects must have authority to do so in the form of a prime contract, a subcontract, a hauling agreement or as a service/supply company. Second tier subcontracting is not approved.

The status of truck drivers and trucking firms on highway construction projects is subject to the type of work being done and the ownership of the truck(s).

The following examples have been provided to illustrate the status of trucking:

- a) Trucks deliver materials from a commercially established supplier; borrow pit, quarry, plant, etc. Neither the drivers nor the firm they work for, perform work on the project.
 - THESE DRIVERS ARE NOT COVERED BY THE DAVIS-BACON ACT AND DO NOT REQUIRE ANY AUTHORIZATION TO MAKE THE DELIVERIES.
- b) Trucks deliver materials from a borrow pit, quarry, plant, etc., set up exclusively for the construction of the highway project and products are not sold commercially.

Trucks are used on the project to haul materials such as, unclassified excavation, from one location to another, or when materials such as unclassified excavation are hauled off the project, but remain property of the Department.

- DRIVERS OF THESE TRUCKS ARE COVERED BY THE DAVIS-BACON ACT AND ARE TO BE LISTED ON WEEKLY PAYROLL REPORTS. IF THE TRUCKS ARE OWNED BY SOMEONE OTHER THAN THE PRIME CONTRACTOR, THAT FIRM IS TO HAVE AN APPROVED HAULING AGREEMENT AS THEIR AUTHORITY TO WORK ON THE PROJECT.
- c) A trucking firm is involved in loading and placing earthen materials in the embankment in addition to hauling.

- IN THIS CASE THE FIRM IS FUNCTIONING AS A SUBCONTRACTOR AND IS TO HAVE AN APPROVED SUBCONTRACT AS THEIR AUTHORITY TO WORK ON THE PROJECT.

WHEN A TRUCK IS OPERATED BY THE OWNER OF THE TRUCK AND REPORTING IS REQUIRED, THE DRIVER IS TO BE LISTED ON THE WEEKLY PAYROLL AS AN "OWNER/OPERATOR". HOURS AND RATES ARE NOT REQUIRED.

In order to ensure that primes working on ODOT construction projects have liability protection, bond coverage and that firms are not subletting more than the allowable 50%¹ of the contract it is essential that each have authority to work on the project. Each Resident Engineer should challenge firms arriving on the project which do not have apparent approval.

Refer to the following flow chart for more information.

Each Resident Engineer should challenge firms arriving on the project which do not have apparent approval.



John Leonard, P.E.
Construction Engineer

¹ In some very rare cases subletting of up to 70% of the contract is allowed by special provision.