

Wage Requirements for Tribal Housing

**Making the Decision and
Implementing TDW's**



TABLE OF CONTENTS

HISTORY AND STATUTORY OVERVIEW **SECTION 1**

History Overview	4
Handbook 1344.1 Chapter 2 Handbook 1344.1	14
Chapter 8	24
2 CFR 200 Appendix II	32
NAHASDA Section 104(b) and 24 CFR 1000.16	34
Factors of Labor Standards Applicability	38

PROS AND CONS **SECTION 2**

Pros and Cons Spreadsheet	46
Labor Standards Monitoring Plan	48

IMPLEMENTATION ISSUES **SECTION 3**

Guidance 2003-03 Sweat Equity	56
Guidance 2003-04 Tribal Laws	58
Guidance 2004-16 Labor Relations Letters	64
DOL Letter 2004-01 Maintenance Wage Rates	67
DOL Letter 2004-02	70

MAKING THE DECISION **SECTION 4**

Things to Consider	74
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JOB DESCRIPTIONS AND WAGE CLASSIFICATIONS **SECTION 5**

How to Develop A Job Description	76
Writing Effective Job Descriptions	78
Sample Job Description Construction Superintendent	80
Beta.Sam.gov	82
Oklahoma Carpenter Classification	84
O*NET Online	86
O*NET Summary Report Drywall Installer	88
O*NET Detail Report Carpenter	90
Hay Method of Classification	93

WAGE RATE DETERMINATIONS**SECTION 6**

Handbook 1344.1 Chapter 3	96
Wage Determinations Online Now beta.Sam.gov	106
Wage Determinations Skagit County	108
Davis-Bacon Surveys Guidebook	110
Okanogan Prevailing Wages	124
Survey Letter Sample	128
Survey Form Sample	130
Survey Form Instructions Sample	132

WRITING THE ORDINANCE**SECTION 7**

Sample Ordinance AVCPRHA	134
Sample Ordinance Bishop Paiute Tribe	137
Sample Ordinance Confederated Tribes of Coos, Lower Umpqua, and Siuslaw	142
Sample Ordinance Hoopa Valley Tribe	146
Sample Ordinance Puyallup Tribe	150
Sample Ordinance Rincon Band	156
Sample Ordinance Sault Ste Marie Tribe	164
Sample Ordinance Yurok Tribe	168
IHP Tribal Wage Rate Certification	174
Sample TERO Ordinance (Cheyenne Arapaho)	177

USING TDW'S IN CONTRACTS**SECTION 8**

Handbook 1344.1 Section 3.12	192
Prevailing Wage Resource Book	196
Form HUD-5370 General Conditions (excerpt)	199
Form HUD-5370 EZ	204
Sample IFB Yolo County	212
Sample Wage Attachment	214
Sample IFB City of Lowell	216
29 CFR 1.6 Effectiveness of Determinations	220
Sample Contract Addendum Change of Rates	222

Davis–Bacon Act

From Wikipedia, the free encyclopedia

The **Davis–Bacon Act** of 1931 is a United States federal law that establishes the requirement for paying the local prevailing wages on public works projects for laborers and mechanics. It applies to "contractors and subcontractors performing on federally funded or assisted contracts in excess of \$2,000 for the construction, alteration, or repair (including painting and decorating) of public buildings or public works".^[1]

The act is named after its sponsors, James J. Davis, a Senator from Pennsylvania and a former Secretary of Labor under three presidents, and Representative Robert L. Bacon of Long Island, New York. The Davis–Bacon act was passed by Congress and signed into law by President Herbert Hoover on March 3, 1931.^[2]

Contents

- 1 History
 - 1.1 Leading to passage
 - 1.2 Since passage
 - 1.2.1 Immediately after passage
 - 1.2.2 1930s
 - 1.2.3 1940–1970
 - 1.2.4 1970–present
 - 1.3 Little Davis-Bacon laws
 - 1.4 Suspensions
- 2 Current practice
- 3 Controversy
 - 3.1 Data collection and publication concerns
 - 3.1.1 Statistical bias
 - 3.1.2 Fraud
 - 3.1.3 Publication delay
 - 3.1.4 Obsolescence of DBA
 - 3.1.5 Compared to Bureau of Labor Statistics
 - 3.2 Cost
 - 3.3 Racism

Davis–Bacon Act



Enacted by the 71st United States Congress

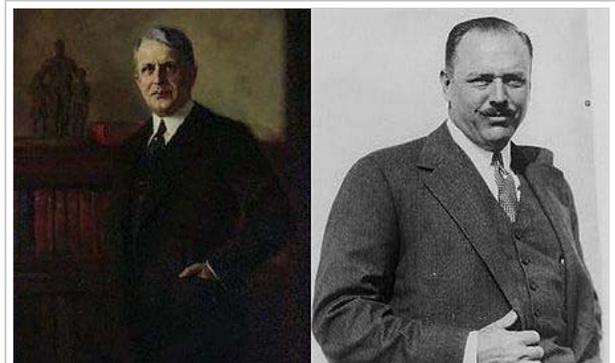
Citations

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Statutes at Large ch. 411, 46 Stat. 1494 (<http://legislink.org/us/stat-46-1494>)

Legislative history

- **Signed into law by President Herbert Hoover on March 3, 1931**



Sen. James J. Davis (R–PA) and Rep. Robert L. Bacon (R–NY-1), the co-sponsors of the Davis–Bacon Act.

- 3.3.1 Intent and early operation
- 3.3.2 Subsequent developments
- 4 See also
- 5 References

History

Leading to passage

Prior to the passage of the federal Davis–Bacon Act (abbreviated DBA), other jurisdictions in the United States had passed laws that required that contractors on public works projects pay the wage that prevailed locally. “In 1891, Kansas adopted a law requiring that ‘not less than the current rate of per diem wages in the locality where the work is performed shall be paid to laborers, workmen, mechanics, and other persons so employed by or on behalf of the state of Kansas’ or of other local jurisdictions. Through the next several decades, other states followed suit, enacting a variety of labor-protective statutes covering workers in contract production.”^{[3][4]}

In 1927, a contractor employed African-American workers from Alabama to build a Veterans' Bureau hospital in the district of Congressman Bacon.^[5] Prompted by concerns about the conditions of workers, displacement of local workers by migrant workers, and competitive pressure toward lower wages,^[6] Bacon introduced the first version of his bill in 1927.

Over the next few years, Bacon attempted to introduce variations on the prevailing wage bill 13 times.^{[7][8]} Finally, in the midst of the Great Depression, with local workers complaining about cheap labor taking their jobs and Congressmen frustrated that their efforts to bring "pork barrel" projects home to their districts did not result in jobs (and therefore political support) from their constituents,^[5] the Hoover Administration requested that Congress reconsider the Act once more as a means of preventing falling wages.^[9] Sponsored in the Senate by former Labor Secretary Davis, it passed by voice vote and was signed into law on 3 March 1931.^[3]

Since passage

Immediately after passage

The Davis–Bacon Act has been amended several times in its history. Almost immediately upon passage in 1931, both unions and contractors expressed dissatisfaction with key components of the law.^[10] Unions claimed that the law lacked enforcement teeth, while contractors pointed out that it was impossible to know beforehand what the prevailing wages were when submitting bids.^[10] President Hoover issued Executive Order 5778, clarifying some of the enforcement mechanisms, and Congress considered amendments which were vetoed before Hoover left office.^[6]

1930s

In 1934 Congress passed and President Roosevelt signed the Copeland "Anti-kickback" Act,^[3] a supplement to the DBA. This was followed in 1935 with another amendment which introduced five changes: (1) The threshold

for falling under the DBA requirements were lowered from \$5,000 to \$2,000; (2) coverage was extended to all federal contract construction, including painting and decorating; (3) the agency may withhold funds sufficient to pay underpaid workers; (4) the Comptroller General would make a list of contractors who had “disregarded their obligations to employees and subcontractors” so that they could be blacklisted from federal contracts for three years; (5) right of legal action was explicitly granted to laborers regardless of whether they had accepted wages; and (6) DBA contracts would include “the minimum wages to be paid various classes of laborers and mechanics” prior to the submission of bids by a contractor (predetermination). The predetermination requirement set up a mechanism to collect and disseminate appropriate prevailing wage data prior to issuing proposal requests for federal contract bids.^[6] Many of these changes were introduced at the urging of labor unions.^[3]

1940–1970

In 1941 the reach of the Act was expanded to cover military construction^[7] In the 1950s, questions were raised about which agencies should control which provisions and whether the new interstate highway acts should specifically reference DBA requirements.^[6] In the 1960s, the passage of the Walsh–Healey and McNamara–O’Hara Service Contract Acts confused the situation further, as there were pay differences between manufacturing and construction, with contractors and unions having clear but opposite preferences.^[6]

In 1962 the House of Representatives convened the Special Subcommittee on Labor, chaired by James Roosevelt D–CA.^[6] In response to this committee, the Secretary of Labor established the Wage Appeals Board to allow wage determinations to be reviewed.^[6] The committee brought an amendment to the DBA that required the inclusion of fringe benefits in the wage determination.^{[3][6]}

1970–present

In 1979, the U.S. Congress General Accounting Office (GAO) – (which was renamed the Government Accountability Office in 2004) published a report titled, “The Davis-Bacon Act Should Be Repealed”.^[11] The GAO summarized its argument as

Significant changes in economic conditions, and the economic character of the construction industry since 1931, plus the passage of other wage laws, make the act unnecessary.

After nearly 50 years, the Department of Labor has not developed an effective program to issue and maintain current and accurate wage determinations; it may be impractical to ever do so.

The act results in unnecessary construction and administrative costs of several hundred million dollars annually (if the construction projects reviewed by GAO are representative) and has an inflationary effect on the areas covered by inaccurate wage rates and the economy as a whole.

This publication reflected an ongoing political debate. Concluding about the same time, the Carter Administration's Office of Management and Budget (OMB) and its Office of Federal Procurement Policy (OFPP) had formed a task force to review DBA and the Services Contract Act.^[6] They published new regulations just as they were leaving office.^[6] The Reagan Administration froze all pending regulations in order to review them, and then issued its own set of regulations^[6] in 1982. These consisted of five changes: (1) setting the threshold for how much of the workforce must be paid a common wage for that wage to become the

"prevailing wage" at 50% (previously 30%); (2) strictly limiting the importation of urban rates for projects in rural areas; (3) limiting the use of wages paid on other DBA-covered federal projects in the determination of prevailing rates to prevent bias in the base rate; (4) expanding the potential use of unskilled "helpers" on federal construction; and (5) eliminating the weekly payroll report requirements of the Copeland "Anti-kickback" Act of 1934, opting instead to require reports only in support of enforcement actions.^[6] These rules were challenged in *Building and Construction Trades' Department. AFL-CIO v. Donovan*, 712 F.2d 611 (D.C. Cir. 1983).^{[6][7][12]} Of the five changes, all were eventually upheld except for the change in reporting requirements.

In addition to these changes, DBA prevailing wage principles have been included in more than 50 federal statutes.^[6]

In September 2013, the United States House of Representatives passed the Streamlining Claims Processing for Federal Contractor Employees Act (H.R. 2747; 113th Congress). This bill, if it becomes law, would amend the Davis–Bacon Act by transferring authority from the Government Accountability Office (GAO) to the United States Department of Labor for processing claims for wages due to laborers and mechanics hired by contractors on public works projects.^[13]

Little Davis-Bacon laws

In addition to the federal law, several other jurisdictions have passed "Little Davis-Bacon" laws.

Little Davis-Bacon Statutory Thresholds^[9]

State	Threshold Amount
Alabama, Arizona, Colorado, Florida, Georgia, Idaho, Indiana, ^[14] Iowa, Kansas, Louisiana, Mississippi, New Hampshire, North Carolina, North Dakota, Oklahoma, South Carolina, South Dakota, Utah, and Virginia	No Prevailing Wage Law
Connecticut, Delaware, Kentucky, Maryland, Nevada, Vermont, Wisconsin	\$100,000 to \$500,000
Alaska, Arkansas, Maine, Minnesota†, Montana, New Mexico, Ohio††, Oregon, Pennsylvania, Tennessee, Wyoming	\$25,000 to \$75,000
California, Hawaii, New Jersey, Rhode Island,	\$1,000 to \$2,000
Illinois, Massachusetts, Michigan, Missouri, Nebraska, New York, Texas, Washington, West Virginia	No threshold

Suspensions

The Davis–Bacon Act allows for suspension by the President in case of emergency. This authority has been exercised four times since passage: twice in general, and twice in limited areas. PFR.

- President Franklin D. Roosevelt suspended the Act in 1934 for three weeks to aid in the introduction of New Deal efforts^[3]
- President Richard Nixon suspended the Act in 1971 for one month as an anti-inflationary measure^{[3][15]}
- President George H. W. Bush initiated a suspension in Florida, Louisiana, and Hawaii. This suspension was not lifted until March 1993 by President Bill Clinton.^[3] The cited reason for the suspension was the

need to provide as many employment opportunities as possible in the recovery from hurricanes Andrew and Iniki.

- President George W. Bush suspended the Act for one month in Florida, Alabama, Mississippi, and Louisiana after Hurricane Katrina.^[6]

Current practice

The Davis–Bacon Act was entered into the United States Code as 40 U.S.C. §§ 276a-276a-5, but has now been re-codified as 40 U.S.C. 3141-3148.^[3] The Act covers four main areas of construction: residential, heavy, buildings, and highway.^[6] Within these areas are further classifications, including craft positions such as plumber, carpenter, cement mason/concrete finisher, electrician, insulator, laborer, lather, painter, power equipment operator, roofer, sheet metal worker, truck driver, and welder [1] (<http://www.wdol.gov/>).

The agency responsible for collecting and disseminating the prevailing wage data is the Wage and Hour Division (WHD) of the United States Department of Labor (DOL).^[9] The procedure "involves four steps: (1) planning and scheduling of surveys, (2) conducting the surveys, (3) clarifying and analyzing the respondents' data and (4) issuing the wage determinations."^[9]

Planning and scheduling surveys: In the third quarter of each year, the WHD distributes a Regional Planning Survey Report, published by the F. W. Dodge division of the McGraw-Hill Information Systems, to regional offices. The regional offices then consider the types of construction planned as well as the age of the current wage determination. This analysis determines when and where surveys will be conducted.^[9]

Issuance of surveys: WD-10 survey forms are sent to contractors and subcontractors along with a cover letter requesting information. Letters and forms are also sent to members of Congress, trade associations, and building trade unions to solicit information from them.^[9]

Compilation of data: WHD analysts then review the returned forms for completeness, ambiguity, and inconsistencies. If the information received is deemed to be inadequate, the scope of the survey may be expanded. For example, if it is determined that relevant projects have not been completed recently, or that the area is inadequately represented, WHD may conduct telephone surveys to increase the robustness of data.^[9]

Publication of data: Once compiled and analyzed, the wage determinations are made publicly available.^[9] See, for example, the Department of Labor website set up for this purpose: [2] (<http://www.wdol.gov/dba.aspx>)

Controversy

Three areas of controversy have surrounded the Davis–Bacon Act since the 1950s. In the beginning, these were touched off because of the Interstate Highway System and the volume of military construction that took place in the Cold War.^[6] These became more pronounced in the 1960s as the Space Race took off, and intensified in the wake of Nixon's suspension.^[6] Those areas, broadly considered, include (a) data collection and accuracy issues resulting from the way regulations have been formulated and administered, (b) the increased cost of federal construction projects, and (c) claims that the law is racist in conception and effect.

Data collection and publication concerns

As noted above, the Wage and Hours Division of the Department of Labor collects data through surveys. These surveys are submitted voluntarily. Researchers have found that the methodology suffered from sampling bias and, in some cases, fraud. These are discussed below.

Statistical bias

For the first 50 years, the WHD used union wages to satisfy the 30% rule.^[9] The GAO found similar results in 1979, just prior to the change to the 50% rule: "Our evaluation of the wage determination files and inquiries regarding 73 wage determinations at Labor's headquarters and five of its regions showed that, in many instances, these wage rates were not adequately or accurately determined. About one-half of the area and project determinations we reviewed were not based on surveys [that the Department of] Labor made of wages paid to workers on private projects in the locality where the wage rates issued were required to be paid. Instead, union-negotiated rates were used, on the assumption that those rates prevailed."^[11]

The use of union data would probably prevail regardless of assumptions, since the data are collected through voluntary surveys. Since the responses are provided voluntarily, and since the response requires a substantial amount of work to understand and complete, it is in the interest of employers with high wage workforces and high overhead to respond. By answering the request for data when employers with lower wage workforces and low overhead do not, they pull the prevailing wage determination in their favor. For smaller employers and employers who do not participate in federal contracting, it is not worth the cost to complete the surveys.^{[9][16]} Furthermore, it is in the interest of local unions to respond to the surveys, since a predetermination of wage significantly below the union wage would allow non-union employers to bid successfully on contracts.^[9] Thus, the survey responses tend to be biased upwards towards collective bargaining agreement wage levels. This source of bias was noted in the DOL Office of the Inspector General report: "A past audit observed that the methods used by WH to obtain survey data allowed bias to be introduced into wage surveys. Statistical sampling of employers was not done. Only data from employers and third parties who volunteered to participate in the surveys were considered. Consequently, data that could have influenced survey results may have been omitted. Also, employers and third parties who may have had a stake in the outcome of wage decisions were afforded an opportunity to submit erroneous data that may have influenced the survey results."^[17]

Fraud

In addition to claims of bias, researchers and investigators have found evidence of fraud. In 1995, the state of Oklahoma conducted an investigation into the WHD-provided prevailing wages being used in state projects. Oklahoma had a Little Davis-Bacon law that, in an attempt to save on administrative costs, adopted the federal standards.^[18] When the state office was notified that some rates had increased 162%, it requested information from the WHD. The WHD denied the Oklahoma Department of Labor access to the survey forms used to determine the wages, so the Oklahoma Department of Labor undertook a criminal investigation. According to Brenda Reneau, then-Commissioner of the Oklahoma Department of Labor, "This investigation found that grossly inaccurate information had been reported to the Federal Government by what the U.S. Department of Labor calls interested third parties. We found inflated numbers of employees on projects, inflated wage rates reported for these same non-existent workers and we found projects that were never built. We also noticed what appears to be a pattern in the reporting method on many of the wage survey forms, as our visual presentation will show here today."^[18] In response to this, "a follow-up investigation conducted by the U.S. Department of Labor confirms that not only was a great deal of inaccurate information reported, as we had alleged, but U.S. Department of Labor documents show certain unions in Oklahoma City as the parties who submitted that information. It appears that false information may have been submitted to the U.S. Department of Labor in an attempt, purposefully, to inflate Davis-Bacon wage rates."^[18] In the wake of the state investigations, the WHD

withdrew many prevailing wage findings for the state, and the Oklahoma Supreme Court found their Little Davis–Bacon statute to be in violation of the state constitution.^[18]

Publication delay

Both academic and government researchers have found evidence that the procedures used by the WHD result in substantial publication delays. The WHD may take on average more than 30 months to issue data. These render the predetermined prevailing wage findings irrelevant since they may be publishing data that is no longer relevant or accurate.^{[9][11][16][17]}

Obsolescence of DBA

In addition to these findings, some detractors have pointed out that the Davis–Bacon Act requirements were rendered moot by the Fair Labor Standards Act (FLSA).^[11] At the time that Davis–Bacon Act was passed, legal scholars were divided on the question about whether the federal government could regulate labor costs and conditions.^{[3][6]} The Davis–Bacon Act was seen as a legitimate way to control labor wages and conditions on federal projects since there was clear jurisdiction on those. However, as the Depression rolled on, especially after the *West Coast Hotel Co. v. Parrish* ruling in 1937,^[3] the Roosevelt Administration succeeded in establishing a federal authority to dictate wages, including a federal, universal minimum wage. In the view of some reviewers, this superseded the need for a prevailing wage law specific to federal contracts.^[11]

Compared to Bureau of Labor Statistics

Finally, some detractors have pointed out that the WHD collects the same data as the Bureau of Labor Statistics (BLS), but does it with inferior methods.^{[11][17]} The BLS samples wages randomly instead of relying on self-reporting. The BLS also uses an interview approach to eliminate reporting errors. Academic researchers have found significant variations between the more accurate and timely BLS data and the WHD data; variances may run around 9%, but in some cases the WHD data may be too low.^[9] For these reasons, the DOL Office of Inspector General directed the WHD to investigate whether the BLS wage data could be used in place of the WHD wage data. They declined to do so, prompting another audit of their methodology.^[17]

Cost

As described above, the Davis–Bacon Act requires contractors to pay a prevailing wage as predetermined by the WHD. One stated purpose of this is to prevent a "race to the bottom" in which employers may use migrant and other low-skill, unemployed workers to perform the work at low costs. If such a possibility exists in an otherwise free market, then Davis-Bacon requirements artificially inflate labor costs above market levels. In addition, companies that participate in federal construction jobs are required to collect data and report regularly. This adds to overhead costs. As a result of these cost increases, projects of a given scope cost more than they would otherwise, or that projects of a given budget must be constrained in scope, or some combination of both.

Supporters of the Davis–Bacon Act contend that these costs differences either don't exist or may be justified.^[19] One contention is that higher paid labor may be paid more because they have superior skills and are more productive.^[20] Under this assumption, a union journeyman would be worth the additional money because he works faster, more accurately, and with less supervision than an inexperienced worker. For example, four union journeyman paid \$25 per hour might perform as well as or better than five entry level workers being paid \$20

per hour. Others point out that federal projects tend to be more complex and require more skilled labor than on either private or state projects.^[21] Yet another counterpoint is that by inflating wages, such requirements direct more income into the middle class rather than paying rock bottom dollars to unskilled labor through federal programs while supporting their families through social service programs.^[20] Finally, blogger Matthew Yglesias has suggested that because union workers tend to vote overwhelmingly Democratic, and because Democrats favor more federal projects, then Davis-Bacon may actually increase the amount of infrastructure built by supporting those who indirectly vote for more programs.^[22]

Racism

Intent and early operation

At the time of original passage, the Jim Crow Laws were in effect throughout the Southern United States. During World War I, immigration from Europe fell dramatically at precisely the time that Northern industry required additional labor for the war effort.^[23] As a result, northern industry and entrepreneurs began to recruit laborers from the South.^[23] This brought about or accelerated the Great Migration in which black (and white) laborers from the South came North in search of better pay and opportunity.

The migration in turn created new demographic challenges in the North. White workers were competing against new labor; in some cases, the black workers were used as pawns in an effort to break unions.^[23] There were widespread efforts to recruit black workers^{[23][24]} and in reaction, efforts to thwart recruitment.^{[23][25]} Black migrants were restricted to specific neighborhoods in northern cities where the buildings were in poor condition and rents were high, forcing them to live in dense conditions.^[23]

In that context, the protests against the Long Island hospital built with migrant labor can be seen for what they were: resistance outside of the Jim Crow South to black workers.^[7] During this time, complaints about black workers taking federal construction jobs appear sporadically through the legislation history of both prior bills that anticipated Davis-Bacon, and Davis-Bacon itself.^{[5][26]} On the floor of the House of Representatives, Congressman Upshaw said: "You will not think that a southern man is more than human if he smiles over the fact of your reaction to that real problem you are confronted with in any community with a superabundance or large aggregation of negro labor."^{[7][27]} U.S. Congressman John J. Cochran (D-Missouri) reported that he had "received numerous complaints in recent months about southern contractors employing low-paid colored mechanics getting work and bringing the employees from the South".^[7] U.S. Congressman Clayton Allgood (D-Alabama) reported on "cheap colored labor" that "is in competition with white labor throughout the country".^{[7][28] [29]}

Despite the initial complaints about the use of migrant workers, the Act does not require that contractors show that workers engaged are local residents, but rather requires that laborers be paid the local prevailing wage. Due to the way the data were collected at that time and due to the fact that construction trades were heavily unionized at that time by craft unions, "prevailing wage" effectively meant "union journeyman wage" as discussed above. Unions operate by negotiating for higher wages, and then working to restrict those eligible for the higher wages to union membership.^[30] Craft unions did not admit black apprentices, and therefore black laborers did not have the opportunity to advance to journeyman status.^{[7][31][32][33][34][35]} According to Bernstein, "as of 1940 blacks composed 19 percent of the 435,000 unskilled "construction laborers" in the United States and 45 percent of the 87,060 in the South",^[7] and according to Hill, "the increase of Negro participation in building trades apprenticeship training programs rose only from 1.5% to 2%" in New York between 1950 and 1960.^{[33]:116} Furthermore, Hill pointed out that "[b]ecause the National Labor Relations Board has done little to enforce the

anti-closed shop provisions of the Taft Hartley Act, building trades unions affiliated to the AFL-CIO in most instances are closed unions operating closed shops".^{[33]:113} Therefore, the requirements and mechanisms of the Davis–Bacon Act necessarily prevented black laborers from participating in federally funded construction projects. “According to a study on youth and minority employment published by the Congressional Joint Economic Committee on July 6, 1977, Davis–Bacon wage requirements discourage nonunion contractors from bidding on Federal construction work, thus harming minority and young workers who are more likely to work in the nonunionized sector of the construction industry.”^[11] Thus, even if racism was not the intent, racial discrimination was a result of the law.

Subsequent developments

The Congress of Industrial Organizations split from the American Federation of Labor in 1935. The AFL was predominantly made up of craft unions, most of which disallowed black members. The CIO was integrationist. In the years that followed, the AFL and CIO moved towards each other and toward integration. By the time they re-united in 1955, unions were much less discriminatory. Even more recently, rules introduced by the Johnson, Nixon, and Reagan Administrations^[7] have reduced the discriminatory effects of the Davis–Bacon Act. Black interest groups have found common cause with unions^[15] and the NAACP passed a resolution in 1993 in support of the DBA.^[36]

See also

- McNamara–O'Hara Service Contract Act
- Copeland "Anti-kickback" Act
- Wage
- Worker's compensation
- Minimum wage
- Living wage
- Prevailing wage

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Chapter 2 PREVAILING WAGE REQUIREMENTS IN HUD PROGRAMS

- 2-1 **Introduction.** There are three types of prevailing wage requirements operable in HUD programs: (1) Davis-Bacon Act prevailing wages payable to laborers and mechanics employed on covered construction work; (2) HUD-determined prevailing wages payable to laborers and mechanics relating to maintenance work (including non-routine maintenance work) in Public, Indian and Hawaiian housing operations, and architects, technical engineers, draftsmen and technicians employed in Public, Indian, and Hawaiian housing development; and (3) Service Contract Act prevailing wages relating to contracts for maintenance and other services (for direct HUD contracts only). Davis-Bacon Act wage requirements are made applicable to HUD programs by statutory provisions in the Davis-Bacon Act, itself (for direct HUD contracts *only*) but most often in HUD Related Acts. HUD-determined wage rates are made applicable to Public, Indian, and Hawaiian housing activities by the U.S. Housing Act of 1937, as amended, and the Native American Housing Assistance and Self-determination Act of 1996, as amended. Service Contract Act wage requirements are made applicable by statutory provisions within the Service Contract Act, itself (for direct HUD contracts *only*).

The Office of Labor Relations (OLR) is responsible for certain Davis-Bacon prevailing wage activity and for HUD-determined prevailing wage standards. In addition, there are other Federal laws that contain labor requirements associated with prevailing wages such as overtime and weekly payroll certification and submission. This chapter discusses the Federal laws and regulations for which the Office of Labor Relations is responsible.

Note: Davis-Bacon Act (DBA) and Service Contract Act (SCA) activities for direct HUD contracts are managed by the HUD Office of the Chief Procurement Officer.

- 2-2 **Basic labor and labor-related statutory provisions.**
- A. **Davis-Bacon Act (DBA).** The Davis-Bacon Act (DBA), enacted in 1931, applies to contracts in excess of \$2,000, for construction, alteration and/or repair of public buildings or public works, including painting and decorating, to which the United States or the District of Columbia is a party. The DBA requires that the advertised specifications for such contracts contain a provision stating the minimum wages to be paid to various classes of laborers and mechanics be based upon the wages found to be prevailing by the Secretary of Labor. The DBA includes provisions that:
1. Require the contractor or subcontractor to pay all mechanics and laborers not less often than once a week;
 2. Prohibit deductions or rebates from wages earned by laborers and mechanics;
 3. Require the contractor or subcontractor to pay Davis-Bacon wages to all laborers and mechanics employed on the site of the work regardless

- of any contractual relationship alleged to exist between the laborers and mechanics and the contractor or subcontractor;
4. Require that the scale of wages to be paid (i.e., the applicable Davis-Bacon wage decision) be posted in a prominent and accessible place at the work site;
 5. Define prevailing wages to include fringe benefits;
 6. Permit withholding from payments due to the contractor on account of wage restitution which may be found due to the laborers and mechanics;
 7. Permit the payment of wage restitution from amounts withheld from contract payments;
 8. Permit the termination of the contract where it is found that that any laborer or mechanic is underpaid;
 9. Permit the debarment of persons or firms found to have disregarded their obligations to employees and subcontractors.

The Davis-Bacon Act is applicable where the Federal Government or the District of Columbia is a party to a contract for construction and the value of the contract exceeds \$2,000. This type of applicability is referred to as *direct Davis-Bacon Act or DBA coverage*. One example is repairs to HUD-owned properties where HUD contracts directly for the repairs. Such DBA contracts are managed under the auspices of HUD's Office of the Chief Procurement Officer. A copy of the DBA is provided in Appendix II-2.

Most HUD- construction work is *not* covered by the DBA since HUD usually does not contract directly for construction work. Rather, Davis-Bacon wage rates apply to HUD programs because of prevailing wage requirements expressed in HUD "Related Acts" such as the U. S. Housing Act of 1937 and the Housing and Community Development Act of 1974, as amended. The *Related Acts* (referred to throughout this Handbook as the Davis-Bacon and Related Acts or *DBRA*) are discussed further in paragraph 2-3 of this chapter.

- B. **Contract Work Hours and Safety Standards Act (CWHSSA).** The CWHSSA applies to both direct Federal contracts and to Federally-assisted contracts where those contracts require or involve the employment of laborers and mechanics and where Federal wage standards (e.g., Davis-Bacon or HUD-determined prevailing wage rates) are applicable. CWHSSA provisions apply to all laborers and mechanics, including watchmen and guards, employed by any contractor or subcontractor. CWHSSA also applies to maintenance laborers and mechanics employed by contractors or subcontractors engaged in the operation of PHA/TDHE/IHA developments.

Note: CWHSSA overtime provisions do not apply to laborers and mechanics employed directly by Public or Indian housing agencies.

CWHSSA provides that all overtime (O/T) hours (defined as hours worked in excess of 40 during any workweek on the CWHSSA-covered project site) must be compensated at a rate not less than one and one half times the regular basic rate of pay (i.e., premium pay). Where CWHSSA O/T provisions are applicable, compensatory time in lieu of premium pay for O/T hours is not permissible. In the event of O/T violations, the CWHSSA renders the contractor liable to the underpaid workers for wage restitution and to the United States for liquidated damages computed at the rate of \$10 per violation. Intentional violations of CWHSSA standards are considered a Federal criminal misdemeanor.

Exemptions:

1. CWHSSA overtime provisions do not apply where the Federal assistance is only in the nature of a loan guarantee or insurance.
2. CWHSSA overtime provisions do not apply to prime contracts of \$100,000 or less.

C. **Copeland Act (Anti-Kickback Act).** The Copeland Act concerns three facets of prevailing wage compliance:

1. The “anti-kickback” provision 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/she is entitled under his/her contract of employment. Violations of the anti-kickback provision are punishable by a fine or by imprisonment up to 5 years, or both.
2. Associated DOL regulations restrict payroll deductions to those that are permissible without DOL approval as explained at 29 CFR §3.5; deductions that require advance DOL approval are explained at 29 CFR §3.6.
3. The Act also requires the submission of weekly payroll reports and statements of compliance (certified payroll report = CPR) by all contractors and subcontractors engaged in such construction, prosecution, completion or repair. The willful falsification of a payroll report or Statement of Compliance may subject the employer to civil or criminal prosecution under §101 of Title 18 and §3729 of Title 31 of the U.S.C. and may also be a cause for debarment.

Exemptions:

1. Copeland Act CPR requirements are applicable *only* where Davis-Bacon (DBA or DBRA) prevailing wage provisions are applicable.

2. Copeland Act *anti-kickback* provisions do not apply where the Federal assistance is only in the nature of loan guarantee.

D. **Fair Labor Standards Act (FLSA)**. The FLSA governs such matters as Federal minimum wage rates and overtime (O/T). These standards are generally applicable to any labor performed and may be *pre-empted* by other (often more stringent) Federal standards such as the DBRA prevailing wage requirements and CWHSSA O/T provisions. The authority to administer and enforce FLSA provisions resides solely with DOL.

E. **Portal-to-Portal Act (PA)**. The PA applies to the DBA and prevents the commencement of any court suit for unpaid straight-time (S/T) wages more than two years after performance of the work (three years in case of willful violations), where permissible under the law. *However*, it is the position of DOL that the PA does not apply to *administrative* actions initiated through Administrative Law Judge (ALJ) hearing procedures; thus, the PA does not preclude corrective administrative action after two (or three) years.

The PA *does not* apply to Federally-assisted (DBRA) projects. Instead, the various state statutes of limitations would apply to such projects in private actions where they are judicially determined to be permissible under the law. The Federal six-year statute of limitations would apply in government enforcement actions.

F. **McNamara-O’Hara Service Contract Act (SCA)**. The SCA governs maintenance and other service work and applies when the Federal government (or the District of Columbia) contracts directly for such services and the value of the contract exceeds \$2,500. SCA-coverage in HUD programs is limited because HUD infrequently enters into direct contracts for services in the administration of its programs. By way of an example, however, a contract for maintenance service at a HUD-owned multifamily property would be covered by the SCA. Like DBA contracts, SCA contracts are managed under the auspices of HUD’s Office of the Chief Procurement Officer. SCA enforcement authority resides *solely* with DOL.

2-3 **HUD Davis-Bacon Related Acts**. Related Acts are program statutes that contain a provision(s) requiring compliance with the wages found to be prevailing by the Secretary of Labor pursuant to the Davis-Bacon Act. These are commonly referred to as the *Davis-Bacon and Related Acts* or *DBRA*. HUD Related Acts include (but are not limited to):

- A. the National Housing Act;
- B. the U. S. Housing Act of 1937;
- C. the Housing and Community Development Act of 1974;
- D. the National Affordable Housing Act of 1990; and
- E. the Native American Housing Assistance and Self-determination Act of 1996, each as amended.

Many of the labor provisions in HUD Related Acts contain applicability thresholds based upon the number of dwelling units involved. Some thresholds are based upon the amount of HUD assistance or the use of HUD funds or assistance. In addition, most HUD Related Acts contain exemptions from prevailing wage coverage for bona-fide volunteers. It is important for OLR and LCA staff to be familiar with the statutory provisions and how these are interpreted. The labor provisions found in current HUD Related Acts are excerpted for reference in Appendix II-1 to this Handbook along with applicability factors relating to specific HUD Related Acts (Appendix II-6).

- 2-4 **Davis-Bacon applicability by administrative instrument.** Even if a HUD program statute does not itself impose prevailing wage requirements, HUD may decide to impose these requirements through an administrative instrument such as regulations or other directives, or by grant or contract agreements. Examples include coverage of the Capital Grant Program, Assisted Living Conversion Program for Section 202 projects, the Housing Finance Agency Risk-Sharing Demonstration Program, the FHA Housing Finance Agency Risk-Sharing Program, and the Assisted Housing Drug Elimination Program.
- 2-5 **Exemptions/exclusions from prevailing wage coverage.** Some HUD programs are not covered because no prevailing wage language is contained in the statute authorizing the program. Examples include McKinney Act programs (other than Single Room Occupancy moderate rehabilitation) and single family FHA insurance programs where there is no language in the statute imposing prevailing wage requirements. In addition, Indian CDBG is excluded from coverage because HUD has exercised statutory authority to waive prevailing wage requirements. (See also exclusions for bona fide volunteers at 2-8, below.)
- 2-6 **Economic Development Initiative/Special Purpose Grants (EDISP).** EDISP grants are activities authorized in HUD appropriations bills where specific projects are earmarked for funding. Generally, EDISP grants are not covered by prevailing wage requirements because the appropriations bills do not contain language imposing Davis-Bacon provisions. However, if other HUD assistance is utilized in conjunction with an EDISP grant, the project associated with the grant may be subject to Davis-Bacon wage provisions to the extent that such provisions are imposed under the other HUD assistance.
- 2-7 **HUD-determined prevailing wage requirements.** HUD-determined prevailing wage rates are applicable to Public, Indian and Hawaiian housing programs because of provisions in the U.S. Housing Act of 1937, as amended (USHA) and the Native American Housing and Self-Determination Act of 1996, as amended (NAHASDA). The USHA and NAHASDA are also Davis-Bacon Related Acts because both contain provisions requiring the payment of not less than Davis-Bacon prevailing wage rates to all construction laborers and mechanics employed in the development of low-income/affordable housing projects.
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- A. **U.S. Housing Act of 1937 (USHA)**. The USHA contains a provision requiring that maintenance laborers and mechanics employed in the operation of low-income housing be paid wages not less than prevailing wage rates determined or adopted by HUD. The USHA also requires the payment of not less than HUD-determined or –adopted wage rates to architects, technical engineers, draftsmen and technicians employed in the development of low-income housing.
- B. **Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA)**. The NAHASDA contains provisions similar to the USHA requiring the payment of not less than HUD-determined wage rates to maintenance laborers and mechanics employed in the operation of affordable housing, and to architects, technical engineers, draftsmen and technicians employed in the development of affordable housing. NAHASDA prevailing wage provisions are applicable to Indian Housing Block Grants and to Housing Assistance for Native Hawaiians. An amendment to NAHASDA allows for the preemption of Davis-Bacon and/or HUD-determined wage rates by tribally-determined prevailing wage rates for the Indian Housing Block Grant (IHBG) program. [See also *Office of Native American Programs (ONAP) Program Guidance No. 2003-04*, dated 2/5/2003]

2-8 **Volunteers**. The labor standards clauses in most HUD program statutes contain provisions allowing for the use of bona-fide volunteers on projects subject to prevailing wage requirements. The use of volunteers may be permitted by a statutory exemption or by statutory waiver authority. Volunteers are excluded from Davis-Bacon and/or HUD-determined prevailing wage coverage and receive no compensation for their labor. However, volunteers may receive expenses, reasonable benefits or nominal fees. (See also HUD Regulations 24 CFR Part 70.)

- A. **Bona-fide volunteer**. A bona-fide volunteer, for labor standards purposes, is defined as an individual who performs services for a public or private entity for civic, charitable, or humanitarian reasons, without promise, expectation or receipt of compensation for services rendered.
1. Individuals shall be considered volunteers only where their services are offered freely and without pressure and coercion, direct or implied, from an employer.
 2. An individual shall not be considered a volunteer if the individual is otherwise employed at any time in the construction or maintenance work for which the individual volunteers. For example, a person that was employed as a covered laborer or mechanic on a project cannot be a bona-fide volunteer working on the same project.
- B. **Expenses, reasonable benefits, or nominal fees**. Volunteers may receive payments for expenses, reasonable benefits or nominal fees in relation to the

work for which they volunteered without losing “volunteer” status. Payment of expenses, benefits or fees must be approved in advance by the HUD Labor Relations Specialist (LRS) responsible for the jurisdiction involved. Examples of expenses, reasonable benefits and nominal fees include such items as uniform allowances, reimbursement for cleaning expenses or wear and tear on personal clothing, and out-of-pocket costs for meals and/or transportation. Such payments are not tied to productivity and in no way are construed as wages or other paid compensation. (See also 24 CFR Part 70, §70.3(b).)

1. Entities that propose to pay expenses, reasonable benefits or nominal fees to volunteers shall request a determination from the LRS that the proposed payments meet the regulatory criteria for such payments.
2. The LRS must respond to such requests within 10 HUD-work days following receipt by the LRS of sufficient information to allow for a determination.

C. **Recordkeeping.** Entities receiving the services of volunteers must maintain records relating to any work that is performed on projects or contracts otherwise covered by Federal prevailing wage requirements.

1. For projects that utilize all-volunteer labor, these records must include the name and address of the agency sponsoring the project, a description of the project, the number of volunteers, the hours of work they performed, and where a waiver of prevailing rates is involved, the type of work performed by the volunteers (See 24 CFR, Part 70, §70.5(c)) .
2. For projects that utilize a mix of volunteer and paid workers, these records must include the items above, and the names of the volunteers.

2-9 **Sweat equity.** Sweat equity programs permit members of eligible families to provide labor in exchange for program benefits including acquisition of property for homeownership or to provide labor in lieu of, or as a supplement to, rent payments. Sweat equity participants are exempt from Federal prevailing wage requirements. Sweat equity is permitted under HOME (see §255 of the NAHA) and (for homeownership) in Indian and Native Hawaiian housing programs under NAHASDA (see also *ONAP Program Guidance No. 2003-03*, dated 2/4/2003).

2-10 **Department of Labor Regulations.** Reorganization Plan #14 of 1950 (discussed in Chapter 1) authorizes the Secretary of Labor to prescribe standards, regulations and procedures which are observed by Federal agencies, including HUD, in the administration and enforcement of Federal labor standards provisions such as Davis-Bacon wage requirements. These regulations are published at Title 29 in the Code of Regulations (CFR); copies of the relevant DOL regulations are contained in Appendix II-4 and are available on-line at: <http://www.access.gpo.gov/nara/cfr/cfr-table-search.html>.

DOL regulations are discussed in more detail throughout this Handbook as related topics are covered. The relevant Parts include:

- A. **Part 1 – Procedures for Predetermination of Wage Rates.** This Part explains how DOL determines the prevailing wage rates under the Davis-Bacon Act. It defines “prevailing wage” and describes how DOL conducts wage surveys and makes determinations of prevailing wages. It discusses when revisions to wage determinations (e.g., supersedeas wage determinations, modifications) become effective with regards to events such as contract awards, starts of construction, bid openings, FHA initial endorsements, and Section 8 agreements to enter into Housing Assistance Payments (HAP) contracts. Part 1 also discusses reconsideration by the Wage and Hour Administrator of wage determinations or of decisions by the Administrator concerning the application of a wage determination.
- B. **Part 3 – Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States.** This Part requires the submission of weekly certified payroll reports, discusses permissible payroll deductions from wages, and describes acceptable methods of wage payment. It also concerns the anti-kickback provisions of the Copeland Act.
- C. **Part 5 – Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (Also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act).** This Part concerns the responsibilities of Federal agencies in the administration and enforcement of Davis-Bacon wage requirements, Copeland Act anti-kickback, certified payroll and wage payments requirements, and CWHSSA overtime provisions. Part 5 is likely the most relevant for HUD Labor Relations staff. It contains definitions, provisions that must be included in the contracts for all covered works, standards for contractor/subcontractor compliance, enforcement requirements and remedies, debarment proceedings, liquidated damages provisions for CWHSSA overtime violations, and reporting requirements.
- D. **Part 6 – Rules of Practice for Administrative Proceedings Enforcing Labor Standards in Federal and Federally Assisted Construction Contracts and Federal Service Contracts.** This Part concerns administrative hearings on enforcement of the Davis-Bacon and Related Acts, the Copeland Act, Contract Work Hours and Safety Standards Act, and the Service Contract Act. It primarily involves responsibilities and procedures within the Department of Labor.
- E. **Part 7 – Practice Before the Administrative Review Board with Regard to Federal and Federally Assisted Construction Contracts.** This Part

concerns the rules of practice of the Administrative Review Board (formerly known as the Wage Appeals Board). Again, this Part primarily involves responsibilities and procedures within the Department of Labor.

- 2-11 **Department of HUD program regulations.** HUD programs regulations are published at 24 CFR. HUD regulations are available on-line at: www.access.gpo.gov/nara/cfr/cfr-table-search.html.

Some HUD program regulations contain requirements pertaining to labor standards provisions. HUD regulatory provisions will be discussed throughout this Handbook and its appendices, as appropriate.

- A. **Part 70 – Use of Volunteers on Projects Subject to Davis-Bacon and HUD-Determined Wage Rates.** This Part governs the use of bona-fide volunteers on projects subject to prevailing wage requirements. It contains definitions and procedures for implementing exemptions and obtaining waivers from HUD concerning prevailing wages for volunteers.
- B. **Part 92 - Home Investment Partnerships Program.** This Part, specifically §92.354, contains the labor standards provisions applicable to the HOME program. It discusses applicability issues and prevailing wage exclusions for volunteers and sweat equity.
- C. **Part 200 – Introduction to FHA Programs.** This Part, at §200.33, contains the labor standards provisions applicable to FHA insurance programs.
- D. **Part 266 – Housing Finance Agency Risk-Sharing Program for Insured Affordable Multifamily Project Loans.** This part, at §266.225, contains the labor standards provisions applicable to HFA risk-sharing projects.
- E. **Part 891 – Supportive Housing for the Elderly and Persons with Disabilities.** This Part, at §891.155(d), contains the labor standards provisions applicable to Section 202 and Section 811 projects.
- F. **Part 1000 – Native American Housing Activities.** This Part, at §1000.16, contains the labor standards provisions applicable to Indian housing programs.
- G. **Part 1006 – Native Hawaiian Housing Block Grant Program.** This Part, at §1006.345, contains the labor standards provisions applicable to the Native Hawaiian Housing Block Grant Program.

Related Appendices

- II-1 HUD Davis-Bacon Related Acts (Excerpts)
- II-2 Davis-Bacon Act/Copeland “Anti-kickback” Act
- II-3 Contract Work Hours and Safety Standards Act
- II-4 DOL Davis-Bacon Regulations (29 CFR Parts 1, 3, 5, 6 and 7)

Chapter 8 ADMINISTRATION AND BASIC ENFORCEMENT OF PREVAILING MAINTENANCE WAGE RATES DETERMINED OR ADOPTED BY HUD

- 8-1 **Introduction.** This chapter concerns the administration and enforcement of prevailing maintenance wage rates determined or adopted by HUD for the operation of Public and Indian housing covered by such rates. For ease of reference, the acronym “MWD” is used to mean maintenance wage decisions and, generally, prevailing maintenance wage rates determined or adopted by HUD. In addition, *HQLR* shall mean the HUD Headquarters Office of Labor Relations, *RLRO* shall mean the Regional Labor Relations Officer, *LRS* shall mean the HUD Labor Relations Specialist/staff; *PHA* shall mean the appropriate staff of the Public housing agency involved, and *TDHE* (tribally-designated housing entity) shall mean the Indian tribe, Indian housing agency or other tribally-designated housing agency administering the program.

Note: This chapter is not applicable to programs other than the operation of low-income housing projects (USHA) or affordable housing (NHASDA) and the agencies administering such programs.

MWDs are statutorily mandated and, for the most part, are administered and enforced in the same manner as Davis-Bacon and Related Acts (DBRA) labor standards in HUD programs.

- 8-2 **Applicability of MWDs.** HUD-determined (or adopted) prevailing wage rate decisions (MWDs) are applicable to the operation of certain Public and Indian housing projects.
- A. **Low-income housing projects operated by Public housing authorities.** MWDs are applicable to the operation by PHA of low-income housing projects as such projects are defined by the U.S. Housing Act of 1937, amended, (USHA), pursuant to Section 12 of the Act.
 - B. **Affordable housing operated by Indian tribes and/or tribally-designated housing entities.** MWDs are applicable to the operation of affordable housing by a TDHE as such housing is defined by the Native American Housing and Self-Determination Act of 1996, as amended (NAHASDA), pursuant to Section 104 of the Act.
 - C. **Exceptions to MWD wage rates.**
 - 1. **Volunteers.** Bona fide volunteers are excepted from MWD coverage for both PHA and TDHE operations. (See also HUD regulations 24 *CFR Part 70*, and paragraphs 2-8 *Volunteers*, and 11-31, *Volunteers*.)

2. **Tribally-determined wage rates.** Prevailing wage rates determined under the auspices of a tribal law or regulation that are applicable to the work or contract involved supersede and render MWDs ineffective. (See also *ONAP Program Guidance 2003-04.*)
- 8-3 **Issuance of maintenance wage determinations.** MWDs are issued by the LRS to each PHA and TDHE operating covered housing within that LRS's jurisdiction. MWDs are issued on form HUD-52158, *Maintenance Wage Determination*. The LRS shall make every effort to ensure that the MWD is issued at least 30 days in advance of the beginning of the respective PHA's/TDHE's fiscal year.
- 8-4 **Use and effectiveness of maintenance wage decisions.** Unless otherwise specified by HUD, the determination shall be effective for a one-year period beginning the first day of the PHA's/TDHE's fiscal year. During the effective period, PHAs/TDHEs may utilize the determination for all routine maintenance work activities without further review or approval from HUD. An expired determination is void.
- 8-5 **Additional classifications.** The PHA/TDHE may request an additional classification and wage rate, as necessary, for any class of maintenance laborer or mechanic which is not listed on the MWD and which is to be employed in the operation of the covered housing by either the PHA/TDHE or a contractor or subcontractor. HUD will issue the appropriate additional classification(s) and wage rate(s) as an addendum to the original MWD. Unless otherwise specified, the additional classification(s) and wage rate(s) shall be effective, retroactively, to the date of the original MWD and shall expire with the original MWD, accordingly.
- 8-6 **Contract Work Hours and Safety Standards Act (CWHSSA).** *Contracts* for covered maintenance work in excess of \$100,000 are subject to the overtime provisions of the CWHSSA. Force account labor (i.e., maintenance workers employed directly by the PHA/TDHE) are *not* covered by CWHSSA overtime provisions. (See 2-2(B), *Contract Work Hours and Safety Standards Act.*)
- 8-7 **Inapplicability of certain labor provisions associated with DBRA.** While the administration and enforcement of MWDs generally mirrors the same standards and expectations associated with DBRA requirements, there are certain DBRA provisions that are not applicable to MWD work/contracts. These differences are described below.
- A. **MWD wage payments/frequency of payments.** MWD wage payments must be made at the full amount of wages due free and clear and without subsequent deduction except as otherwise provided by law or regulation. MWD payments may be made no later than one pay period following the end of the regular pay period in which the wages were earned or accrued. A period may not be of any duration longer than semi-monthly.

B. Recordkeeping. Employers (PHAs, TDHEs, contractors and subcontractors) engaged on work subject to MWDs must make, and maintain for no less than three years following the completion of the work, records containing information demonstrating compliance with the MWDs applicable to the work. These records must at a minimum contain for each laborer or mechanic employed:

1. Employee name, address and Social Security Number;
2. Correct work classification(s);
3. Hourly rate(s) of monetary wages paid;
4. Rate(s) of any bona fide fringe benefits provided;
5. Number of daily and weekly hours worked;
6. Gross wages earned;
7. All deductions taken; and
8. Actual net wages paid.

Such records must be made available for inspection or transcription by authorized representatives of the PHA, TDHE and/or HUD.

8-8 **Contracts for maintenance work or services.** This paragraph and the following paragraphs assume that a proper determination of MWD labor standards applicability has been made for the contracts(s) involved and that the correct MWD wage decision has been assigned.

Note: HUD observes for maintenance contracts the \$2,000 threshold instituted for contracts subject to the Davis-Bacon and Related Acts. (See also On the Mark! #11, *What's new about maintenance contract thresholds?*)

A. PHA/TDHE responsibilities. For each maintenance contract the PHA/TDHE shall:

1. Ensure that the current MWD and contract standards, are incorporated into the contract (e.g., contract specifications).
2. Ensure that no contract is awarded to any contractor that is debarred or otherwise ineligible to participate in Federal programs.
3. Provide technical support to the prime contractor and subcontractors concerning prevailing wage requirements.
4. Identify and process requests for additional classifications and wage rates, as needed.
5. Conduct on-site interviews with the maintenance laborers and mechanics employed by contractors and subcontractors.
6. Perform periodic "spot-check" reviews of contractor and subcontractor records, including comparison of on-site interview data against such records. (See 8-7(B), *Recordkeeping.*)

7. Notify the contractor, and any subcontractor involved, of any labor standards deficiencies and required corrective actions.
8. Receive and screen employee and other complaints or allegations of prevailing wage violations.
9. Ensure full correction of labor standards deficiencies or violations.
10. Dispose of deposit/escrow accounts established for labor standards purposes.
11. Establish and maintain full documentation of all labor standards administration and enforcement activities.

Section I – Contract Administration

- 8-9 **Contract wage decision and standards.** The bid solicitation, if any, and the resulting contract for covered maintenance work must contain the applicable MWD and the HUD-5370-C, *General Conditions for Non-construction Contracts – Sections 1 and/or 2*, as appropriate. These are often inserted in the bid/contract specifications.
- A. **Maintenance wage determination.** The wage decision lists the work classifications approved for the project and the minimum wage rates that must be paid to maintenance laborers and mechanics performing the work of the corresponding classifications. A multi-year contract for maintenance work or services must incorporate any subsequent MWD which may be issued to the PHA/TDHE during the life of the contract.
- B. **Contract standards.** The contract clauses prescribe the responsibilities of the contractor 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 liquidated damages which may be found due. These contract clauses enable HUD or the PHA/TDHE to enforce the Federal labor standards applicable to the project/contract. The HUD-5370-C is available at HUDClips.
- C. **Acceptable methods of incorporation.** The applicable MWD and HUD-5730-C may be incorporated into bid solicitations (if any) and contracts by “hard-copy”, incorporation into other documents, or by reference. See 3-12(C) for additional guidance on acceptable incorporation methods.
- 8-10 **Verification of contractor eligibility and termination of ineligible contractors.** No contract may be awarded to any contractor that is debarred, suspended or otherwise ineligible to participate in Federal or Federally-assisted contracts or programs. The labor standards clauses (i.e., HUD-5370-C) insert into the contract a certification of eligibility such that the holder of the contract, the prime contractor and all subcontractors, certify that they are eligible for award. The PHA/TDHE shall verify the eligibility of all prime contractors prior to contract award by reviewing the Excluded Parties List available on-line at: www.epls.gov The PHA/TDHE shall make a record of the verification in the project files. Any contract awarded to a prime contractor or subcontractor that is found to be ineligible for award must be terminated immediately.
- 8-11 **Additional classifications and wage rates.** If the MWD does not include a work classification(s) required for the execution of the contract work, the employer (contractor or subcontractor) may request an additional classification(s) and wage
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rate(s) through the PHA/TDHE. Generally, additional classification and wage rates requests are not approved for apprentices, trainees, helpers or welders.

- 8-12 **Labor standards administration and enforcement files.** The PHA/TDHE is responsible for the creation, maintenance and preservation of labor standards files for each prevailing wage project administered by them. HUD does not prescribe for PHAs/TDHEs any particular file system or components. *Except* that the file system demonstrates that the LCA has successfully carried out its labor standards responsibilities.
- 8-13 **Final review.** Prior to the final payment on the contract, the PHA/TDHE shall conduct final close-out review for each contract. Final review considers whether there are any outstanding labor standards issues. HUD imposes no particular protocols concerning a final review, however, PHAs/TDHEs must ensure that all labor standards issues have been fully resolved or that appropriate provisions (e.g., escrow account) have been or will be put in place to ensure full compliance.

Section II – Basic Enforcement.

- 8-14 **Labor standards compliance monitoring.** Periodic monitoring is conducted to ensure all contractors and subcontractors are performing the contract work in accordance with the applicable labor standards provisions. The two key aspects of periodic monitoring include spot-check reviews of contractor and subcontractor records and on-site interviews with laborers and mechanics employed under the contract.
- A. Spot-check reviews.** The PHA/TDHE shall monitor the labor standards performance of each prime contractor and subcontractors (employers). Spot-check reviews shall consist of random examinations of the employers records to detect labor standards violations such as underpayments, unapproved work classifications, and failure to pay premium pay for overtime hours. The first spot-check review for any employer may provide a pattern of satisfactory labor standards performance, in which case subsequent reviews may be less frequent and/or less intensive.
- B. On-site interviews (MWD).** The PHA/TDHE is responsible for conducting on-site interviews with maintenance laborers and mechanics and recording the information gathered. (PHAs/TDHEs may find form HUD-11, *Record of Employee Interview*, helpful in this regard.) PHAs/TDHEs are encouraged to utilize judgment in assessing whether and with whom on-site interviews should be conducted during any site visit. Such interviews shall be conducted in a manner consistent with on-site interviews conducted on contracts/projects subject to DBRA requirements. (See 5-8(C), *On-site interviews.*)
1. **Comparison to employer records.** Information collected during on-site interviews shall be compared to the respective employer's corresponding records. The result of the comparison, including any discrepancies, shall be noted. Any discrepancies disclosed during the comparison must be brought to the employer's attention and must be resolved.
 2. **Targeted interviews.** Where spot-check reviews and/or the comparison of interview statements to employer records indicate that underpayments may exist, it is appropriate to target interviews to particular crafts or to the employees of a certain employer(s).
- C. Questionnaires.** Questionnaires may be mailed to employees when the PHA/TDHE has reason to doubt the accuracy of the employer's records and underpayments are suspected. These questionnaires are used to test the accuracy of the records and/or to obtain the employees' versions of their
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working conditions. The information gathered through the use of questionnaires may be used to develop complaints of underpayment. (See *Federal Labor Standards Questionnaire*, form HUD-4730.)

- 8-15 **Compliance principles, common discrepancies and corrections.** Many of the labor standards requirements associated with maintenance wage rates are similarly in effect for DBRA contracts/projects. For example, both involve the payment of not less than the applicable prevailing wage rate for various classifications of work; both involve certain recordkeeping requirements; both involve the payment of wage restitution where underpayments have occurred. To the extent applicable, PHAs/TDHEs should follow the guidance at 5-9 through 5-13 to correct discrepancies related to maintenance prevailing wage and other labor standards requirements.

ELECTRONIC CODE OF FEDERAL REGULATIONS

e-CFR data is current as of September 17, 2015

[Title 2](#) → [Subtitle A](#) → [Chapter II](#) → [Part 200](#) → [Subpart F](#) → Appendix

Title 2: Grants and Agreements

[PART 200—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS](#)
[Subpart F—Audit Requirements](#)

APPENDIX II TO PART 200—CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY CONTRACTS UNDER FEDERAL AWARDS

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

(A) Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

(B) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

(C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

(D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

(G) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(H) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

(I) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

(J) See §200.322 Procurement of recovered materials.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75888, Dec. 19, 2014]

[Need assistance?](#)

Excerpt from NAHASDA

SEC. 104. TREATMENT OF PROGRAM INCOME AND LABOR STANDARDS. [25 USC 4114]

(a) PROGRAM INCOME-

(1) AUTHORITY TO RETAIN- Notwithstanding any other provision of this Act, a recipient may retain any program income that is realized from any grant amounts under this Act if--

- (A) such income was realized after the initial disbursement of the grant amounts received by the recipient; and
- (B) the recipient has agreed that it will utilize such income for housing related activities in accordance with this Act.

(2) PROHIBITION OF RESTRICTED ACCESS OR REDUCTION OF GRANT- The Secretary may not **restrict access to or** reduce the grant amount for any Indian tribe based solely on--

- (A) whether the recipient for the tribe retains program income under paragraph (1);
- (B) the amount of any such program income retained; ~~or~~
- (C) whether the recipient retains reserve amounts described in section 210, or
- (D) whether the recipient has expended retained program income for housing-related activities.

(3) EXCLUSION OF AMOUNTS- The Secretary may, by regulation, exclude from consideration as program income any amounts determined to be so small that compliance with the requirements of this subsection would create an unreasonable administrative burden on the recipient.

(4) EXCLUSION FROM PROGRAM INCOME OF REGULAR DEVELOPER'S FEES FOR LOW-INCOME HOUSING TAX CREDIT PROJECTS- Notwithstanding any other provision of this Act, any income derived from a regular and customary developer's fee for any project that receives a low-income housing tax credit under section 42 of the Internal Revenue Code of 1986, and that is initially funded using a grant provided under this Act, shall not be considered to be program income if the developer's fee is approved by the State housing credit agency.

(b) LABOR STANDARDS-

(1) IN GENERAL- Any contract or agreement for assistance, sale, or lease pursuant to this Act shall contain a provision requiring that not less than the wages prevailing in the locality, as determined or adopted (subsequent to a determination under applicable State, tribal, or local law) by the Secretary, shall be paid to all architects, technical engineers, draftsmen, and technicians employed in the development, and all maintenance laborers and mechanics employed in the operation, of the affordable housing project involved; and shall also contain a provision that not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Act of March 3, 1931 (commonly known as the Davis-Bacon Act; chapter 411; 46 Stat. 1494; 40 U.S.C. 276a et seq.), shall be paid to all laborers and mechanics employed in the development of the affordable housing involved, and the Secretary shall require certification as to compliance with the provisions of this paragraph before making any payment under such contract or agreement.

(2) EXCEPTIONS- Paragraph (1) and the provisions relating to wages (pursuant to paragraph (1)) in any contract or agreement for assistance, sale, or lease pursuant to this Act, shall not apply to any individual who receives no compensation or is paid expenses, reasonable benefits, or a nominal fee to perform the services for which the individual volunteered and who is not otherwise employed at any time in the construction work.

(3) APPLICATION OF TRIBAL LAWS- Paragraph (1) shall not apply to any contract or agreement for assistance, sale, or lease pursuant to this Act, if such contract or agreement is otherwise covered by one or more laws or regulations adopted by an Indian tribe that requires the payment of not less than prevailing wages, as determined by the Indian tribe.

24 CFR § 1000.16 - What labor standards are applicable?

CFR Table of Popular Names

§ 1000.16 What labor standards are applicable?

(a) *Davis-Bacon wage rates.*

(1) As described in section 104(b) of NAHASDA, contracts and agreements for assistance, sale, or lease under NAHASDA must require prevailing wage rates determined by the Secretary of Labor under the Davis-Bacon Act (40 U.S.C. 3141-44, 3146, and 3147) to be paid to laborers and mechanics employed in the development of affordable housing.

(2) When NAHASDA assistance is only used to assist homebuyers to acquire single family housing, the Davis-Bacon wage rates apply to the construction of the housing if there is a written agreement with the owner or developer of the housing that NAHASDA assistance will be used to assist homebuyers to buy the housing.

(3) Prime contracts not in excess of \$2000 are exempt from Davis-Bacon wage rates.

(b) HUD-determined wage rates. Section 104(b) also mandates that contracts and agreements for assistance, sale or lease under NAHASDA require that prevailing wages determined or adopted (subsequent to a determination under applicable state, tribal or local law) by HUD shall be paid to maintenance laborers and mechanics employed in the operation, and to architects, technical engineers, draftsmen and technicians employed in the development, of affordable housing.

(c) Contract Work Hours and Safety Standards Act. Contracts in excess of \$100,000 to which Davis-Bacon or HUD-determined wage rates apply are subject by law to the overtime provisions of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701).

(d) *Volunteers.* The requirements in [24 CFR part 70](#) concerning exemptions for the use of volunteers on [projects](#) subject to Davis-Bacon and HUD-determined wage rates are applicable.

(e) Paragraphs (a) through (d) of this section shall not apply to any contract or agreement for assistance, sale, or lease pursuant to [NAHASDA](#), or to any contract for [construction](#), development, operations, or maintenance thereunder, if such contract or agreement for assistance, sale, or lease is otherwise covered by one or more laws or regulations adopted by an Indian tribe that requires the payment of not less than prevailing wages, as determined by the Indian tribe. Paragraphs (a) through (d) of this section shall also not apply to work performed directly by tribal or TDHE employees under a contract or agreement for assistance, sale, or lease, that is covered by one or more such laws or regulations adopted by an Indian tribe.

(f) *Other laws and issuances.* Recipients, contractors, subcontractors, and other participants must comply with regulations issued under the labor standards provisions cited in this section, other applicable Federal laws and regulations pertaining to labor standards, and HUD Handbook 1344.1 (Federal Labor Standards Compliance in Housing and Community Development Programs).

[[63 FR 12349](#), Mar. 12, 1998, as amended at [77 FR 71522](#), Dec. 3, 2012]

CFR Toolbox

[Law about... Articles from Wex](#)

[Table of Popular Names](#)

[Parallel Table of Authorities](#)

[How current is this?](#)

Factors of Labor Standards Applicability

The labor standards provisions in HUD program statutes vary considerably meaning that there are significant differences in whether and to what extent prevailing wage requirements are applicable under these programs. This treatment discusses some of the differences and explains how the language is interpreted for applicability purposes. These sections refer to the specific language in each statutory provision; for the complete text of the statutory provision, please see ***HUD Davis-Bacon Related Acts***.

Housing and Community Development Act of 1974, Section 110(a) (CDBG, Section 108 Loan Guarantee, EDI/BEDI)

1. ...construction work financed...

CDBG funds (i.e., Title I funds) can be used to finance activities other than "construction work" which uses do not trigger Davis-Bacon requirements. For example, CDBG can finance real property acquisition, purchase of equipment, architectural and engineering fees, other services (e.g., legal, accounting, construction management), and other non-construction items such as furniture, business licenses, real estate taxes, and tenant allowances for such items.

On the other hand, "financing" is not limited to the act of paying for construction work directly. "Financing" can mean, for example, using CDBG assistance to pay the interest charged to reduce the interest rate on a construction loan (including certain collateral accounts). Generally, "financing" also means using CDBG funds to provide permanent financing (take-out loan) following construction.

2. ...in whole or in part...

Notice that the statute seems to anticipate that CDBG funds may be used in conjunction with other funding sources. If CDBG funds are used to finance only a portion of the construction work, labor standards are

applicable to the *entire* construction work.

3. ***All laborers and mechanics employed by contractors and subcontractors...***

The covered classes of workers are those employed by "contractors and subcontractors." Consequently, the labor standards provisions *do not* apply to employees of the grantee (force account workers) who are not employed by contractors or subcontractors but that may be engaged on an otherwise covered project. Note that the construction work is covered but force account workers are excluded.

4. ***...shall apply to the rehabilitation of residential property only if such property contains not less than 8 units.***

This language represents an exemption for residential property that contains 7 or less units. Although the statute refers to the "rehabilitation" of residential property, this exemption has been interpreted to include the new construction of residential property containing 7 or less units.

Typically, single-family homeowner properties are excluded under this exemption. However, *property* is not limited to a specific building. Property is defined as one or more buildings on an undivided lot or on contiguous lots or parcels, which are commonly-owned and operated as one rental, cooperative or condominium project. Examples of 8+ unit properties may include:

- 5 townhouse buildings side-by-side which consist of 2 units each.
- 3 apartment buildings each consisting of 5 units and located on one tract of land.
- 8 single-family (not homeowner) houses located on contiguous lots.

5. Further, HUD has concluded that the term "rehabilitation" as used within the statutory language is not meant to preclude new construction from this exemption. The Conference Report on the HCD Act of 1974 indicated that at the time that the statute was written, residential new construction was not an eligible activity. However, subsequent changes to the statute now permit the use of CDBG funds (and other Title I funds) for residential new construction. Accordingly, residential new construction is treated in the same manner as residential rehabilitation for Davis-Bacon

purposes.

HCDA Statutory Language

National Affordable Housing Act, Section 286(a) (HOME)

1. ...affordable housing with 12 or more units assisted with funds made available under this subtitle...

Unlike CDBG, the standard for coverage is *assisted* not financed - which provides for much broader application. This means that Davis-Bacon requirements are operable without regard to whether the HOME funds are used for construction or non-construction activities.

Non-construction activities include real property acquisition, architectural and engineering fees, and other professional services. In some cases, Davis-Bacon requirements may be triggered when HOME funds are used to provide downpayment assistance to individual homebuyers. (See also HUD Regulations at 24 CFR 92.354(a)(2).)

This also recognizes that HOME projects can contain units that are not assisted by HOME. The threshold applies only to the number of units assisted by HOME. For unit threshold purposes, HUD uses the number of units identified as "HOME" units under the program definition whether determined on a pro-rata basis, specific designation or other means allowable by HUD's Office of Community Planning and Development (CPD).

Note also that once Davis-Bacon requirements are triggered, the labor standards are applicable to the construction of the entire project - including the portions of the project other than the assisted units.

2. Any contract for the construction of affordable housing with 12 or more units assisted with funds...

Davis-Bacon requirements are applicable to *contracts for construction* covering 12 or more HOME-assisted units. Davis-Bacon does not follow "construction work" or "projects". This factor has implications in two ways: First, a HOME project with 12 or more assisted units that is constructed under multiple contracts each containing less than 12 HOME units is not covered. (Note: HOME regulations prohibit breaking a single project into multiple contracts for the purpose of avoiding Davis-Bacon.)

Second, if multiple HOME projects each containing less than 12 assisted units are grouped into a contract(s) for construction that covers a total of 12 or more assisted units, the contract is covered.

3. ***Sweat Equity.***

HOME provides for a sweat equity program (see NAHA Section 255) which permits members of an eligible family to provide labor in exchange for acquisition of property for homeownership or to provide labor in lieu of, or as a supplement to, rent payments. Such sweat equity participants are exempt from Davis-Bacon prevailing wage requirements.

NAHA Statutory Language

C. U.S. Housing Act of 1937, Section 12(a) (Public Housing)

1. Any contract for loans, contributions, sale, or lease pursuant to this Act...

Prevailing wage requirements apply through provisions required in any contract for loans, contributions, sale, or lease.... Generally, the "contract" referenced, here, relates to the Annual Contributions Contract between HUD and the public housing agency. This term (contract) may also relate to an Agreement to Enter Into a Housing Assistance Payments Contract (AHAP) or an Agreement to Enter Into a Project Rental Assistance Contract (APRAC). These Agreements are executed for housing projects that will receive Section 8 rental assistance.

Prevailing wage applicability is *not* tied to a funding source nor to a specific use of any funds. This means that Federal funding for the particular development or operations work is not a prerequisite to Davis-Bacon or HUD-determined wage rate applicability.

2. ...(HUD-determined wage rates) shall be paid to all architects, technical engineers, draftsmen, and technicians employed in the development, and all maintenance laborers and mechanics employed in the operation..., ...(Davis-Bacon wage rates) shall be paid to all laborers and mechanics employed in the development...

Notice that, unlike other HUD labor standards

provisions, the USHA makes no distinction between laborers and mechanics employed by the agency and those employed by contractors and subcontractors. This means that "force account" labor - workers employed directly by the agency, whether on a full-time, part-time, permanent or temporary basis - must receive the prevailing wages applicable to the work they perform.

3. ***...(Davis-Bacon wage rates) shall be paid...in the development of the project involved (including a project with nine or more units assisted under Section 8 of this Act, where the public housing agency or the Secretary and the builder or the sponsor enter into an agreement for such use ...before construction or rehabilitation is commenced)....***

Notice, also, that the only applicability thresholds pertain to Section 8 projects: there must be 9 or more Section 8-assisted units *and* there must be an agreement for the Section 8 assistance before construction begins. These agreements are referred to as AHAPs and/or APRACs. The 9 unit threshold refers to the number of units in the project that are Section 8-assisted, not to the total number of units in the project. The USHA contains no unit threshold for public housing.

While the USHA does not contain a dollar threshold, HUD observes the statutory Davis-Bacon Act \$2,000 threshold for development work and has implemented a \$2,000 threshold for maintenance contracts.

USHA Statutory Language

D. Native American Housing Assistance and Self-Determination Act of 1996, Section 104(b), (Indian Housing)

1. ***Any contract or agreement for assistance, sale, or lease pursuant to this Act...***

Similar to the USHA (public housing), prevailing wage requirements apply through provisions required in any contract or agreement for assistance, sale, or lease.... Prevailing wage applicability is *not* tied to a funding source nor to a specific use of any funds. This means that Federal funding for the particular development or operations work is not a prerequisite to Davis-Bacon or HUD-determined wage rate applicability.

2. ***...(HUD-determined wage rates) shall be paid to all architects, technical engineers, draftsmen, and technicians employed in the development, and all maintenance laborers and mechanics employed in the operation..., ...(Davis-Bacon wage rates) shall be paid to all laborers and mechanics employed in the development...***

Again, NAHASDA mirrors the USHA in that it makes no distinction between laborers and mechanics employed by the agency and those employed by contractors and subcontractors. This means that "force account" labor - workers employed directly by the agency, whether on a full-time, part-time, permanent or temporary basis - must receive the prevailing wages applicable to the work they perform.

3. ***Threshold.***

NAHASDA contains no dollar or number of units threshold. However, HUD observes the statutory Davis-Bacon Act \$2,000 threshold for development work and has implemented a \$2,000 threshold for maintenance contracts.

4. ***(HUD-determined and/or Davis-Bacon and wage provisions) shall not apply to any contract ..., if such contract or agreement is otherwise covered by one or more laws or regulations adopted by an Indian Tribe that requires the payment of not less than prevailing wages, as determined by the Indian Tribe...***

This provision allows for the preemption of Federally-determined (HUD-determined and/or Davis-Bacon) wage rates where a Tribe has determined prevailing wage rates for operations and/or development work. Note that the tribal determination must be of rates that "prevail"¹ and the tribal law or regulation must be applicable to the work in question. *(See also ONAP Program Guidance 2003-04, dated 2/4/2003.)*

5. ***Sweat Equity.***

HUD has concluded that, consistent with a provision in the USHA (predecessor to NAHASDA), family members providing sweat equity labor for construction or rehabilitation of a home assisted under NAHASDA are excluded from prevailing wage (HUD-determined and/or Davis-Bacon) coverage. *Sweat equity* means

members of an eligible family may contribute labor toward the development of a homeownership project. These sweat equity participants are not covered by prevailing wage requirements. (See also, *ONAP Program Guidance 2003-03, dated 2/4/2003.*)

NAHASDA Statutory Language (Indian Programs)

E. Housing Assistance for Native Hawaiians (Title VIII of NAHASDA), Section 805(b)4(b), (Hawaiian Homelands)

1. Any contract or agreement for assistance, sale, or lease pursuant to this Act...

Similar to the USHA (public housing), prevailing wage requirements apply through provisions required in any contract or agreement for assistance, sale, or lease.... Prevailing wage applicability is *not* tied to a funding source nor to a specific use of any funds. This means that Federal funding for the particular development or operations work is not a prerequisite to Davis-Bacon or HUD-determined wage rate applicability.

2. ...(HUD-determined wage rates) shall be paid to all architects, technical engineers, draftsmen, and technicians employed in the development, and all maintenance laborers and mechanics employed in the operation..., ...(Davis-Bacon wage rates) shall be paid to all laborers and mechanics employed in the development...

Again, NAHASDA mirrors the USHA in that it makes no distinction between laborers and mechanics employed by the agency and those employed by contractors and subcontractors. This means that "force account" labor - workers employed directly by the agency, whether on a full-time, part-time, permanent or temporary basis - must receive the prevailing wages applicable to the work they perform.

3. Threshold.

NAHASDA contains no dollar or number of units threshold. However, HUD observes the statutory Davis-Bacon Act \$2,000 threshold for development work and has implemented a \$2,000 threshold for maintenance contracts.

4. Sweat Equity.

HUD has concluded that, consistent with a provision in the USHA (predecessor to NAHASDA), family members providing sweat equity labor for construction or rehabilitation of a home assisted under NAHASDA are excluded from prevailing wage (HUD-determined and/or Davis-Bacon) coverage. *Sweat equity* means members of an eligible family may contribute labor toward the development of a homeownership project. These sweat equity participants are not covered by prevailing wage requirements. (See also, *ONAP Program Guidance 2003-03, dated 2/4/2003.*)

NAHASDA Statutory Language (Hawaiian Homelands)

1. HUD has not defined "prevailing" for the purposes of tribally-determined wage rates. HUD, also, has not prescribed policies or procedures for the administration or enforcement of such tribal rates. HUD defers to each Tribe to establish the definitions, parameters and methodology for the determination, administration and enforcement of tribally-determined prevailing wage rates.

Pros and Cons

Davis-Bacon Wage Rates

Pros	Cons
System already in place	Limits flexibility
Wage determinations provided	May increase project costs
Internal controls mandated	May discourage local hiring
<ul style="list-style-type: none"> • Certified payrolls 	Can be administratively burdensome
<ul style="list-style-type: none"> • Onsite interviews 	<ul style="list-style-type: none"> • Certified payrolls
<ul style="list-style-type: none"> • Reporting 	<ul style="list-style-type: none"> • Onsite interviews
<ul style="list-style-type: none"> • DOL monitoring 	<ul style="list-style-type: none"> • Reporting
	<ul style="list-style-type: none"> • DOL monitoring

Tribal Wage Rates

Pros	Cons
Increases flexibility	Increased up-front time and effort
May reduce administrative burden	<ul style="list-style-type: none"> • Job descriptions
May reduce project costs	<ul style="list-style-type: none"> • Wage classifications
	<ul style="list-style-type: none"> • Surveys
	<ul style="list-style-type: none"> • Ordinance
	Requires ongoing effort
	May require two separate systems
	<ul style="list-style-type: none"> • TDW
	<ul style="list-style-type: none"> • DBW

This monitoring plan is designed to assist a tribe or tribally designated housing entity to conduct self-monitoring of its performance and compliance with pertinent requirements and is virtually identical to the plan that the Office of Native American Programs uses.

TABLE OF CONTENTS

I.	Purpose	2
II.	Pre-Review Preparation	3
III.	Review	4

TRIBE/TDHE NAME:	Regulatory Statutory Citation	Other Tools
I. Purpose		
<p>Laborers and mechanics employed in the development (e.g., construction, rehabilitation) of affordable housing projects must be paid no less than prevailing wages pursuant to the Davis-Bacon Act (Davis-Bacon wages). Maintenance laborers and mechanics employed in the operation of such projects must be paid no less than prevailing wages determined by HUD (HUD wages). HUD has delegated labor standards administration and enforcement responsibilities to recipients. The purpose of the Labor Standards limited review is to determine whether the tribe/TDHE has carried out its labor standards responsibilities.</p> <p>Tribes/TDHEs may utilize tribally-determined prevailing wage rates (TDWs) in lieu of Davis-Bacon and/or HUD wages.</p> <p>Note: These labor standards provisions apply to the Indian Housing Block Grant (IHBG) but DO NOT apply to ICDBG, ROSS, or RHED/RIF programs.</p>	<p>24 CFR 1000.16 29 CFR Parts 1-5 Sec. 104(b)(1) of NAHASDA</p> <p>Sec. 104(b)(3) of NAHASDA</p> <p>24 CFR 1003.603 (Not mentioned in ROSS or RHED/RIF)</p>	<p>“Making Davis-Bacon Work – A Practical Guide for States, Indian Tribes, and Local Agencies” (found at www.hud.gov/offices/olr) HUD Handbook 1344.1</p> <p>Program Guidance 2003-04</p> <p>Program Guidance 2009-07</p>

TRIBE/TDHE NAME:	Regulatory Statutory Citation	Other Tools
II. Pre-Review Preparation		
A. Determine whether the tribe/TDHE is utilizing Davis-Bacon, HUD, and/or TDW rates.		
1. If the tribe/TDHE has elected to use TDWs in lieu of Davis-Bacon and/or HUD wages, identify the date such TDWs were put in place to determine the scope of TDW-applicability (i.e., was any development or maintenance work undertaken during the review period at a time when the TDWs were <i>not</i> in place?).		
2. If the tribe/TDHE used TDWs for <i>all</i> development and maintenance work during the review period and continuing to the current date, no further Davis-Bacon and HUD wage labor standards review is appropriate. Record same in work papers.		
3. If the tribe/TDHE used TDWs for a portion of development or maintenance work undertaken during the review period, limit any Davis-Bacon and/or HUD wage review to the work/period(s) <i>not</i> subject to TDWs.		

TRIBE/TDHE NAME:	Regulatory Statutory Citation	Other Tools
4. If applicable, obtain a copy of the current/most recent HUD Maintenance Wage Determination (HUD-52158) issued to the tribe/TDHE.		
III. Review		
A. TDWs. If the tribe/TDHE has elected to utilize TDWs for development and/or maintenance work:	NAHASDA Sec. 104(b)(3)	
1. Determine whether the Tribe has adopted a tribal law or regulation that requires the payment of not less than prevailing wages as determined by the Tribe.		
2. If yes, review the tribal law or regulation to determine:		
a. Whether the law or regulation requires the payment of not less than <i>prevailing</i> wages (not “minimum”, “average”, “fair” wages, etc.).		
b. Whether the law or regulation is applicable to all, or only a portion, of development and/or maintenance work.		

TRIBE/TDHE NAME:	Regulatory Statutory Citation	Other Tools
3. Inquire whether the tribe/TDHE has utilized Davis-Bacon or HUD wages for any development or maintenance work <i>not</i> covered by TDWs.		
4. Inquire whether the tribe/TDHE has notified HUD of its election to use TDWs and of the scope of work subject to TDWs (see 2 b, above). (NOTE: This notification is not required.)		
B. Davis-Bacon and/or HUD wages. If the tribe/TDHE has elected to use Davis-Bacon wages for development work and/or HUD wages for maintenance work, determine:	24 CFR 1000.16 29 CFR Part 5	Practical Guide HB 1344.1
1. Whether the tribe/TDHE has designated staff for labor standards administration and enforcement.		
2. Whether the tribe/TDHE maintains labor standards records for covered development and maintenance work, including copies of contracts (if applicable); payroll reports; correspondence; and evidence that any discrepancies or violations were corrected.		Labor Relations Letter 04-02

TRIBE/TDHE NAME:	Regulatory Statutory Citation	Other Tools
3. Whether labor standards records relating to development work are retained for no less than 3 years after completion of the work.		
4. Whether the tribe/TDHE's labor standards protocols ensure that:		
a. For both contracts and force account labor, a Davis-Bacon wage decision is assigned for development work and a HUD wage decision is assigned for maintenance work.		
b. The applicable wage decision (and Davis-Bacon poster for development work) is posted at a location accessible to all laborers and mechanics covered by such wage decision.		
c. Contracts for development and/or maintenance work in excess of \$2,000 contain both the applicable wage decision and labor standards provisions (HUD-5370).	24 CFR 1000.16(a)(3)	
d. Payrolls or other employer records, as appropriate, are reviewed to assess employer compliance.	29 CFR 5.6	

TRIBE/TDHE NAME:	Regulatory Statutory Citation	Other Tools
e. Confidential interviews are conducted at the job site with laborers and mechanics performing covered work.		
f. Payroll, wage, and any other labor standards discrepancies are noted and corrected.		
g. Complaints or other allegations of wage violations are addressed promptly and followed to resolution.		
C. General. Reports, technical assistance, training.		
1. Determine whether the tribe/TDHE submits Davis-Bacon labor standards enforcement reports, as required (i.e., semi-annually, and in each case where wage restitution exceeds \$1,000).	29 CFR 5.7	
2. Assess whether there is a need for technical assistance or training concerning prevailing wage applicability, administration, enforcement, or reporting.		



No. 2003-03
February 4, 2003

PROGRAM GUIDANCE

PROGRAM: Indian Housing Block Grant (IHBG)

FOR: All Tribal Government Leaders and Tribally Designated Housing Entities (TDHE)

TDHE

FROM: Rodger Boyd, Deputy Assistant Secretary for Native American Programs, PN

TOPIC: Applicability of Davis-Bacon Wage Rates to Sweat Equity Used to Construct and Rehabilitate Homes Under Programs Receiving Assistance Under NAHASDA

Purpose: The purpose of this Guidance is to provide clarification on the applicability of Davis-Bacon wage rates to Indian Housing Block Grant (IHBG) funded programs incorporating homebuyer's sweat equity in the construction or rehabilitation of homes.

References: U. S. Housing Act of 1937 (USHA), Section 12 and former Section 202; the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA) (P.L. 104-330), Section 104 (b); the American Homeownership and Economic Opportunity Act of 2000 (Homeownership Act) (P.L. 106-569); 24 CFR 70.2 and 24 CFR 1000.16.

Background: The contribution of labor by families assisted under the Mutual Help Homeownership Program was specifically authorized in former Title II of the USHA by Section 202 (e)(1)(a), which provided that the assisted family must enter into a Mutual Help and Occupancy Agreement requiring that the family agree to "contribute toward the development cost of a project in the form of land, labor, cash, or materials and equipment." Under the general labor standards provisions in Section 12 of the USHA, Davis-Bacon provisions and wage rates would otherwise have applied, and under U. S. Department of Labor (DOL) regulations, would have required payment for laborers and mechanics to be made weekly without deduction except as permitted under DOL regulations.

Moreover, HUD recognized that families making Mutual Help labor contributions would not meet the qualifications for volunteers under Section 12 (b) of the USHA since they would be obtaining a benefit from their labor, in the form of housing, that goes beyond the expenses, reasonable benefits or nominal fee permitted under Section 12 (b). For this reason, HUD's volunteer rule did not apply to Mutual Help labor contributions. (See 24 CFR 70.2.) However, the Department recognized that the specific provision in Section 202 (e)(1) applicable to Mutual Help housing superseded the general labor standards provisions in Section 12 and allowed families to contribute labor under the Mutual Help

PROGRAM GUIDANCE 2003-03 (RECIP)

Program. The Mutual Help Homeownership Program became the major Federal homeownership program for Native Americans and a standard model that many IHBG recipients continue to use.

NAHASDA superseded several programs, including Title II of the USHA, which had previously provided separate forms of assistance to Native Americans. In superseding these forms of assistance, NAHASDA replaced varying provisions regarding labor standards coverage with one standard in Section 104 (b) that would apply to all affordable housing assisted under NAHASDA. While NAHASDA has no specific statutory provision like Section 202 (e) (1) of the USHA that would explicitly allow the contribution of labor in the development of housing by assisted families, the issue of whether Davis-Bacon wage provisions should apply to sweat equity housing programs funded under NAHASDA has arisen. The Department concludes that a family's labor is not subject to Davis-Bacon wage rates when they are participating in a Mutual Help-style homebuyer sweat equity program that receives IHBG funds.

Inquiries: If you have any questions, please contact your local Area Office of Native American Programs or your HUD Labor Relations Specialist.



No. 2003-04
February 5, 2003

PROGRAM GUIDANCE

PROGRAM: Indian Housing Block Grant

FOR: All Tribal Government Leaders and Tribally Designated Housing Entities (TDHE)

R.B.A.

FROM: Rodger Boyd, Deputy Assistant Secretary for Native American Programs, PN

TOPIC: Application of Tribal Laws Pertaining to the Use of Tribally Determined Wages (TDW)

Purpose: This Guidance has been prepared in cooperation with HUD's Office of Labor Relations (OLR) to provide assistance to tribes that are interested in adopting tribal laws or regulations for determining tribally determined prevailing wage rates (commonly referred to as tribally determined wages [TDW]) for application to the development and operation of affordable housing.

References: Section 104(b) of the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA); 24 C.F.R. 1000.16 and 29 C.F.R. 1.2 and 1.3.

Background: Section 104(b) of NAHASDA requires that prevailing wage rates as determined by the Secretary of Labor (commonly known as Davis-Bacon wage rates) be paid to all laborers and mechanics employed in the development of affordable housing and that HUD-determined prevailing wage rates be paid to all maintenance laborers and mechanics employed in the operation of affordable housing.

On December 27, 2000, NAHASDA was amended, in part, by the Omnibus Indian Advancement Act (P.L. 106-568) by adding paragraph (3) to section 104(b), which allows for Indian tribes to determine and apply their own prevailing wage rates in their contracts or agreements for the development and operation of affordable housing in place of Federally determined prevailing wage rates. The new statutory language reads as follows:

PROGRAM GUIDANCE 2003-04 (RECIP)

- (3) APPLICATION OF TRIBAL LAWS- Paragraph (1) shall not apply to any contract or agreement for assistance, sale, or lease pursuant to this Act, if such contract or agreement is otherwise covered by one or more laws or regulations adopted by an Indian tribe that requires the payment of not less than prevailing wages, as determined by the Indian tribe.

Upon passage of the December 2000 amendments, the Department originally determined that this amendment would require an implementing regulation. HUD has modified its position and will now permit implementation of the exception from Davis-Bacon and HUD-determined wage rate coverage under NAHASDA for tribally determined prevailing wage rates without waiting for issuance of implementing regulations.

Developing and Enacting a TDW Law or Regulation: In general, NAHASDA now provides that Davis-Bacon and HUD-determined rates shall not apply to a contract or agreement if the contract/agreement is otherwise covered by a law or regulation adopted by an Indian tribe that provides for the payment of not less than prevailing wages as determined by the tribe. From this we can see that an Indian tribe that chooses to use TDWs in place of Davis-Bacon and/or HUD-determined wage rates needs, by statute, to do two things: (1) pass a tribal law or regulation, and (2) be sure that the law requires the payment of not less than those wage rates the tribe determines to be prevailing. In doing these, there are several other pieces to be considered.

In order for Davis-Bacon or HUD-determined rates to be inapplicable, the tribal law or regulation must provide for payment of a tribally determined *prevailing* wage rate -- not merely a "minimum" wage rate. To do this, an administrative mechanism should be established for determining the prevailing wage rates. The Department recommends that in establishing this mechanism, the tribe also give consideration to such issues as providing for formal adoption of the wage rates and future changes to the wage rates in order to keep them current. This mechanism may be separate from the actual tribal law or regulation.

Neither NAHASDA, nor HUD, defines "*prevailing*." In providing for TDWs, practicality requires that the tribe will have to develop (or reference) their own definitions of what "*prevailing*" rates are and their own methods for how to make their determinations of prevailing wage rates. The definition can appear in the law or regulation, or in the determining mechanism. We highly recommend that in defining it, the term "prevailing" actually be used.

The Department of Labor (DOL) defines *prevailing wages* for Davis-Bacon purposes in its regulations at 29 C.F.R. 1.2 as:

- (a)(1) The prevailing wage shall be the wage paid to the majority (more than 50 percent) of the laborers or mechanics in the classification on similar projects in the area during the period in question. If the same wage is not paid to a majority of those employed in the classification, the prevailing wage shall be the average of the wages paid, weighted by the total employed in the classification.

This definition is provided here solely as an example. In developing TDWs, tribes may, or may not, wish to adapt the DOL's definition for their use as the tribe sees fit.

PROGRAM GUIDANCE 2003-04 (RECIP)

In establishing TDWs, it should be kept in mind that IHBG funded projects still must comply with the cost reasonableness provisions of OMB Circular A-87 and Total Development Costs (TDC) which limit the amount of funds that can be provided for construction.

The tribe should consider its options regarding the scope of work for which TDWs will apply and whether TDWs will apply to *all*, or only a portion of, the work involved in the development and/or operation of affordable housing. In other words, will TDWs replace both Davis-Bacon and HUD-determined rates and to what extent (all work or only certain work)? In developing TDWs, tribes may also use, or adapt, the job classifications provided under the Davis-Bacon Act, or they may develop their own classifications as applicable to their situation.

In addition, tribes are responsible for designing whatever monitoring and enforcement mechanisms they choose to ensure compliance with their tribally determined prevailing wage rates.

Application of TDWs: Under Section 104(b)(3), the substitution of TDWs for federally determined prevailing wage rates is only applicable to the Indian Housing Block Grant (IHBG) Program. Any other federally funded programs will be guided by the labor standards specified by that program.

The provisions of section 104(b)(3) regarding the application of TDWs only apply to prevailing wages and certain related requirements. The provisions for certified payroll reports and permissible payroll deductions in the Copeland “Anti-Kickback” Act and the overtime provisions of the Contract Work Hours and Safety Standards Act will not apply to contracts and agreements that are subject to TDWs, unless the agreement or contract is also assisted by other sources of federal assistance that apply Davis-Bacon wage rates. In addition, the DOL regulations pertaining to the Davis-Bacon and Related Acts (29 CFR Parts 1, 3, 5, 6, and 7) will not be applicable to TDW-covered contracts. This means, for example, that there will be no federal provision requiring the conduct of on-site interviews or governing the use of apprentices and trainees. Also, the federal statutory and regulatory provisions allowing for the exemption of volunteers from Davis-Bacon and HUD wage rate requirements will not be applicable. Other applicable federal laws and regulations pertaining to labor standards, such as the Occupational Safety and Health Act (OSHA), will still apply to IHBG funded projects cover by TDWs.

HUD Notification: It is not necessary to obtain HUD approval of a tribal law or regulation establishing TDWs. However, NAHASDA conditions for labor standards do stipulate that IHBG recipients must annually certify as to their compliance with Section 104(b)(1) of the Act. In order to help IHBG recipients avoid any monitoring confusion either with HUD or the Department of Labor (DOL), ONAP requests that IHBG recipients annually notify their Area ONAP office with their IHP whether they will be using TDWs in place of Davis-Bacon and/or HUD-determined prevailing wage rates. The notification should indicate if the TDWs are to apply to maintenance and/or development work. Area ONAP staff will provide copies of the notifications to HUD’s OLR Field Office staff in order to convey that these recipients will not require monitoring for compliance with Davis-Bacon requirements and/or HUD-determined wage requirements.

PROGRAM GUIDANCE 2003-04 (RECIP)

HUD Assistance: The HUD’s OLR has considerable experience in the determination, administration and enforcement of Federal prevailing wage rates. OLR is available to share that knowledge and experience with any tribe that wants the Department’s advice about how to implement TDWs. Tribes that would like individual advice or assistance from HUD regarding the determination or implementation of TDWs should contact their HUD Regional Labor Relations Officer (see list below) or their Area Office of Native American Programs (ONAP).

In sharing its knowledge and expertise, HUD recognizes that it is serving in an advisory capacity only. The parameters set in sec. 104(b)(3) of NAHASDA are very broad, leaving decisions to the discretion of the tribe, and tribes are free to make whatever decisions they deem appropriate within the confines of the statutory language.

HUD Office of Labor Relations Regional Officers			
State	Name	Telephone Number	E:Mail Address
Eastern/Woodlands ONAP			
Massachusetts Maine New Hampshire Rhode Island Vermont	William A. Pickett	(617) 994-8232	William_A._Pickett@hud.gov
Michigan Wisconsin	David Richardson	(312) 353-9090 Ext. 2236	David_Richardson@hud.gov
Mississippi North Carolina South Carolina Tennessee	Dondra Merrell	(404) 331-5001 Ext. 2041	Dondra_J._Merrell@hud.gov
Upstate New York	Wayne Horbert	(216) 264-8000 Ext. 3148	Wayne_M._Horbert@hud.gov
Southern Plains ONAP			
Louisiana Oklahoma Texas	Feris Ferguson	(817) 978-5617	Feris_E._Ferguson@hud.gov
Northern Plains ONAP			
Missouri	Frank Bustamante	(913) 551-5471	Frank_C._Bustamante@hud.gov
Colorado Montana South Dakota Utah Wyoming Nebraska North Dakota	Carolyn Duncan	(303) 672-5287 Ext. 1	Carolyn_Duncan@hud.gov

PROGRAM GUIDANCE 2003-04 (RECIP)

Southwest ONAP			
Arizona California Nevada New Mexico	Carol Clark	(415) 436-6576	Carol_B._Clark@hud.gov
Northwest ONAP			
Idaho Oregon Washington	James Harrell	(206) 220-5109 Ext. 3630	Jim_Harrell@hud.gov
Alaska ONAP			
Alaska	James Harrell	(206) 220-5109 Ext. 3630	Jim_Harrell@hud.gov

PROGRAM GUIDANCE

PROGRAM: All Programs

FOR: Tribal Government Leaders and Tribally Designated Housing Entities

T.D.B.A.

FROM: Rodger J. Boyd, Deputy Assistant Secretary, PN

TOPIC: Transmittal of Labor Relations Letters LR 2004-01 and LR 2004-02

Purpose: The purpose of this Guidance is to transmit the two attached Labor Relations Letters (LR 2004-01 and LR 2004-02) issued by the Department's Office of Labor Relations. Both of these letters can be found on HUD's Office of Labor Relations website at http://www.hud.gov/offices/olr/olr_lrl.cfm.

Reference Documents:

- Native American Housing Assistance and Self-Determination Act (NAHASDA) of 1996, Section 104 (b);
- 24 CFR 1000.16, Implementation of NAHASDA, Final Rule;
- Program Guidance 2003-03, IHBG: Applicability of Davis-Bacon Wage Rates to Sweat Equity Used to Construct and Rehabilitate Homes Under Programs Receiving Assistance Under NAHASDA;
- Program Guidance 2003-04, IHBG: Application of Tribal Laws Pertaining to the Use of Tribally Determined Wages (TDW)

Applicability:

LR 2004-01, Administration and enforcement of prevailing wage rates determined or adopted by HUD, discusses the streamlining of six of OLR's policies that pertain to HUD-determined wage rates applicable to maintenance and non-routine maintenance.

(1) HUD has established a prevailing wage administration and enforcement framework for HUD-determined wage rates that is less burdensome to client organizations than those of the Department of Labor.

(2) HUD is eliminating the requirements for payroll certifications and submission, and weekly wage payments.

- (3) OLR requires that employers maintain records for a three-year period demonstrating compliance with the prevailing wage rate requirements.
- (4) The LR provides for the payment of wages on a semi-monthly basis.
- (5) Grantees are allowed to amend HUD-5370 and contracts to be consistent with the provisions of LR 2004-01.
- (6) The LR provides guidance on compliance monitoring of contractors and employee interviews.

LR 2004-02, RE: Inapplicability of certain Federal labor standards' provisions to Public Housing Agencies, Indian Tribes, Tribally Designated Housing Entities (TDHEs), Indian Housing Authorities (IHAs) and the Department of Hawaiian Homelands, outlines certain exclusions from Federal Labor Standards requirements for tribes, TDHEs, IHAs and the Department of Hawaiian Homelands when they are engaged in construction or maintenance work using their own employees on projects assisted with funds from the U.S. Housing Act of 1937 or NAHASDA. These exclusions pertain to:

- (1) overtime pay for force account laborers and mechanics;
- (2) weekly Davis-Bacon wage payments; and
- (3) weekly certified payroll reports.

The attached LR Letters provide a detailed explanation of the points summarized above. Note that the exclusions discussed in these LR Letters only pertain to tribes, TDHEs, IHAs and the Department of Hawaiian Homelands. The exclusions do not apply to contractors or subcontractors that are engaged by these agencies.

These Labor Relations Letters also do not apply to those tribes or their TDHEs that have enacted tribal laws providing for tribally determined wage (TDW) rates (see Program Guidance 2003-04). However, tribes and TDHEs with TDWs in place may want to reference these LR letters and apply the guidance, as they deem appropriate and applicable under the labor laws enacted by their tribe.

If you have questions regarding these Labor Relations Letters or their applicability to your organization, please contact your Area ONAP or the field or Regional HUD Labor Relations staff for your jurisdiction. Visit the Office of Labor Relations web site to learn more about labor standards in HUD programs and to obtain contact information for Labor Relations staff and a list of staff jurisdictions: www.hud.gov/offices/olr.

Attachments

- Subject: **Administration and enforcement of prevailing wage rates determined or adopted by HUD**
- I. Statutory provisions and prior guidance**
 - II. Elimination of payroll certification and submission, payroll deduction and weekly wage payment requirements**
 - III. Recordkeeping requirements**
 - IV. Payroll deductions and frequency of wage payments**
 - V. Labor standards clauses for routine and non-routine maintenance contracts**
 - VI. Compliance monitoring**

The Department of Housing and Urban Development (HUD) has undertaken efforts to streamline and otherwise reform its policies and instructions relating to the administration and enforcement of prevailing wage rates determined or adopted by HUD (*aka* HUD-determined wage rates). Ultimately, HUD intends to publish regulations and other formal directives relating to these areas. The purpose of this Letter is to provide relief and interim guidance for public housing authorities (PHAs), tribes, tribally designated housing entities (TDHEs), and their contractors. Note that the guidance in this Letter pertains only to HUD-determined wage rates applicable to maintenance and non-routine maintenance. This guidance does **not** pertain to construction work subject to Davis-Bacon and Related Act wage and reporting requirements.

This guidance is provided with the cooperation and advice of the Offices of Public and Indian Housing, Native American Programs, and General Counsel.

I. Statutory provisions and prior guidance

HUD prevailing wage requirements are imposed at Section 12(a) of the U.S. Housing Act of 1937, as amended, for public housing and at Section 104(b) and 805(b) of the Native American Housing Assistance and Self-Determination Act of 1996, as amended, for Indian housing and Native Hawaiian housing, respectively. Generally, these clauses require, in part, that all maintenance laborers and mechanics employed in the operation of the housing

project (which includes routine and non-routine maintenance work) be paid no less than the wage rates prevailing in the locality as determined or adopted (subsequent to a determination under applicable State, local or tribal law) by HUD.¹

In developing its operational policies and procedures for these areas of responsibility, HUD relied upon the framework established by the Department of Labor (DOL) for the Davis-Bacon and Related Acts (DBRA). HUD disseminated its policies and procedures in draft Notice 95-01-SL and in associated memoranda, contract standards, training materials and other communications.

DBRA standards are similar to those associated with HUD prevailing wage requirements, but in some cases are more stringent. HUD has discretion to establish policies and procedures for HUD-determined wage rates different from the DOL DBRA standards. HUD has concluded that it is reasonable and desirable to establish a prevailing wage administration and enforcement framework for HUD-determined wage rates that is less burdensome on PHAs, TDHEs, tribes and their contractors.

II. Elimination of payroll certification and submission, payroll deduction and weekly wage payment requirements

Prior HUD guidance required contractors and/or subcontractors performing work subject to HUD-determined wage rates to submit weekly certified payroll reports to the PHA, tribe or TDHE involved, and to comply with DOL regulations at 29 CFR Part 3 concerning permissible payroll deductions. In addition, HUD required that all laborers and mechanics (covered by HUD-determined wage rates) be paid not less often than once a week. These requirements were contained in the draft Notice 95-01-SL and in HUD Form 5370, General Conditions (for non-routine maintenance). Effective immediately, HUD is amending its guidance and HUD Form 5370 to eliminate the payroll certification and submission and weekly wage payment requirements.²

Note that with regard to records, the HUD is eliminating only the requirements to certify and submit payroll reports. This action does not relieve contractors and/or subcontractors of

¹ Note that under NAHASDA, HUD-determined wage rates may be preempted by tribally determined prevailing wage rates; see ONAP Program Guidance No. 2003-04. Additionally, bona fide volunteers are excluded from HUD prevailing wage requirements; see 24 CFR Part 70.

² Following consultation with the Department of Labor, HUD has concluded that DOL regulations at 29 CFR Parts 3 and 5 are not germane where HUD prevailing wage requirements are applicable.

their obligations to create and maintain records demonstrating their compliance with HUD-determined prevailing wage requirements.

See Sections III and IV of this Letter concerning recordkeeping, payroll deduction and pay frequency requirements.

III. Recordkeeping requirements

PHAs, tribes, TDHEs, and any other employers (e.g., contractors, subcontractors) engaged on work subject to HUD-determined wage rates must make and maintain for 3 years from the completion of the work records containing information demonstrating compliance with the prevailing wage rates determined (or adopted) by HUD and applicable to the work.³ These records must at a minimum contain for each laborer and mechanic employed:

- 1) His or her name, address and social security number;
- 2) Correct work classification or classifications;
- 3) Hourly rate or rates of monetary wages paid;
- 4) Rate or rates of any fringe benefits provided;
- 5) Number of daily and weekly hours worked;
- 6) Gross wages earned;
- 7) Any deductions taken; and
- 8) Actual wages paid.

Such records shall be made available for inspection or transcription by authorized representatives of the PHA, tribe, TDHE and/or HUD.

IV. Payroll deductions and frequency of wage payments

Employers (PHAs, tribes, TDHEs, contractors and/or subcontractors) must pay to each employee subject to HUD-determined wage requirements the full amount of wages due free and clear and without subsequent deduction (except as otherwise provided by law or regulations). These payments must be made no later than one pay period following the end of the regular pay period in which the wages were earned or accrued. A pay period may not be of any duration longer than semi-monthly.

³ The recordkeeping burden reflected is required by DOL and approved by the Office of Management and Budget under control number 1215-0017.

V. Labor standards clauses for routine and non-routine maintenance contracts

PHAs, tribes and TDHEs that award contracts for routine or non-routine maintenance work must incorporate into the contract (and bid specifications, if applicable) appropriate labor standards clauses to obligate and ensure the compliance of the contractor and any subcontractors. HUD has published labor standards clauses applicable to routine and non-routine maintenance in HUD Form 5370-C, General Conditions for Non-Construction Contracts, Section II⁴. The applicable HUD wage decision must also be incorporated into the contract and any bid specifications.

VI. Compliance monitoring and employee interviews

PHAs, tribes and TDHEs shall perform contractor compliance monitoring with such frequency and depth as appropriate (based upon the scope and duration of the contract involved) to ensure that all laborers and mechanics are paid no less than the HUD prevailing wage rate for the type of work they perform. Such compliance monitoring shall include interviews with the employees. Contractors and/or subcontractors shall permit authorized representatives of the PHA, tribe, TDHE or HUD to interview employees during normal working hours.

Any questions regarding this Letter should be directed to the field or Regional HUD Labor Relations staff responsible for the jurisdiction involved. A list of Labor Relations staff and contact information is available at the Office of Labor Relations website:

www.hud.gov/offices/olr

/S/

Edward L. Johnson

Director

Office of Labor Relations

⁴ Available at HUDClips (www.hudclips.org/cgi/index.cgi) and the Office of Labor Relations web site (www.hud.gov/offices/olr).



Office of Labor Relations
LABOR RELATIONS LETTERS

Date: September 8, 2004

Letter No. LR 2004-02

Subject: Inapplicability of certain Federal labor standards provisions to Public Housing Agencies, Indian Tribes, Tribally Designated Housing Entities, Indian Housing Authorities and the Department of Hawaiian Homelands

- I. Statutory and regulatory provisions**
- II. Contract Work Hours and Safety Standards Act overtime provisions**
- III. Davis-Bacon Act weekly wage payments**
- IV. Copeland Act (Davis-Bacon) certified payroll reports**

The Department of Housing and Urban Development (HUD) has determined that certain Federal labor standards requirements are *not* applicable to public housing agencies (PHAs), Indian tribes, tribally designated housing entities (TDHEs), Indian housing authorities (IHAs) and the Department of Hawaiian Homelands (DHHL) when these agencies undertake construction or maintenance work with their own employees on projects assisted under the U.S. Housing Act of 1937 or the Native American Housing Assistance and Self-Determination Act of 1996. These exclusions pertain to:

- Overtime (premium) pay for force account laborers and mechanics;
- Weekly Davis-Bacon wage payments; and
- Weekly certified payroll reports.

Note that the exclusions discussed in this Letter pertain **only** to these tribal, state and local government agencies. The exclusions do *not* pertain to contractors or subcontractors that are engaged by these agencies to perform work subject to Federal prevailing wage and reporting requirements.

This guidance is provided with the cooperation and advice of the HUD Offices of Public and Indian Housing, Native American Programs and General Counsel, and the Department of Labor (DOL).

I. Statutory and regulatory provisions

HUD provides assistance to PHAs, TDHEs, IHAs, and the DHHL through programs authorized under the U.S. Housing Act of 1937 (USHA) and the Native American Housing Assistance and Self-determination Act of 1996 (NAHASDA), as amended. These programs are subject to labor standards provisions requiring the payment of Federal prevailing wage rates as determined by the Department of Labor (DOL) pursuant to the Davis-Bacon Act (for work defined as development), and as determined or adopted by HUD (for work defined as operations).¹ Additionally, the provisions of the Contract Work Hours and Safety Standards Act (CWHSSA) may be applicable to development or operations work, and the provisions of the Copeland Act may be applicable to development work undertaken pursuant to these programs.

The USHA and NAHASDA identify the covered classes of workers for prevailing wage purposes as “all laborers and mechanics”. However, CWHSSA overtime provisions and Copeland Act reporting requirements concern wages paid to laborers and mechanics employed by *contractors or subcontractors*.

DOL regulations implementing the Davis-Bacon and Related Acts, CWHSSA and Copeland Act requirements maintain that a state or local government is not regarded as a contractor where covered work is performed by its own employees (*aka* force account).² In consultation with DOL, HUD has concluded that PHAs, tribes, TDHEs/IHAs and the DHHL are agencies that are considered among the excluded units of a state or local government (including a tribal government). This exclusion means that certain labor standards provisions that are specifically applicable to laborers and mechanics employed by contractors and subcontractors are *not* applicable to laborers and mechanics employed by PHAs, tribes, TDHEs/IHAs and the DHHL when these agencies perform work that is subject to labor standards under the USHA or NAHASDA.³ The specific exclusions are discussed

¹ See USHA Section 12(a); and NAHASDA Sections 104(b) and 805(b). However, under the NAHASDA Indian Housing Block Grant Program, the requirements for payment of Davis-Bacon and HUD-determined prevailing rates do not apply to any contract or agreement for assistance, sale, or lease that is covered by a tribal law or regulation requiring payment of not less than prevailing wages, as determined by the Indian tribe. See NAHASDA Section 104(b)(3) and ONAP Program Guidance No. 2003-04. This Letter applies where there is no such tribal law or regulation.

² See 29 CFR Part 5, Section 5.2(h).

³ Note that the USHA and NAHASDA make no distinction between laborers and mechanics employed by contractors and subcontractors and force account employees in relation to the workers entitled to prevailing wages. Therefore, force account employees are likewise entitled to receive no less than the wages determined

in the following paragraphs.

II. Contract Work Hours and Safety Standards Act overtime provisions

The provisions of the CWHSSA are applicable to operations and development work performed under the USHA and NAHASDA. CWHSSA contains a provision requiring premium (time and one-half) pay for overtime hours worked by laborers and mechanics employed by contractors and subcontractors. Since PHAs, tribes, TDHEs/IHAs and the DHHL are not regarded as contractors, CWHSSA overtime provisions are not applicable to these agencies and their force account employees.

Accordingly, PHAs, tribes, TDHEs/IHAs and the DHHL may offer force account employees compensatory time in lieu of premium pay for overtime hours that may be performed on operations or development work. Note that force account employees may be otherwise subject to the overtime provisions of the Fair Labor Standards Act (FLSA). Compensatory time may be offered to FLSA-covered force account employees to the extent permitted under the FLSA. Such agencies should consult with the DOL concerning the extent to which force account employees may be covered by FLSA overtime provisions.

Note that CWHSSA overtime wage payment requirements remain applicable to contractors and subcontractors engaged in operations or development work (where the amount of the prime contract is in excess of \$100,000).

III. Davis-Bacon Act weekly wage payments

DOL regulations implementing Davis-Bacon and Related Act (DBRA) prevailing wage requirements mandate that contractors and subcontractors pay all laborers and mechanics (employed on the DBRA-covered work) not less often than once a week.⁴ The USHA and NAHASDA require the payment of Davis-Bacon wage rates to all laborers and mechanics engaged in development work. However, neither the USHA nor NAHASDA requires *weekly* payment of DBRA wages. Since PHAs, tribes, TDHEs/IHAs and the DHHL are not regarded as contractors for the purposes of these regulations, HUD, in consultation with DOL, has concluded that the requirement to make wage payments not less often than weekly

to be prevailing pursuant to the Davis-Bacon Act (for development work) and the prevailing wages determined or adopted by HUD (for operations work).

⁴ See 29 CFR Part 5, Section 5.5(a)(1)(i).

is **not** applicable to PHAs, tribes, TDHEs/IHAs and the DHHL. These agencies may make prevailing wage payments to force account laborers and mechanics with such frequency (e.g., bi-weekly, semi-monthly, etc.) as may be permitted under other governing Federal, tribal, state or local requirements.

Note, again, that the DBRA weekly wage payment requirement remains applicable to contractors and subcontractors engaged in development work.

IV. Copeland Act (Davis-Bacon) certified payroll reports

The Copeland Act and corresponding DOL regulations require that contractors and subcontractors engaged in construction work covered by the DBRA certify and submit weekly payroll reports regarding the payment of DBRA prevailing wages.⁵ HUD, in consultation with DOL, has concluded that in relation to force account employees, PHAs, tribes, TDHEs/IHAs and the DHHL are not covered by the payroll certification and submission requirements imposed on contractors and subcontractors. However, such agencies are required to maintain, for not less than three (3) years following completion of the covered work, records demonstrating compliance with DBRA prevailing wage requirements (as well as HUD-determined wage rate requirements).

Finally, the Copeland Act and corresponding DOL regulations remain applicable to all contractors and subcontractors engaged in DBRA-covered work.

Any questions regarding this Letter should be directed to the Regional or Field HUD Labor Relations staff responsible for the jurisdiction involved. A list of Labor Relations staff and contact information is available at the Office of Labor Relations website: www.hud.gov/offices/olr

/S/

Edward L. Johnson

Director

Office of Labor Relations

⁵ See 29 CFR Part 3, Section 3.3(b).

Tribally-Determined Wage Rates

Things to Consider

1. Do you have sufficient staff and/or resources to:
 - a. Determine wage classifications
 - b. Conduct surveys
 - c. Keep surveys current
 - d. Ensure contractor compliance
2. Do you have outstanding findings?
 - a. HUD onsite reviews
 - b. Annual financial audit
 - c. Self-Monitoring
3. What are your construction plans?
 - a. No projects planned at this time
 - b. One project planned
 - c. We plan to be in construction mode on an ongoing basis
4. Force Account
 - a. We have no plans to use force account
 - b. We're planning on starting a force account program
 - c. We're currently using force account for all or most of our construction
5. Labor costs
 - a. Our labor costs have not been a problem in past projects
 - b. Our labor costs seem to be higher than they should be
6. Tribe impact (if TDHE)
 - a. The tribe does not have a construction program – no problems seen
 - b. The tribe has a construction program using DBW's. They will need to adopt TDW's as well as housing.
 - c. The tribe is currently using their own wage rates for their construction program. We will need to incorporate their wages into housing system.

How to Develop a Job Description

Develop job descriptions to help you articulate the most important outcomes you need from an employee performing a particular job. Job descriptions are a communication tool to tell coworkers where their job leaves off and the job of another employee starts.

They tell an employee where their job fits within the overall department and the overall company. They help employees from other departments, who must work with the person hired, understand the boundaries of the person's responsibilities.

Finally, job descriptions are an integral piece of the performance development planning process.

Your goal in hiring is to find the brightest, most competent, flexible, reliable, multifaceted employees you can find. A job description, if not viewed as a straight jacket, helps your successful recruiting in several ways. A job description:

- causes the manager of the position and any other employees already performing the job to agree on the responsibilities and scope of the position,
- helps Human Resources know the knowledge, skills, education, experience, and capabilities you seek in your new employee, so an effective recruiting plan is formulated,
- informs candidates about the duties and responsibilities of the position for which they are applying,
- informs employees who are assisting with the interview process about the questions to ask candidates and what you seek in the new employee, and
- may protect you legally when you can demonstrate why the candidate selected for a position was your most qualified and culturally suited applicant.

Steps in Developing Job Descriptions

Use these steps to develop your job descriptions.

1. **Gather the appropriate people for the task.** The manager to whom the position will report takes the lead in developing a job description, but other employees who are performing similar jobs can contribute to its development, too. Additionally, if the position is new and will relieve current employees of work load, they should be part of the discussion. A first position? The manager or company owner can develop the job description on his or her own.
2. **Perform a job analysis.** You need as much data as possible to develop a job description. The job analysis may include:
 - Internet research and sample job descriptions online or offline highlighting similar jobs,

- an analysis of the work duties, tasks, and responsibilities that need to be accomplished by the employee filling the position,
- research and sharing with other companies that have similar jobs, and
- articulation of the most important outcomes or contributions needed from the position.

The more information you can gather, the easier the actual task of developing the job description will be.

3. **Write the job description.** Your company may have a format for job descriptions so check with Human Resources. Often, however, all HR expects is a list of the responsibilities and they prefer to develop the final format congruent with other job descriptions across the company.

These are the normal components of the job description:

- Overall position description with general areas of responsibility listed,
- Essential functions of the job described with a couple of examples of each,
- Required knowledge, skills, and abilities,
- Required education and experience,
- A description of the physical demands, and
- A description of the work environment.

Your company and your process may vary, but these components give the employee clear direction.

4. **Review the job description** periodically to make sure it accurately reflects what the employee is doing and your expectations of results from the employee.

Use the job description as a basis for the employee development plan (PDP) An employee's job description is integral in the development of his or her quarterly employee development plan.

An effective job description establishes a base so that an employee can clearly understand what they need to develop personally, and contribute within your organization. Develop job descriptions to provide employees with a compass and clear direction.

Writing Effective Job Descriptions

Job descriptions are an essential part of hiring and managing your employees. These written summaries ensure your applicants and employees understand their roles and what they need to do to be held accountable. Job descriptions also:

- Help attract the right job candidates
- Describe the major areas of an employee's job or position
- Serve as a major basis for outlining performance expectations, job training, job evaluation and career advancement
- Provide a reference point for compensation decisions and unfair hiring practices

Overview

A job description should be practical, clear and accurate to effectively define your needs. Good job descriptions typically begin with a careful analysis of the important facts about a job such as:

- Individual tasks involved
- The methods used to complete the tasks
- The purpose and responsibilities of the job
- The relationship of the job to other jobs
- Qualifications needed for the job

What to Avoid

Don't be inflexible with your job description. Jobs are subject to change for personal growth, organizational development and/or evolution of new technologies. A flexible job description encourages employees to grow within their position and contribute over time to your overall business.

What to Include

Job descriptions typically include:

- Job title
- Job objective or overall purpose statement
- Summary of the general nature and level of the job
- Description of the broad function and scope of the position
- List of duties or tasks performed critical to success
- Key functional and relational responsibilities in order of significance
- Description of the relationships and roles within the company, including supervisory positions, subordinating roles and other working relationships

Additional Items for Job Descriptions for Recruiting Situations

- Job specifications, standards, and requirements
- Job location where the work will be performed
- Equipment to be used in the performance of the job
- Collective Bargaining Agreements if your company's employees are members of a union
- Salary range

Proper Language in the Job Description

Keep each statement in the job description crisp and clear:

- Structure your sentences in classic verb/object and explanatory phrases.
- Since the occupant of the job is the subject of your sentence, it may be eliminated. For example, a sentence pertaining to the description of a receptionist position might read: "Greets office visitors and personnel in a friendly and sincere manner."
- Always use the present tense of verbs.
- If necessary, use explanatory phrases telling why, how, where, or how often to add meaning and clarity (e.g. "Collects all employee time sheets on a bi-weekly basis for payroll purposes.")
- Omit any unnecessary articles such as "a," "an," "the," or other words for an easy-to-understand description.
- Use unbiased terminology. For example, use the he/she approach or construct sentences in such a way that gender pronouns are not required.
- Avoid using adverbs or adjectives that are subject to interpretation such as "frequently," "some," "complex," "occasional," and "several."

TITLE: CONSTRUCTION SUPERINTENDENT	SALARY GRADE:
REPORTS TO: CONSTRUCTION MANAGER	FLSA:
DEPARTMENT: CONSTRUCTION	MEDICAL EXAM:
CLASSIFICATION:	DATE:

JOB SUMMARY:

The incumbent is responsible for planning, scheduling, and supervising all activities for the Force Account Crew. Is responsible for coordinating procurement of construction materials and scheduling delivery to maximize Force Account productivity. Coordinates with the tribe/TDHE to minimize the disruption of work during relocation of families. Advises the construction manager on status of work in progress. Makes recommendations to improve delivery of the program.

ESSENTIAL FUNCTIONS:

1. Supervises all the field construction activities of the TDHE/tribal force account crew.
2. Organizes, schedules and implements the construction activities of the force account crew in accordance with the latest construction management techniques in order to yield the most efficient productivity.
3. Coordinates the inter-active functions of contractors, architects and TDHE staff members with relation to the force account labor force.
4. Reviews shop drawings and maintains the as-built drawings in conjunction with the Building Inspector.
5. Maintains the daily time records of the force account crew in the manner prescribed by the Construction Manager.
6. Coordinates the timely purchase and delivery of all building materials needed to supply the force account crew through the TDHE/tribal Purchasing Agent.

KNOWLEDGE SKILLS AND ABILITIES:

Knowledge of:

- ◆ A thorough knowledge of the building codes adopted by the TDHE/ tribe.

- ◆ A thorough knowledge of the latest construction management techniques for field related activities.

Skills:

- ◆ Capable of reading and interpreting civil, architectural, structural, mechanical, and electrical blueprints.
- ◆ Capable of estimating labor productivity and applying those estimates to labor needs for various construction activities.

Able to:

- ◆ Organize and complete the internal processes of record keeping for construction related activities.
- ◆ Exercise judgment in prioritizing and scheduling construction activities.
- ◆ Work well with people of varied socioeconomic backgrounds.
- ◆ Perform the required mathematical computations for construction related activities.
- ◆ Communicate effectively orally and in writing.

WORKING CONDITIONS:

Work is typically performed in both the office setting and the field at the housing units.

MINIMUM QUALIFICATIONS:

High school diploma or GED supplemented with an accredited apprenticeship program and ten years of residential building experience, **or**, any combination of education, training, and work experience which provides the required knowledge, skill and ability to perform the duties of this position.

SPECIAL REQUIREMENTS:

- ◆ Must have a valid (State) driver's license and be insurable
- ◆ Must submit to a pre-employment drug test
- ◆ Must submit to a background investigation

Authoritative site for Assistance Listings and Wage Determinations only

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This will be the official U.S. government website for people who make, receive, and manage federal awards.

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Contracting



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This website has officially replaced WDOL.gov.

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- Search Wage Determinations





Human Capital Management Carpenter I (#F44A)

**\$10.31-\$18.30 hourly / \$1,786.75-\$3,172.65 monthly /
\$21,441.00-\$38,071.77 annual**

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**\$10.98-\$20.13 hourly / \$1,903.64-\$3,490.01 monthly /
\$22,843.71-\$41,880.14 annual**



[Notify Me when a Job Opens for the above position\(s\)](#)

BASIC PURPOSE

Positions in this job family are assigned responsibilities involving skilled carpentry work in a state agency, facility or institution. This may include the construction, maintenance or repair of various buildings, structures or fixtures.

TYPICAL FUNCTIONS

The functions within this job family will vary by level, but may include the following:

- Erects, maintains and repairs various types of buildings, sheds, scaffolds, forms, frames, fences and other structures; builds and repairs bridges and culverts; alters, repairs and maintains doors, floors, partitions, roofs, stairways, windows, screens and other wooden fixtures; repairs or replaces wooden parts on truck beds, wagons, machinery and equipment; builds and repairs park benches, roadside tables and signs; repairs venetian blinds and awnings; fits and glazes glass windows and doors.
- Reconstructs, alters or repairs tables, chairs, benches, counters, lockers, shelves and window frames; performs some cabinet work; makes rough sketches and estimates the cost of new structures and repair work; advises in the selection of building materials; prepares preliminary requisitions; stores building materials and supplies.
- Does skilled hand and bench work in a carpentry shop; operates planers, joiners, power saws, routers, drill press and other woodworking equipment; cleans, sharpens, oils, greases and repairs hand and power tools; instructs and trains semiskilled and unskilled helpers; assigns tasks and checks work in process and upon completion; supervises patient helpers when assigned; keeps time, material and job records for assigned work details.
- Makes estimates on construction and renovation costs; prepares requisitions for materials; checks materials stores; interprets work orders, blueprints, technical orders and other specifications; maintains records and reports of time, materials used, and work performed.

KNOWLEDGE, SKILLS, & ABILITIES

Level I :

Knowledge of the materials, method, tools and equipment used in carpentry; and of the safety precautions of the trade. Ability is required to alter, maintain and repair wood and wood-substitute articles, fixtures and structures, including glass, flooring and roof installation; to estimate time, materials and costs; to read and interpret blueprints and sketches; to follow written and oral instructions; and to train and direct unskilled helpers.

Level II:

Those identified in Level I plus knowledge of tools and equipment used in cabinet work; and of supervisory principles and practices and the ability to supervise the work of other carpenters and unskilled helpers.

LEVEL DESCRIPTORS

This job family consists of two levels which are distinguished based on the complexity of work assigned and the responsibility assigned for the supervision of others.

Level I:

This is the career level of this job family where employees are assigned responsibilities involving skilled carpentry work at the

full performance level involving the construction, maintenance or repair of various buildings, structures or fixtures. Responsibilities may also be assigned for providing training and guidance to unskilled or semi-skilled workers assigned to assist on various projects.

Level II:

This is the leadership level of this job family where employees are assigned responsibilities involving the supervision of skilled carpentry work. This will include planning and organizing various projects, determining materials needed and staffing requirements, and making work assignments to assigned staff. Responsibilities may also include performing highly skilled carpentry work, such as cabinet work and the construction and assembly of products such as tables, desks and chairs.

MINIMUM QUALIFICATIONS

Level I :

Education and Experience requirements at this level consist of two years of experience in skilled carpentry work or an equivalent combination of education/training and experience in the carpentry trade.

Level II:

Education and Experience requirements at this level consist of those identified in Level I plus two additional years of experience as a skilled carpenter of cabinet maker.

SPECIAL REQUIREMENT

In order to operate state-owned vehicles in the performance of regularly assigned duties, some positions may require that the successful applicant possess a valid Oklahoma driver's license at the time of appointment.

Upon a conditional offer of employment, Department of Mental Health and Substance Abuse Services applicants must submit to a physical examination and shall meet the physical examination requirements of occasionally lifting/carrying **80** pounds, **25** pounds frequently, able to push and pull a maximum force of **40** pounds and able to lift and hold overhead up to **40** pounds.

CLASS: F44A; EST: 8/21/2007; REV: 7/2/2012 7:45:00 AM;

CLASS: F44B; EST: 8/21/2007; REV: 7/2/2012 7:45:00 AM;



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Summary Report for: 47-2081.00 - Drywall and Ceiling Tile Installers

Apply plasterboard or other wallboard to ceilings or interior walls of buildings. Apply or mount acoustical tiles or blocks, strips, or sheets of shock-absorbing materials to ceilings and walls of buildings to reduce or reflect sound. Materials may be of decorative quality. Includes lathers who fasten wooden, metal, or rockboard lath to walls, ceilings or partitions of buildings to provide support base for plaster, fire-proofing, or acoustical material.

Sample of reported job titles: Ceiling Installer, Dry Wall Installer, Drywall Finisher, Drywall Hanger, Drywall Mechanic, Exterior Interior Specialist, Metal Framer, Metal Stud Frammer, Sheetrock Hanger, Sheetrock Installer

View report:

Summary

[Details](#)

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[Tasks](#) | [Tools & Technology](#) | [Knowledge](#) | [Skills](#) | [Abilities](#) | [Work Activities](#) | [Detailed Work Activities](#) | [Work Context](#) | [Job Zone](#) | [Education](#) | [Credentials](#) | [Interests](#) | [Work Styles](#) | [Work Values](#) | [Related Occupations](#) | [Wages & Employment](#) | [Job Openings](#) | [Additional Information](#)

Tasks

+ - 5 of 24 displayed

- + Measure and mark surfaces to lay out work, according to blueprints or drawings, using tape measures, straightedges or squares, and marking devices.
- + Read blueprints or other specifications to determine methods of installation, work procedures, or material or tool requirements.
- + Fit and fasten wallboard or drywall into position on wood or metal frameworks, using glue, nails, or screws.
- + Hang dry lines to wall moldings to guide positioning of main runners.
- + Measure and cut openings in panels or tiles for electrical outlets, windows, vents, plumbing, or other fixtures, using keyhole saws or other cutting tools.

[back to top](#)

Tools & Technology

+ - 10 of 49 displayed

Tools used in this occupation:

- + **Hand sprayers** — Pistol hopper guns; Texture guns; Texture sprayers
- + **Lifts** — Drywall lifts; Mini lifters; Roll lifters
- + **Putty knives** — Corner knives; Joint knives; Taping knives; Wipe-down knives
- + **Saws** — Drywall ripping tools; Drywall saws; Wallboard saws
- + **Trowels** — Bullnose trowels; Drywall trowels; Inside corner trowels; Outside corner trowels

Technology used in this occupation:

- + **Accounting software** — Job costing software

- ⊕ **Office suite software** — Microsoft Office software
- ⊕ **Optical character reader OCR or scanning software** — Logic Group Scanner Digitizing Software
- ⊕ **Project management software** — Construction Software Center EasyEst; DevWave Estimate Works; On Center Quick Bid; Turtle Creek Software Goldenseal
- ⊕ **Word processing software** — Microsoft Word; Wilhelm Publishing Threshold

[back to top](#)

Knowledge

+ - 5 of 10 displayed

- ⊕ **Building and Construction** — Knowledge of materials, methods, and the tools involved in the construction or repair of houses, buildings, or other structures such as highways and roads.
- ⊕ **Mathematics** — Knowledge of arithmetic, algebra, geometry, calculus, statistics, and their applications.
- ⊕ **Design** — Knowledge of design techniques, tools, and principles involved in production of precision technical plans, blueprints, drawings, and models.
- ⊕ **Mechanical** — Knowledge of machines and tools, including their designs, uses, repair, and maintenance.
- ⊕ **Customer and Personal Service** — Knowledge of principles and processes for providing customer and personal services. This includes customer needs assessment, meeting quality standards for services, and evaluation of customer satisfaction.

[back to top](#)

Skills

+ - 5 of 6 displayed

- ⊕ **Active Listening** — Giving full attention to what other people are saying, taking time to understand the points being made, asking questions as appropriate, and not interrupting at inappropriate times.
- ⊕ **Critical Thinking** — Using logic and reasoning to identify the strengths and weaknesses of alternative solutions, conclusions or approaches to problems.
- ⊕ **Speaking** — Talking to others to convey information effectively.
- ⊕ **Complex Problem Solving** — Identifying complex problems and reviewing related information to develop and evaluate options and implement solutions.
- ⊕ **Judgment and Decision Making** — Considering the relative costs and benefits of potential actions to choose the most appropriate one.

[back to top](#)

Abilities

+ - 5 of 22 displayed

- ⊕ **Arm-Hand Steadiness** — The ability to keep your hand and arm steady while moving your arm or while holding your arm and hand in one position.
- ⊕ **Near Vision** — The ability to see details at close range (within a few feet of the observer).
- ⊕ **Trunk Strength** — The ability to use your abdominal and lower back muscles to support part of the body repeatedly or continuously over time without 'giving out' or fatiguing.
- ⊕ **Extent Flexibility** — The ability to bend, stretch, twist, or reach with your body, arms, and/or legs.
- ⊕ **Gross Body Equilibrium** — The ability to keep or regain your body balance or stay upright when in an



Details Report for: 47-2031.01 - Construction Carpenters

Construct, erect, install, and repair structures and fixtures of wood, plywood, and wallboard, using carpenter's hand tools and power tools.

Sample of reported job titles: Assembler, Cabinet Maker, Carpenter Foreman, Carpentry Foreman, Concrete Carpenter, Construction Superintendent, Construction Worker, Foreman, Framer, Production Worker

View report:

[Summary](#)

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[Tasks](#) | [Tools & Technology](#) | [Knowledge](#) | [Skills](#) | [Abilities](#) | [Work Activities](#) | [Detailed Work Activities](#) | [Work Context](#) | [Job Zone](#) | [Education](#) | [Credentials](#) | [Interests](#) | [Work Styles](#) | [Work Values](#) | [Related Occupations](#) | [Wages & Employment](#) | [Job Openings](#) | [Additional Information](#)

Tasks [Save Table \(XLS/CSV\)](#)

+ - 10 of 22 displayed (22 important)

Importance	Category	Task
87	Core	+ Follow established safety rules and regulations and maintain a safe and clean environment.
87	Core	+ Study specifications in blueprints, sketches, or building plans to prepare project layout and determine dimensions and materials required.
85	Core	+ Measure and mark cutting lines on materials, using a ruler, pencil, chalk, and marking gauge.
84	Core	+ Shape or cut materials to specified measurements, using hand tools, machines, or power saws.
83	Core	+ Install structures or fixtures, such as windows, frames, floorings, trim, or hardware, using carpenters' hand or power tools.
83	Core	+ Verify trueness of structure, using plumb bob and level.
80	Core	+ Select and order lumber or other required materials.
78	Core	+ Arrange for subcontractors to deal with special areas, such as heating or electrical wiring work.
77	Core	+ Maintain records, document actions, and present written progress reports.
76	Core	+ Build or repair cabinets, doors, frameworks, floors, or other wooden fixtures used in buildings, using woodworking machines, carpenter's hand tools, or power tools.

[back to top](#)

Tools & Technology [Save Table \(XLS/CSV\)](#)

Tools used in this occupation:

- + **Biscuit jointers** — Biscuit joiners; Joiners
- + **Guide jig** — Chain saw jigs; Mortise jigs
- + **Jacks** — Beam-lifting jacks; Screw jacks; Wall-lifting jacks
- + **Ladders** — Extension ladders; Fold-up ladders; Non-conducting ladders
- + **Levels** — Calibrating electronic levels; Laser levels; Torpedo levels; Visible beam laser levels ([see all 15 examples](#))
- + **Power routers** — Plunge routers; Portable routers; Trim routers
- + **Power saws** — Beam saws; Circular saws; Reciprocating saws; Worm-drive saws ([see all 7 examples](#))
- + **Scaffolding** — Ladder jacks; Pump jacks
- + **Screwdrivers** — Multi-tip screwdrivers; Phillips head screwdrivers; Straight screwdrivers
- + **Squares** — Combination squares; Framing squares; Layout bars
- + **Tape measures** — Cross-curve tape measures; Measuring tapes; Story pole tape measures

Technology used in this occupation:

- + **Accounting software** — Intuit QuickBooks software; Intuit Quicken software; Job costing software
- + **Computer aided design CAD software** — Drawing and drafting software
- + **Information retrieval or search software** — Renaissance MasterCarpenter
- + **Internet browser software** — Web browser software
- + **Office suite software** — Microsoft Office software
- + **Project management software** — Bosch Punch List; Craftsman CD Estimator; Turtle Creek Software Goldenseal; VirtualBoss ([see all 5 examples](#))
- + **Spreadsheet software** — Microsoft Excel
- + **Web page creation and editing software**
- + **Word processing software** — Microsoft Word; Wilhelm Publishing Threshold

[back to top](#)

Knowledge Save Table ([XLS/CSV](#))

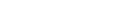
Importance	Knowledge
91 	+ Building and Construction — Knowledge of materials, methods, and the tools involved in the construction or repair of houses, buildings, or other structures such as highways and roads.
79 	+ Mathematics — Knowledge of arithmetic, algebra, geometry, calculus, statistics, and their applications.
70 	+ English Language — Knowledge of the structure and content of the English language including the meaning and spelling of words, rules of composition, and grammar.
66 	+ Mechanical — Knowledge of machines and tools, including their designs, uses, repair, and maintenance.

- 65  + **Design** — Knowledge of design techniques, tools, and principles involved in production of precision technical plans, blueprints, drawings, and models.
- 61  + **Public Safety and Security** — Knowledge of relevant equipment, policies, procedures, and strategies to promote effective local, state, or national security operations for the protection of people, data, property, and institutions.
- 57  + **Administration and Management** — Knowledge of business and management principles involved in strategic planning, resource allocation, human resources modeling, leadership technique, production methods, and coordination of people and resources.
- 55  + **Education and Training** — Knowledge of principles and methods for curriculum and training design, teaching and instruction for individuals and groups, and the measurement of training effects.
- 53  + **Customer and Personal Service** — Knowledge of principles and processes for providing customer and personal services. This includes customer needs assessment, meeting quality standards for services, and evaluation of customer satisfaction.
- 42  + **Engineering and Technology** — Knowledge of the practical application of engineering science and technology. This includes applying principles, techniques, procedures, and equipment to the design and production of various goods and services.

[back to top](#)

Skills Save Table ([XLS](#)/[CSV](#))

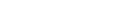
+ - 10 of 35 displayed (10 important)

Importance	Skill
53 	+ Active Listening — Giving full attention to what other people are saying, taking time to understand the points being made, asking questions as appropriate, and not interrupting at inappropriate times.
53 	+ Monitoring — Monitoring/Assessing performance of yourself, other individuals, or organizations to make improvements or take corrective action.
53 	+ Speaking — Talking to others to convey information effectively.
50 	+ Active Learning — Understanding the implications of new information for both current and future problem-solving and decision-making.
50 	+ Complex Problem Solving — Identifying complex problems and reviewing related information to develop and evaluate options and implement solutions.
50 	+ Coordination — Adjusting actions in relation to others' actions.
50 	+ Critical Thinking — Using logic and reasoning to identify the strengths and weaknesses of alternative solutions, conclusions or approaches to problems.
50 	+ Judgment and Decision Making — Considering the relative costs and benefits of potential actions to choose the most appropriate one.
50 	+ Reading Comprehension — Understanding written sentences and paragraphs in work related documents.
50 	+ Time Management — Managing one's own time and the time of others.

[back to top](#)

Abilities [Save Table \(XLS/CSV\)](#)

+ - 10 of 52 displayed (20 important)

Importance	Ability
66 	⊕ Manual Dexterity — The ability to quickly move your hand, your hand together with your arm, or your two hands to grasp, manipulate, or assemble objects.
63 	⊕ Problem Sensitivity — The ability to tell when something is wrong or is likely to go wrong. It does not involve solving the problem, only recognizing there is a problem.
60 	⊕ Trunk Strength — The ability to use your abdominal and lower back muscles to support part of the body repeatedly or continuously over time without 'giving out' or fatiguing.
60 	⊕ Visualization — The ability to imagine how something will look after it is moved around or when its parts are moved or rearranged.
56 	⊕ Information Ordering — The ability to arrange things or actions in a certain order or pattern according to a specific rule or set of rules (e.g., patterns of numbers, letters, words, pictures, mathematical operations).
56 	⊕ Near Vision — The ability to see details at close range (within a few feet of the observer).
53 	⊕ Arm-Hand Steadiness — The ability to keep your hand and arm steady while moving your arm or while holding your arm and hand in one position.
53 	⊕ Deductive Reasoning — The ability to apply general rules to specific problems to produce answers that make sense.
53 	⊕ Multilimb Coordination — The ability to coordinate two or more limbs (for example, two arms, two legs, or one leg and one arm) while sitting, standing, or lying down. It does not involve performing the activities while the whole body is in motion.
53 	⊕ Oral Comprehension — The ability to listen to and understand information and ideas presented through spoken words and sentences.

[back to top](#)

Work Activities [Save Table \(XLS/CSV\)](#)

+ - 10 of 41 displayed (26 important)

Importance	Work Activity
85 	⊕ Getting Information — Observing, receiving, and otherwise obtaining information from all relevant sources.
77 	⊕ Inspecting Equipment, Structures, or Material — Inspecting equipment, structures, or materials to identify the cause of errors or other problems or defects.
77 	⊕ Performing General Physical Activities — Performing physical activities that require considerable use of your arms and legs and moving your whole body, such as climbing, lifting, balancing, walking, stooping, and handling of materials.
76 	⊕ Handling and Moving Objects — Using hands and arms in handling, installing, positioning, and moving materials, and manipulating things.
75 	⊕ Organizing, Planning, and Prioritizing Work — Developing specific goals and plans to prioritize, organize, and accomplish your work.

The Hay Method and Equal Pay

CANADIAN HUMAN RIGHTS ACT
AND EQUAL PAY GUIDELINES

HAY GUIDE CHART-PROFILE
METHOD OF JOB EVALUATION

Core factor	Sub factor	Dimension	Core factor
Skill	Intellectual skill	Knowledge and skill, however acquired, associated with practical procedures, specialized techniques and scientific disciplines	Know-How
		Conceptual or actual management knowledge and skill	
		Human relation skill	
	Physical skill	Physical skill associated with practical procedures and specialized techniques	
Effort	Intellectual effort	The independence, complexity and novelty of the thinking required in the job	Problem Solving
	Physical effort	Intensity, frequency and duration of physical effort or activity producing physical stress or fatigue	Working Conditions
Responsibility	Accountability for machines, finances and other resources	The size of the organizational unit or function which the job affects, as indicated by the resources involved (human and otherwise)	Accountability
	Accountability for work of other employees	The role of the job in bringing about the objectives of an organizational unit or function, including accountability for the work of others.	
	Reliance on employees to perform the work	The nature of the organizational unit or function requiring knowledge and skill.	Know-How
Working Conditions	Noise, heat, cold, physical danger, conditions hazardous to health, other conditions produced by the physical work environment	Intensity, frequency and duration of unavoidable conditions in the physical environment (e.g., fumes, temperature, noise, vibration, dirt, dust, and unavoidable exposure to hazardous substances, equipment, and/or situations)	Working Conditions
	Isolation, mental stress, other conditions produced by the psychological work environment	Intensity, frequency, and duration of exposure to factors inherent in the work process or environment, (e.g., isolation, multiple deadlines) which increase the risk of such conditions as tension or anxiety.	
		Intensity, frequency and duration of sensory attention during the work process	

Chapter 3 DAVIS-BACON WAGE DECISIONS

- 3-1 **Introduction.** The U.S. Department of Labor (DOL) is responsible for determining prevailing wage rates for construction work pursuant to the Davis-Bacon Act and publishes schedules of these wages in Davis-Bacon wage decisions. DOL regulations pertaining to the determination, publication, use and effectiveness of Davis-Bacon wage decisions (also known as wage determinations) are found at 29 CFR Part 1. A copy of these regulations is found at Appendix II-4 in this Handbook.

In this chapter, *DOL* shall mean the Department of Labor, *HQLR* shall mean the HUD Headquarters Office of Labor Relations, *RLRO* shall mean the Regional Labor Relations Officer, *LRS* shall mean the HUD Labor Relations Specialist/staff; *LCA* (Local Contracting Agency) shall mean the appropriate staff of the state, local or tribal agency administering the project. LCA requests and reports for DOL review must be submitted through the LRS *except* that state agencies may submit requests and reports directly to DOL.

- 3-2 **Construction wage rate decisions – definition.** The term “wage decision” includes the original decision and any subsequent decisions modifying, superseding, correcting or otherwise changing the provisions of the original decision. (*Note:* The term “wage decision” shall be used within this chapter to mean the Davis-Bacon wage decision.)

A wage decision is a schedule of construction work classifications and wage rates that represent the *minimum* rates that must be paid to workers employed in those classifications. Wage decisions are established for defined geographic areas, usually by county or group of counties, and for four general characters of construction work. (See also, DOL publication *Davis-Bacon Construction Wage Determinations Manual of Operations* and *All Agency Memoranda Nos. 130 and 131*, and *Labor Relations Letter LR-96-03*.)

- 3-3 **Character of work.** The DOL establishes Davis-Bacon wage decisions for four broad categories (or characters) of construction work:

- A. **Residential.** Residential construction is defined as those projects involving the construction, alteration or repair of single family houses or apartment buildings of no more than four (4) stories in height. The definition includes all incidental items such as site work, parking areas, utilities, streets and sidewalks, unless there is an established area practice to the contrary.

- B. **Building.** Building construction includes apartment buildings exceeding four (4) stories, and all other sheltered enclosures with walk-in access for the purpose of housing persons, machinery, equipment or supplies, including incidental items such as grading, paving and utilities. Examples include high-rise apartment buildings, nursing homes and convalescent facilities, community centers, fire stations, commercial buildings, and dormitories.

- C. **Highway.** Highway construction includes the initial construction, alteration or repair of roads, streets, highways, alleys, parking areas, sidewalks and other similar projects not incidental* to residential, building or heavy construction.

* For example, the repair of streets and parking areas in a residential area that is performed independent of any other construction work is subject to highway wage rates. However, streets, parking areas and sidewalks installed during the new construction of residential apartments would be considered *incidental* to the residential construction work and would be performed pursuant to the residential wage decision applicable to the project.

- D. **Heavy.** Heavy construction projects are those that are not properly classified as “residential”, “building”, or “highway”. Some examples include antenna towers, canals, drainage and irrigation projects, sanitary and storm sewers, water mains and supply lines (not incidental to other construction), and storage tanks.

3-4 **Types of wage decisions.** In addition to four (4) characters of construction work, wage decisions are issued in two ways: General wage decisions and project wage decisions.

- A. **General wage decisions.** Most Davis-Bacon wage decisions are “General Wage Decisions”, also referred to as “area decisions”. General wage decisions are usually published annually by DOL and may be modified or superseded throughout the year. Updates to wage decisions are typically published on Fridays. The official web site for publications of general wage decisions, modifications and supersedeas wage decisions is: www.wdol.gov (*Wage Determinations On-line*). HUD Labor Relations staff and LCAs may utilize general wage decisions without advance notice or approval from DOL. Most Davis-Bacon wage decisions are available as published general wage decisions.
- B. **Project wage decisions.** If an appropriate wage decision (by location, character of work, and/or specific trade required) is *not* published in the general wage decisions, a “project” wage decision shall be ordered from DOL. Project wage decisions are applicable *only* to the construction work specified on the request to DOL and listed on the front page of the wage decision. Project wage decisions are valid for 180 days from the date of original issuance by DOL. The issuance and expiration dates will be indicated on the front page of the wage decision. Like general wage decisions, project wage decisions may be modified.

Note: A project wage decision may be applicable even though a general wage determination is published which covers the geographic location and character of work involved. For example: A project involves only roof replacement on a 4-story apartment building and the only classification needed for the work is

a Roofer. A general wage decision is published for residential construction in the county where the project is located; however, the general wage decision does not include a Roofer classification and wage rate. In this case, the general wage decision is not relevant to the roof replacement and a project wage decision must be ordered from DOL.

3-5 **Obtaining wage decisions.** General wage decisions and modifications are available to LRSs and LCAs through www.wdol.gov. This is the *only* on-line location endorsed by DOL. Project wage decisions must be ordered on a case-by-case basis from DOL (see paragraph B, below).

- A. **General wage decisions** are available on-line at www.wdol.gov. Note that this web site carries current wage decisions/modifications and an archive of previous general wage decisions/modifications beginning February 2000.
- B. **As project wage decisions are needed,** the LRS shall submit a completed SF-308, *Request for Determination and Response to Request*, to DOL National Office, allowing approximately 30 days for receipt of the project wage decision from DOL.

3-6 **Selecting the correct wage decision.** Wage decisions are selected and assigned to specific contracts or projects by the responsible contract officer. For HUD-administered projects (e.g., FHA-insured multifamily development), the responsible contract officer is the LRS. In addition, the LRS provides technical support and oversight to LCAs administering HUD programs in selecting and assigning the appropriate wage decision. In general, the appropriate wage decision is the *one* wage decision that is applicable to the geographic location and overall character of work to be performed. (See also *Labor Relations Letter LR-96-03, Application of Department of Labor guidance concerning "projects of a similar character"*.)

- A. **Geographic location.** Wage decisions are issued by county or groups of counties. The appropriate geographic location is generally the county in which the project/construction work will be physically located.
- B. **Character of work.** The overall character of work is determined based upon the principal purpose(s) of the project and the end result of the construction activity. DOL guidance (All Agency Memo 130) states that a "project" is classified as belonging in *one* of the four categories of construction and that a "project" consists of *all construction necessary to complete a facility*. The four categories of construction are discussed in section 3-3 of this guide. "Overall character" considers the principal purposes of the construction in conjunction with any incidental items to identify the *one* category of construction that corresponds best to the project. In certain cases, a single project may contain separate and distinguishable components that fall into different categories of construction and are not incidental.

1. **Incidental** items are elements of a project whose function is to support the principal purposes and do not change the overall character of work. Examples of incidental items include parking areas and sidewalks installed to support residential or building projects. While parking areas and sidewalks, in and of themselves, constitute “highway” construction, these elements installed in conjunction with a residential or building project are considered to be incidental to the principal purpose of the construction and are subject to the same wage decision that applies to the principal purpose.
2. **Substantial** is defined by DOL in terms of relative cost: more than 20% of the total project cost, and/or in terms of absolute cost: \$1 million or more. A project that contains substantial components that fall into different categories of construction may require that separate wage decisions be assigned to substantial components. (See paragraph 3-6(E), below.)
3. **End result** refers to the outcome of the construction activity that determines the character of work. This generally is a factor only in rehabilitation projects. For example, if an existing 4-story office building is being rehabilitated and the end result will be an apartment building, the character of work is *residential*. Conversely, if a single-family home is being renovated and the end result is a community center, the character of work is *building*.

- C. **Considerations for residential construction.** Residential construction is defined as projects involving the construction, alteration, or repair of single-family houses or apartment buildings of no more than four stories in height. This includes all incidental items such as site work, parking areas, utilities, streets and sidewalks.

The primary component, which determines the character of work, is the housing. Elements such as site work, parking areas, etc., are incidental items and are included within the definition of residential construction. Generally, any housing development (four stories or less) is classified as “residential.” This classification is not altered by the cost of incidental items, even if such costs reach the threshold guides (above) for “substantial.” Except in the most extraordinary circumstances, such as where local industry practice clearly demonstrates otherwise, only residential wage decisions shall be assigned for housing development projects of four stories or less. The Regional Labor Relations Office (RLRO) shall consult with HQLR in advance where the use of multiple wage decisions is contemplated for a housing development project. (See also *Labor Relations Letter LR-96-03*.)

1. **First story (floor).**
 - a. A lowermost story is considered a first story (floor) if it is:

- (1) Primarily above exterior grade on one or more sides; and,
 - (2) Contains at least 50% living accommodations or related nonresidential uses (e.g., laundry space, recreation/hobby rooms, commercial use, and/or corridor space).
- b. A lowermost story is considered a first story (floor) without regard to a percentage test if it is primarily above ground on two or more sides.
 - c. A lowermost story is considered a first story (floor) if it contains the main entrance to the building.
 - d. A lowermost story is considered a first story (floor) without regard to exterior grade if it is used for apartment space in a way substantially similar to the upper floors.
2. **Basement.** Stories below grade used for storage, parking mechanical systems/equipment, etc., are considered basement stories which are not used in determining the building's height.
 3. **Attic.** An attic is an unfinished space located immediately below the roof. Such space is not used in determining a building's height even if used for storage purposes.
 4. **Half-story.** A half-story over the building's fourth story would preclude a residential classification. A half-story is a story finished as living accommodations located wholly or partially within the roof frame with floor space at least half as large as the story below. (Space with less than five (5) feet clear headroom shall not be considered as floor area.)
 5. **Top story.** The top story, not finished for living accommodations, between the uppermost floor and the ceiling or the roof above, with floor space as large as the story below, is considered a story for purposes of determining a building's height.
 6. **Housing unit requirements.** Each housing unit must be fully and independently functional; each housing unit must have its own kitchen and bathroom. A building wage decision is applicable if the project design fails to meet these criteria. For example, certain assisted living facilities may not meet these criteria.

Note: Single room occupancy (SRO) projects are *exempt* from these criteria. SRO projects are not required to have a kitchen and bath in each housing unit. (*Dutch Hotel (SRO) Kitchen, WAB No. 90-29, March 22, 1991.*)

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- D. Mixed-use projects.** Some projects may contain elements of different construction characters that are separate in function and are not incidental to each other. For example, a 3-story building and a 5-story building in a multifamily project each has an independent purpose and function and is not incidental to the other. In such cases, it is appropriate to identify more than one character of work and to assign multiple wage decisions, i.e., a wage decision(s) covering each character of work involved.
- E. Multiple wage decisions.** “Multiple wage decisions” refers to the practice of assigning more than one Davis-Bacon wage decision for a single project. Multiple wage decisions may be required when the project contains separate and distinguishable components that fall into different categories of construction and the components are *not* incidental to each other (e.g., mixed-use projects) *and/or* are so substantial in cost or scope that separate wage decisions for the components are warranted.
- F. Davis-Bacon compliance on projects with multiple wage decisions.** The developer/prime contractor must ensure that all laborers and mechanics receive no less than the applicable wage rate based upon the classification of work performed and the wage decision assigned to the “character” of the construction work performed. Compliance may be established in the following manners:
1. **Pay the highest of all wage rates.** The developer/prime contractor may establish compliance by ensuring the payment of the highest wage rate on all applicable wage decisions for each work classification. *Or,*
 2. **Utilize wage rates on all wage decisions.** The developer/prime contractor may utilize the wage rates contained in all of the wage decisions assigned provided that the following conditions for multiple wage decisions are met:
 - a. The project/contract specifications must clearly delineate the portions of the project/contract subject to each wage decision assigned.
 - b. All assigned wage decisions must be posted at the job site with an explanation as to where each wage decision applies.
 - c. The developer/prime contractor must establish adequate controls to ensure that all laborers and mechanics are paid in accordance with the wage decisions assigned.
 - d. All employers (prime contractor, subcontractors, lower-tier subcontractors) must prepare and maintain accurate employee time and payroll records to demonstrate compliance with all wage decisions assigned to the project/contract.
 - e. Use of the wage rates contained in multiple wage decisions is contingent upon the agreement and compliance with these conditions.
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- 3-7 **Modifications.** General wage decisions and project wage decisions may be modified from time to time to keep them current, correct errors and for other purposes. Modifications may be limited to one or more particular work classifications and wage rates. Modifications are effective to a project if received by the agency (HUD) or if notice of the modification is published (at www.wdol.gov) prior to the lock-in date. Modifications expire on the date of expiration for the wage decision to which the modification applies. For example, a modification to a project wage decision will expire on the same date as the original project wage decision. A modification to a general wage determination will remain in effect until superseded by a subsequent modification, or the original general wage decision is superseded or cancelled.
- 3-8 **Supersedeas wage decisions.** A supersedeas wage decision completely replaces the original wage decision. The most common supersedeas wage decisions are those published annually to replace the prior year's general wage decisions and frequently involve no changes to the work classifications or wage rates. However, supersedeas wage decisions may involve changes in a large number of job classifications and/or wage rates. Supersedeas wage decisions are effective to projects in the same manner as modifications.
- 3-9 **Letters of inadvertence.** Letters of inadvertence are issued by DOL to correct errors in the written text of a wage decision such as clerical errors made in processing the schedule of wage rates. The corrections issued in a letter of inadvertence shall be included in any bid documents, contract specifications, and/or in any on-going contract retroactively to the start of construction.
- 3-10 **Use and effectiveness of wage decisions.** General and project wage decisions, whichever are applicable, become effective or "lock-in" for a particular contract or project at a specific point, in most cases, not later than the date construction starts. Once a wage decision is "locked-in" for a specific contract or project, subsequent modifications or supersedeas wage decisions are not effective for that contract/project. However, prior to the "lock-in" date, modifications and supersedeas wage decisions shall be considered for effectiveness. Project wage decisions shall be monitored to ensure that the "lock-in" date occurs before the project wage decision expires. The "lock-in" date is also referred to as the "effective date". (See also DOL Regulations, *29 CFR Part 1, §1.6.*)

General and project wage decisions shall be effective (locked-in) on the date the contract is awarded, or the date construction starts, whichever may occur first, except as follows:

- A. **Contracts entered into pursuant to competitive bidding.** General wage decisions shall be locked-in on the date bids are opened *provided* that the contract is awarded within 90 days after bid opening. If the contract is awarded more than 90 days after bid opening, a general wage decision must be updated as of the date of award unless an extension is obtained (see

paragraph D, below). A project wage decision shall be locked-in at contract award. Modifications to a general or project wage decision published at www.wdol.gov or received by HUD prior to the lock-in date shall be effective with respect to the contract/project.

Exception for competitive bid procedures ONLY: A modification to a general or project wage decision published/received less than 10 days before bid opening may be disregarded if it is found that there is not a reasonable amount of time to notify prospective bidders of the modification before bid opening. A record of such finding must be made to the contract/project file.

- B. Projects assisted under the National Housing Act (e.g., FHA-insured).** A general wage decision shall be locked-in on the date the mortgage is initially endorsed *provided* that construction starts within 90 days after initial endorsement. If construction starts more than 90 days after initial endorsement, the general wage decision must be updated as of the construction start date unless an extension is obtained (see paragraphs D and F, below). A project wage decision shall be locked-in at initial endorsement or start of construction, whichever occurs first. Modifications published/received prior to the lock-in date shall be effective with respect to that project.
- C. Projects to receive Section 8 rental payments assistance under the U.S. Housing Act of 1937.** A general wage decision shall be locked-in on the date of the agreement to enter into a housing assistance payments contract (AHAP) or project rental assistance agreement (APRAC) or analogous instrument is executed *provided* that construction starts within 90 days after such execution. If construction starts more than 90 days after execution of the AHAP/APRAC, the general wage decision must be updated as of the construction start date unless an extension is obtained (see paragraph D, below). A project wage decision shall be “locked-in” on the date the AHAP or APRAC, or analogous instrument is executed or the start of construction, whichever occurs first. Modifications published/received prior to the lock-in date shall be effective with respect to that project.
- D. Request for extension for general wage decisions.** In those cases where the 90-day time limitation for contract award (paragraph 3-10(A)) or construction start (paragraphs 3-10(B) or (C)) has been exceeded, HUD may request an extension to the effective date of the prior wage decision from DOL. The request must be supported by a statement of the factual circumstances and a finding that the extension is necessary and proper in the public interest to prevent injustice or undue hardship. Such requests shall be prepared by the LRS and submitted through the RLRO to HQLR. HQLR shall consider the request and, if warranted, shall transmit the request to DOL for the consideration of the Wage and Hour Administrator. (See also DOL Regulations 29 CFR Part 1, §1.6(c)(3)(iv).)

- E. **Special instructions concerning expiration of project wage decisions.** A project wage decision is void if it is not locked-in before the expiration date. HUD may request an extension when it appears that a project wage decision may expire after the bid opening date but before contract award. The LRS shall follow the instructions at 3-10(D), above, in submitting such a request. (See also DOL Regulations *29 CFR Part 1, §1.6(a)(1).*)
- F. **Special instructions concerning FHA-insured, Section 202 and Section 811 projects.** When a modification or supersedeas decision is published or received by HUD before initial endorsement or initial closing but *after* the issuance of the firm commitment by HUD *and* less than 90-days has transpired between firm commitment and the prospective initial endorsement/closing date, HUD may request a variance in the application of DOL regulations at 29 CFR Part 1, §1.6 such that the project may proceed with the wage decision as it was published on the date of firm commitment issuance. The LRS shall follow the instructions at 3-10(D), above, in submitting a request for variance. (See also DOL Regulations *29 CFR Part 5, §5.14.*)

- 3-11 **Retroactive wage decisions.** If HUD funding or assistance under a statute requiring the payment of Davis-Bacon wage rates is approved *after* contract award (or start of construction where there is no contract award), the LRS/LCA shall identify and obtain the Davis-Bacon wage decision in effect as of the contract award/construction start date. The applicable wage decision shall be incorporated into the contract specifications *retroactively* to the start of construction. (See also DOL Regulations *29 CFR Part 1, §1.6(g).*)

Exception. The DOL Wage and Hour Administrator may issue a wage decision to be effective on the date of approval of HUD funding or assistance whenever the Administrator finds that it is necessary and proper in the public interest to prevent an injustice or undue hardship. *And*, provided further that the Administrator finds no evidence of intent to apply for Federal funding or assistance prior to contract award or start of construction, as appropriate. Such requests shall be prepared and submitted in the same manner, including appropriate supporting statements of fact and reasoning, as described at 3-10(D), above.

- 3-12 **Incorporation of wage decision and labor standards provisions in bid specifications and contracts.** The applicable Davis-Bacon wage decision, including modifications, and the applicable Federal labor standards provisions must be made a part of the bid documents (if any) and/or contract specifications for any construction work subject to Davis-Bacon prevailing wage requirements. (See also DOL Regulations, *29 CFR Part 5, §5.5(a).*)

- A. **Incorporation in contracts and subcontracts.** Every ensuing construction contract, subcontract and any lower-tier subcontracts must include the

Authoritative site for Assistance Listings and Wage Determinations only

LOGIN.GOV is now live on Beta.SAM.gov

You will now log in to Beta.SAM.gov using login.gov. Please check out the video for more informa...

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All Award Data

I'm looking for..



Welcome

This will be the official U.S. government website for people who make, receive, and manage federal awards.



What Can I Do Here?

Contracting



**Wage
Determinations
(WDOL)**

General Decision Number: WA150126 07/24/2015 WA126

Superseded General Decision Number: WA20140126

State: Washington

Construction Type: Residential

Counties: Skagit and Whatcom Counties in Washington.

RESIDENTIAL CONSTRUCTION PROJECTS (consisting of single family homes and apartments up to and including 4 stories).

Note: Executive Order (EO) 13658 establishes an hourly minimum wage of \$10.10 for 2015 that applies to all contracts subject to the Davis-Bacon Act for which the solicitation is issued on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.10 (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract. The EO minimum wage rate will be adjusted annually. Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

Modification Number	Publication Date
0	01/02/2015
1	01/23/2015
2	03/27/2015
3	07/10/2015
4	07/24/2015

* BRWA0001-019 06/01/2015

	Rates	Fringes
BRICKLAYER.....	\$ 37.65	14.77

ELEC0073-007 07/01/2014

	Rates	Fringes
ELECTRICIAN.....	\$ 19.20	7.76

ELEV0019-001 01/01/2015

	Rates	Fringes
ELEVATOR MECHANIC.....	\$ 48.59	28.38+a

a. Paid Holidays- New Year's Day, Memorial day, Independence Day, Labor Day, Veteran's Day, Thanksgiving Day, the Friday after Thanksgiving, Christmas Day

LABO0238-001 06/01/2013

purifying respirator or additional protective clothing.

LEVEL A-B: - \$1.00 PER HOUR - Uses supplied air in conjunction with a chemical splash suit or fully encapsulated suit with a self-contained breathing apparatus.

Employees shall be paid Hazmat pay in increments of four(4) and eight(8) hours.

SUWA2011-021 06/27/2014

	Rates	Fringes
CARPENTER.....	\$ 19.31	10.65
LABORER: Common or General.....	\$ 15.21	0.00
OPERATOR: Backhoe/Excavator/Trackhoe.....	\$ 26.41	0.00
OPERATOR: Bobcat/Skid Steer/Skid Loader.....	\$ 17.53	0.00
OPERATOR: Bulldozer.....	\$ 29.63	0.00
PAINTER (Brush, Roller, and Spray).....	\$ 24.75	5.91
PLUMBER.....	\$ 25.86	2.76
ROOFER.....	\$ 23.12	2.90
SHEET METAL WORKER (HVAC Duct Installation Only).....	\$ 20.84	7.30

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of "identifiers" that indicate whether the particular

DAVIS-BACON SURVEYS

INTRODUCTION

OVERVIEW OF DAVIS-BACON SURVEY PROCESS

KEY CLASSES

CERTIFIED PAYROLLS

SURVEY FORM WD-10 & INSTRUCTIONS

INTRODUCTION

- ◇ The WHD conducts a continuing program for obtaining and compiling wage rate information, including the conduct of surveys requesting the voluntary submission of wage data by contractors, contractors' associations, labor organizations, public officials, and other interested parties as the basis for developing Davis-Bacon wage determinations that reflect the wages paid to for laborers and mechanics employed on different types of construction in local areas across the country, which set minimum pay requirements for federal and federally assisted construction subject to DBA/DBRA prevailing wage requirements.
- ◇ Based on the data submitted in response to the such surveys, WHD determines the locally prevailing wages to be issued Davis-Bacon wage determinations for inclusion in DBA and DBRA covered contracts.

Statutory and regulatory requirements

- ◇ The DBA requires that minimum wage requirements to be included in covered contracts be “based on the wages the Secretary of Labor determines to be prevailing for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work” in the area (usually a county) in which proposed contract work is to be performed. 40 U.S.C. § 3142(b).
 - ◇◇ As noted in 29 C.F.R. § 1.1(a), the responsibility for such determinations has been delegated to the WHD Administrator and authorized representatives.
- ◇ 29 C.F.R. Part 1 establishes the procedures for issuing and applying Davis-Bacon wage determinations to covered contracts.
- ◇ The regulatory definition of the term “prevailing wage” is stated at 29 C.F.R. § 1.2(a)(1):
 - ◇◇ The *prevailing wage* shall be the wage paid to the majority (more than 50 percent) of the laborers or mechanics in the classification on similar projects in the area during the period in question. If the same wage is not paid to a majority of those employed in the classification, the *prevailing wage* shall be the average of the wages paid, weighted by the total employed in the classification.
- ◇ The regulation further states at 29 C.F.R. § 1.2(a)(2) that:
 - ◇◇ In determining the *prevailing wages* at the time of issuance of a wage determination, the Administrator will be guided by paragraph (a)(1) of this section and will consider the types of information listed in § 1.3 of this part.

- ◇ The WHD conducts a continuing program for the obtaining and compiling of wage rate information, in accordance with 29 C.F.R. § 1.3, which addresses “Obtaining and compiling wage rate information.” As mandated by 29 C.F.R. § 1.3(a):
 - ◇◇ The Administrator will encourage the voluntary submission of wage rate data by contractors, contractors' associations, labor organizations, public officials and other interested parties, reflecting wage rates paid to laborers and mechanics on various types of construction in the area, and .
 - ◇◇ The Administrator may also obtain data from agencies on wage rates paid on construction projects under their jurisdiction.
 - ◇◇ The information submitted should reflect not only the wage rates paid a particular classification in an area, but also the type or types of construction on which such rate or rates are paid, and whether or not such rates were paid on federal or federally assisted projects subject to Davis-Bacon prevailing wage requirements.
- ◇ A listing of types of information that “may be considered in making wage rate determinations is provided in 29 C.F.R. § 1.3(b). It includes:
 - ◇◇ Statements showing wage rates paid on projects, which should include:
 - ◇◇◇ the names and addresses of contractors, including subcontractors,
 - ◇◇◇ the locations, approximate costs, dates of construction and types of projects,
 - ◇◇◇ whether or not the projects are Federal or federally assisted projects subject to Davis-Bacon prevailing wage requirements,
 - ◇◇◇ the number of workers employed in each classification on each project, and
 - ◇◇◇ the respective wage rates paid such workers.
 - ◇◇ Signed collective bargaining agreements;
 - ◇◇ Wage rates determined for public construction by State and local officials pursuant to State and local prevailing wage legislation.; and
 - ◇◇ Any other information pertinent to the determination of prevailing wage rates.
 - ◇◇ Also, in making wage rate determinations pursuant to 23 U.S.C. § 113, the highway department of the State in which a project in the Federal-Aid highway system is to be performed shall be consulted, and before making a determination of wage rates for such a project the Administrator shall give due regard to the information thus obtained.

- ◇ This chapter of the *DOL Prevailing Wage Resource Book* provides information concerning the WHD survey process whereby data is requested, analyzed, compiled, and used to issue the Davis-Bacon wage determinations that are incorporated into DBA/DBRA covered contracts.

OVERVIEW OF DAVIS-BACON SURVEY PROCESS

- ◇ When a survey is started, national and local interested parties are notified of the survey, its boundaries, time frame, and cutoff date by letter which requests their participation by facilitating the survey briefing process, encouraging contractors/members to participate in the survey and through the submission of wage data.
- ◇ Contractors are identified initially from construction information provided on F.W. Dodge reports and are sent letters requesting wage data and lists of subcontractors. Subcontractors are also contacted for wage data.
- ◇ Follow-up on all non-responses. Analysts call contractors to obtain missing data and/or to clarify wage data submissions.
- ◇ Wage and fringe benefit data are collected from construction contractors and other interested parties on WD-10 survey forms including an electronic version found at: (<http://www.dol.gov/whd/programs/dbra/WD10Instrctns/wd10instructions.htm>).
- ◇ Wage data submissions are verified as to area, time frame, construction type, and timeliness. WHD analysis of survey data and resolution of “area practice” issues presented by the data are carried out. (“Area practice” issues arise in the survey process when multiple classifications perform the same work.)
- ◇ Third party verification, contractor verification, on-site verification are conducted.
- ◇ The wage data are tabulated in a computer program and prevailing wage rates and fringe benefits are calculated.
 - ◇◇ If a majority of the workers in a classification were paid the same rate, that rate will be determined to be the prevailing wage for the classification. For example, if a majority were paid the union rate negotiated for certain work under a collective bargaining agreement in the area, that rate will be determined to be the prevailing wage for the classification.
 - ◇◇ If the data does not show such a majority for a given classification, the average of the wages paid, weighted by the total employed in that classification, will be determined to be the prevailing wage for the classification. 29 C.F.R. § 1.2(a).
- ◇ These wage rates are tested for adequacy. Wage determinations are developed and issued where data adequacy tests have been met.
- ◇ Data from metropolitan counties cannot be used in determining wages for non-metropolitan areas; and vice versa. 29 C.F.R. § 1.7(b).

- ◇ Data collection for multiple construction type statewide surveys range from 4 to 6 months and follow-up analysis and clarification can take 12-18 months after the survey cut-off date.
- ◇ Accurate and comprehensive wage determinations are dependent upon interested party participation in the survey process.
- ◇ Survey participation by federal procurement agencies is sometimes required to issue a new wage schedule.
- ◇ Federal agencies may also play a key role in survey success by encouraging participation.
- ◇ The DOL/WHI prevailing wage determinations based upon survey data cannot reflect wage data that is not submitted. They can only reflect the data that is actually submitted.

KEY CLASSES

The following key classes are those normally necessary for each of the four types of construction, and every attempt is made to collect data on these classifications.

BUILDING	RESIDENTIAL
<ol style="list-style-type: none"> 1. Heat and frost insulators 2. Bricklayers 3. Boilermakers 4. Carpenters 5. Cement masons 6. Electricians 7. Iron workers 8. Laborers - common 9. Painters 10. Pipefitters 11. Plumbers 12. Power equipment operators (operating engineers) 13. Roofers 14. Sheet metal workers 15. Tile setters 16. Truck drivers 	<ol style="list-style-type: none"> 1. Bricklayers 2. Carpenters 3. Cement masons 4. Electricians 5. Iron workers 6. Laborers - common 7. Painters 8. Plumbers 9. Power equipment operators (operating engineers) 10. Roofers 11. Sheet metal workers 12. Truck drivers
HEAVY & HIGHWAY	
<ol style="list-style-type: none"> 1. Carpenters 2. Cement masons 3. Electricians 4. Iron workers 5. Laborers - common 6. Painters 7. Power equipment operators (operating engineers) 8. Truck drivers 	

CERTIFIED PAYROLLS

- ◇ Data from projects to which Davis-Bacon prevailing wage requirements applied may be needed to supplement wage data from private projects to allow for development of a wage determination. 29 CFR 1.3(d).
 - ◇◇ Data from all projects, including those on which Davis-Bacon prevailing wage requirements applied, are always used in determining the prevailing wages for heavy construction and for highway construction.
 - ◇◇ In determining the prevailing wages for building and residential construction, data from Davis-Bacon prevailing wage projects will not be used in calculating the prevailing wage if sufficient information is received from non-prevailing wage projects.
- ◇ Federal agencies may be requested to provide data from certified payrolls to supplement data submitted from other sources, where appropriate. Where that occurs:
 - ◇ It is not necessary to send a copy of every certified payroll submitted for a particular project. Only copies of those certified payrolls showing the peak employment week of a worker classification on a particular project by a particular contractor need be furnished.
 - ◇ Certified payroll information will be transcribed to the WD-10 form as it can be electronically scanned into WHD's survey computer program. The use of certified payroll data may materially affect the resulting wage determination.

SURVEY FORM AND WD-10 INSTRUCTIONS

U.S. DEPARTMENT OF LABOR DAVIS-BACON RESOURCE BOOK

DB SURVEYS

<p>Form WD-10 Davis-Bacon Wage Survey Report of Construction Contractor's Wage Rates</p> <p style="text-align: right;">U.S. Department of Labor Employment Standards Administration Wage and Hour Division</p>  <p><small>OMB No. 1215-0046 Expires 06/30/2002 Rev. Dec. 2000</small></p> <p>1. Please indicate the full name, address and phone number of the General/Prime Contractor or Subcontractor reporting wage data for the project indicated on this form.</p> <p>NAME OF CONTRACTOR/SUBCONTRACTOR</p> <p>ADDRESS</p> <p>CITY STATE ZIP</p> <p>PHONE EXTENSION FAX</p> <p>2. Submitter information</p> <p>LAST NAME AND FIRST NAME</p> <p>TITLE</p> <p>ORGANIZATION</p> <p>PHONE EXTENSION FAX</p> <p>EMAIL ADDRESS</p> <p>3. Please supply the complete name of the project, project description (area within a building, highway section, specific room number, etc.), address, and name of General/Prime Contractor if different from item 1.</p> <p>FULL NAME OF PROJECT</p> <p>PROJECT DESCRIPTION</p> <p>ADDRESS</p> <p>CITY</p> <p>STATE COUNTY</p> <p>NAME OF GENERAL / PRIME CONTRACTOR</p>	<p>INSTRUCTIONS - Please enter the information in the white boxes and fill in the circles as appropriate. You can either hand print the information in blue or black ink, or use a typewriter or printer. Detailed instructions for completing this form (or obtaining additional copies), as well as definitions for many of the terms used on this form are found on a separate instruction page.</p> <p>We estimate that it will take an average of 20 minutes to complete this collection of information, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, send them to: U.S. Department of Labor, Wage and Hour Division, Administrator, Room S-3502, 200 Constitution Avenue NW, Washington, DC 20210.</p> <p>NOTE: This form is used by the U.S. Department of Labor to determine the locally prevailing wage rates under the Davis-Bacon and related Acts. The submission of wage data is encouraged but is voluntary. This is an optional form provided to ensure consistency in submission of wage data. Respondents may use an alternate form if all the information requested is included. The identity of the Respondent will be kept confidential to the maximum extent possible under existing law. Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number.</p> <p>4. Indicate if project is subject to a Federal (Davis-Bacon) or state wage determination.</p> <p><input type="radio"/> FEDERAL <input type="radio"/> STATE <input type="radio"/> NEITHER</p> <p>5. Please select one choice at right.</p> <table border="0" style="width: 100%;"> <tr> <td style="width: 33%; vertical-align: top;"> <p>A. Please provide a list, on the enclosed form, of any subcontractors you used on this project, including addresses and phone numbers.</p> <p><input type="radio"/> THE LIST IS BEING RETURNED WITH THIS FORM</p> <p><input type="radio"/> THE LIST WAS PROVIDED EARLIER</p> <p><input type="radio"/> THERE ARE NO SUBCONTRACTORS</p> </td> <td style="width: 33%; vertical-align: top;"> <p>I AM THE <input type="radio"/> GENERAL/PRIME CONTRACTOR <input type="radio"/> SUBCONTRACTOR</p> <p>B. 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If the project has more than one type of construction please mark the additional type.</p> <table border="0" style="width: 100%;"> <tr> <td><input type="radio"/> APARTMENT BUILDING*</td> <td><input type="radio"/> MOTEL/HOTEL</td> <td><input type="radio"/> RESIDENTIAL*</td> </tr> <tr> <td><input type="radio"/> BICYCLE PATH</td> <td><input type="radio"/> NURSING/ASSISTED LIVING FACILITY</td> <td><input type="radio"/> ROAD/STREET/HIGHWAY/DRIVE</td> </tr> <tr> <td><input type="radio"/> BRIDGE OVER NAVIGABLE WATER</td> <td><input type="radio"/> OFFICE/COMMERCIAL BUILDING</td> <td><input type="radio"/> SCHOOL</td> </tr> <tr> <td><input type="radio"/> BRIDGE (ANY OTHER TYPE)</td> <td><input type="radio"/> PAVING</td> <td><input type="radio"/> SITE PREPARATION</td> </tr> <tr> <td><input type="radio"/> DORMITORY</td> <td><input type="radio"/> PARKING LOT</td> <td><input type="radio"/> TREATMENT PLANT</td> </tr> <tr> <td><input type="radio"/> HOSPITAL</td> <td><input type="radio"/> PLAYGROUND</td> <td><input type="radio"/> WATER/SEWER</td> </tr> <tr> <td colspan="3"><input type="radio"/> OTHER _____</td> </tr> </table> <p>* If you selected APARTMENT, NURSING FACILITY, or RESIDENTIAL:</p> <table border="0" style="width: 100%;"> <tr> <td><input type="checkbox"/> NUMBER OF STORIES</td> <td><input type="checkbox"/> KITCHEN IN EACH UNIT? 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U.S. DEPARTMENT OF LABOR
DAVIS-BACON RESOURCE BOOK

DB SURVEYS

Form WD-10
Davis-Bacon Wage Survey
Page 2 (see reverse for instructions)

OMB No. 1215-0046 Expires 09/30/2002 Rev. Dec. 2000

7. Classifications and Fringe Benefit Information. In the questions below, CBA stands for Collective Bargaining Agreement. In the five benefit-related columns, please describe the benefits (if any) for each classification, and also tell us how they are paid. If the benefit is paid out periodically, tell us how much you pay and how frequently you pay it, using a single letter abbreviation. Use "H" for hourly, "D" for daily, "W" for weekly, "M" for monthly, and "Y" for yearly. If the benefit is paid as a percentage of the hourly rate, check the appropriate box, then tell us the percentage using the boxes below the checkbox. Regarding the Vacation & Holiday and additional benefit columns, if appropriate, tell us how many days are paid annually.

If you only supplied building materials, and no employees worked on the project, then fill in the circle below. You may skip the rest of this question, and sign and date the form.

ONLY SUPPLIED MATERIALS

CLASSIFICATION	PEAK WEEK ENDING DATE <small>MM / DD / YY</small>	HOURLY RATE	HEALTH & WELFARE	PENSION (401K, ETC)	APPRENTICE TRAINING	VACATION & HOLIDAY	ADDITIONAL FRINGE
			<input type="checkbox"/> \$ per EMP. per <input type="checkbox"/> % OF HOURLY RATE	<input type="checkbox"/> \$ per EMP. per <input type="checkbox"/> % OF HOURLY RATE	<input type="checkbox"/> \$ per EMP. per <input type="checkbox"/> % OF HOURLY RATE	<input type="checkbox"/> \$ per EMP. per <input type="checkbox"/> % OF HOURLY RATE <input type="checkbox"/> # DAYS PER YEAR	<input type="checkbox"/> \$ per EMP. per <input type="checkbox"/> % OF HOURLY RATE <input type="checkbox"/> # DAYS PER YEAR
TYPE OF WORK PERFORMED	# OF EMPLOYEES	PAID UNDER A CBA? <input type="checkbox"/> <input type="checkbox"/>					
CLASSIFICATION	PEAK WEEK ENDING DATE <small>MM / DD / YY</small>	HOURLY RATE	<input type="checkbox"/> \$ per EMP. per <input type="checkbox"/> % OF HOURLY RATE	<input type="checkbox"/> \$ per EMP. per <input type="checkbox"/> % OF HOURLY RATE	<input type="checkbox"/> \$ per EMP. per <input type="checkbox"/> % OF HOURLY RATE	<input type="checkbox"/> \$ per EMP. per <input type="checkbox"/> % OF HOURLY RATE <input type="checkbox"/> # DAYS PER YEAR	<input type="checkbox"/> \$ per EMP. per <input type="checkbox"/> % OF HOURLY RATE <input type="checkbox"/> # DAYS PER YEAR
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TYPE OF WORK PERFORMED	# OF EMPLOYEES	PAID UNDER A CBA? <input type="checkbox"/> <input type="checkbox"/>					
8. COMMENTS OR REMARKS			DESCRIPTION OF ANY ADDITIONAL FRINGE (SEE LAST COLUMN OF ITEM 7)				
YOUR SIGNATURE			DATE <small>MM / DD / YY</small>				

Note: The willful falsification of any submitted information may result in civil or criminal prosecution. See 18 U.S.C. 1001.



**U.S. DEPARTMENT OF LABOR
DAVIS-BACON RESOURCE BOOK**

DB SURVEYS

**Instructions for the WD-10
Davis-Bacon Wage Survey
Report of Construction Contractor's Wage Rates**

Information about Davis-Bacon Wage Surveys, including dates of current and future surveys and the electronic WD-10, may be obtained at the Davis-Bacon and related Acts (DBRA) web site at www.dol.gov/whd/programs/dbra/index.htm.

INSTRUCTIONS

- Use blue or black ink.
- Hand-print letters/numbers.
- Use one block for each letter, number, period, or space. If you use a typewriter or printer to complete this form, ignore the block spacing.
- Fill in circles completely.
- Use one WD-10 form for each construction project.

This form is machine readable, and should not be copied. For additional forms, please contact (1-866-487-9243), OR fill out and submit your forms electronically using the following site on the World Wide Web:
<https://www.dol.gov/whd/programs/dbra/wd10/index.htm>.

FORM SIDE 1

Sections 1 and 2 — Contractor and Submitter Information

- 1 Fill in with information about your company.
- 2 Fill in with information about the submitter of the form.

Sections 3, 4, 5, and 6 — Project Information

- 3 Fill in information about the construction project your company worked on and the project's location and description.
- 4 Fill in one circle to identify if the project was subject to a federal or state wage determination.
- 5 Fill in one circle to identify yourself as either the general/prime contractor or a subcontractor.
- 5A Indicate if you had no subcontractors, OR if you did, then indicate whether you are enclosing a list of subcontractors along with the WD-10 form, or if you submitted a list earlier.
- 5B If you were the prime/general contractor, provide the date any work began on this project, the date the project ended (indicate if actual or estimated date), and the total project value.
- 5C If you were a subcontractor, provide the date your work started and ended (indicate if actual or estimated date) and the subcontract value.
- 6 Mark the type of construction project your company worked on. If none of the construction types matches your project, fill in the circle next to OTHER, and indicate the type of construction in the blocks. If you selected APARTMENT BUILDING, NURSING/ASSISTED LIVING FACILITIES, or RESIDENTIAL, indicate the number of stories, and fill in the circle if there was a kitchen and/or a bath in each unit.

FORM SIDE 2

Section 7 — Classification and Fringe Benefits

- If you only supplied materials, and no employees worked on the project, then fill in the circle marked "Only Supplied Materials," skip the rest of section 7, and sign and date the form.
- The remainder of section 7 requests multiple types of information per classification. Fill in each item as defined and described as follows:
 - CLASSIFICATION(S) are the position titles of jobs within your company (e.g., Carpenter, Electrician, Laborer, Crane Operator, etc.). Fill in one classification per line. If the workers in a classification are paid more than one hourly rate or different fringe benefits, please list them on separate lines. If more than 6 classifications and wage rates need to be listed for a project, report the additional classifications and wage rates on a new WD-10. On the new WD-10 fill out only Sections 1, 3, and 7.

GUAM SURVEY RESPONDENTS ONLY:

- LIST H2B VISA WORKERS SEPARATELY FROM OTHER REPORTED WORKERS
- IDENTIFY H2B WORKERS BY AN "H2" AFTER THE CLASSIFICATION TITLE

Example:

H2B/Visa Carpenter

Non-H2B Carpenter

CLASSIFICATION
Carpenter H2

CLASSIFICATION
Carpenter

- TYPE OF WORK PERFORMED – Explain the type of work that each classification performs (e.g., Laborer: landscape, pipelayer; Carpenter: carpentry, drywall; Operator: backhoe, etc.).

Examples:

CLASSIFICATION	LABORER
TYPE OF WORK PERFORMED	PIPELAYER

CLASSIFICATION	CARPENTER
TYPE OF WORK PERFORMED	CARPENTRY & DRYWALL

CLASSIFICATION	OPERATOR
TYPE OF WORK PERFORMED	BACKHOE

U.S. DEPARTMENT OF LABOR DAVIS-BACON RESOURCE BOOK

DB SURVEYS

Section 7 — Classification and Fringe Benefits (continued)

- PEAK WEEK ENDING DATE is the week you had the largest number of employees in a classification.
- NUMBER OF EMPLOYEES is the largest number of employees working in this classification on this project.
- HOURLY RATE is the dollar amount you paid employees per hour working in this classification.
- CBA – If the employee is paid under a Collective Bargaining Agreement, fill in the circle that represents Yes, otherwise fill in the circle that represents No. If yes, fill in the Local Union Number the listed employee/wage rate is affiliated with.
- FRINGE BENEFITS are paid in addition to the hourly rate. Report only the costs or contributions incurred by your company, NOT the employees. Do not include costs paid by the employer that are required by either Federal, State, or local law such as worker's compensation or unemployment insurance. Fill out the information under each fringe benefit that applies.
 - HEALTH & WELFARE – Medical or hospital care, or insurance to provide such care, life insurance, long- or short-term disability, sickness, or accident insurance.
 - PENSION (401K, ETC.) – Retirement/401K, defined contribution plans (including savings and thrift, deferred profit sharing and money purchase pension), annuity cost, or cost of insurance to provide such a benefit.
 - APPRENTICE TRAINING – Defrayment of the cost of apprenticeship or similar training programs.
 - VACATION & HOLIDAY – The payment of compensation for holidays and vacation.
 - ADDITIONAL FRINGE – If you are not sure of the category of the fringe benefit(s), enter the rate information in the column, and specify the fringe type in the “Description of Any Additional Fringe” field at the bottom of the form.

Fringe benefits can be paid by a straight dollar amount, or by a percentage of the basic hourly rate. Indicate the cost or contribution your company paid to this classification during the peak week of this project.

If the fringe benefits were paid by a straight dollar amount: Dollars (\$) per Employee (EMP.) per

- Mark the circle before \$ per EMP. per
- Fill in the dollar value in the blocks provided.

Include the decimal position when you fill in the dollar amount.

Do not include the \$ sign. (Example: 1.50 for one dollar and fifty cents.)

- Indicate how often this dollar value was paid in the block following \$ per EMP. per with the values as follows: H for hourly, D for daily, W for weekly, M for monthly, and A for annually/yearly.

Example — If an employee was provided a straight dollar amount of \$1.50 on a weekly basis for health and welfare:

HEALTH & WELFARE	
<input checked="" type="radio"/> \$ per EMP. per W	
<input type="radio"/> % OF HOURLY RATE	
1 . 5 0	

If the fringe benefits were paid by a percentage of the basic hourly rate: Percentage (%)

- Mark the circle before % OF HOURLY RATE.
- Fill in the percentage values (based on the basic hourly rate) in the blocks.

Do not include the % sign.

Include a decimal position only if necessary.

Example — For 10%, print “10” or “.1” in the blocks. If an employee was provided 10% of the hourly rate for pension contribution:

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Use a “5” to indicate a half of a percent.

Example — For 10½%, print “10.5” or “.105” in the blocks:

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Item 8 — Comments or Remarks and Signature

- COMMENTS OR REMARKS — Provide comments or additional information.
- SIGNATURE — Submitter must sign and date the form.

KEY TERMS

- **Apprentice** – A person employed and registered in a bonafide apprenticeship program. (If these Apprentices/Trainees are in a formal program approved by the U.S. Dept. of Labor, Bureau of Apprenticeship and Training (BAT), or a state apprenticeship agency recognized by BAT, then information regarding wages and fringe benefits need not be provided.)
- **Helper** – A person that helps or assists and whose duties are distinct from the journey level class and laborer.
- **General/Prime Contractor** – The principal contractor on the project.
- **Subcontractor** – A contractor working on the project responsible for specific work but not the overall project. You are not a subcontractor for purposes of this survey if you supplied only materials.
- **Subcontractor List** – A machine-readable form for reporting the names and addresses of any subcontractors used by the contractor/subcontractor on the project being reported.
- **Trainee** – A person registered in a construction occupation program.

OKANOGAN PREVAILING WAGE SHEET/TERO APPRENTICE

OCCUPATION	ENTRY LEVEL 60%	SECOND LEVEL 80%	JOURNEYMAN 100%
asbestos abatement workers	\$ 20.89	\$ 27.85	\$ 34.81
Backhoe & Hoe Ram (under 3/4 yard	\$ 23.80	\$ 31.73	\$ 39.66
Backhoe & Ram (3/4 - 3 yard)	\$ 23.96	\$ 31.95	\$ 39.94
Backhoe (3 yard & over)	\$ 24.13	\$ 32.17	\$ 40.21
Blade (finish & blue top)	\$ 24.13	\$ 32.17	\$ 40.21
Blade (motor patrol & attachments)	\$ 23.96	\$ 31.95	\$ 39.94
Bobcat (skidsteer)	\$ 23.60	\$ 31.47	\$ 39.34
Brick Mason	\$ 25.43	\$ 33.90	\$ 42.38
Carpenter	\$ 23.57	\$ 31.42	\$ 39.28
Cranes over 25 ton, to and including 45 ton	\$ 23.96	\$ 31.95	\$ 39.94
Cranes, 25 ton and under	\$ 23.80	\$ 31.73	\$ 39.66
Crusher Fedder Man	\$ 23.05	\$ 30.73	\$ 38.41
Crusher, Grizzle and Screening Plant	\$ 23.96	\$ 31.95	\$ 39.94
Dozer, Multiple Units with Single Blade	\$ 23.96	\$ 31.95	\$ 39.94
Drillers Helper	\$ 23.05	\$ 30.73	\$ 38.41
Drilling Equipment (8in bit and over)	\$ 23.80	\$ 31.73	\$ 39.66
Drills (churn, core, calyxs or diamond)	\$ 23.70	\$ 31.60	\$ 39.50
Drywall applicator	\$ 23.57	\$ 31.42	\$ 39.28
Drywall Taper	\$ 20.44	\$ 27.25	\$ 34.06
Electricians	\$ 24.34	\$ 32.46	\$ 40.57
Equipent Serviceman, Greaser and Oiler	\$ 23.70	\$ 31.60	\$ 39.50
Fireman & Heater Tender	\$ 23.05	\$ 30.73	\$ 38.41
Flaggers	\$ 19.63	\$ 26.17	\$ 32.71
Forklift or Lumber Stacker, Hydra-lift	\$ 23.24	\$ 30.98	\$ 38.73
Grade Checker	\$ 23.80	\$ 31.73	\$ 39.66
HD Welder	\$ 24.13	\$ 32.17	\$ 40.21
Heat & Frost Insulators	\$ 20.48	\$ 27.30	\$ 34.13
Heating Equipment Mechanics/HVAC	\$ 11.10	\$ 14.80	\$ 18.50
Hoe Ram	\$ 23.80	\$ 31.73	\$ 39.66
Insulation Applicators	\$ 23.57	\$ 31.42	\$ 39.28
ironworker	\$ 18.38	\$ 24.51	\$ 30.64
Laborer asphalt raker	\$ 21.21	\$ 28.28	\$ 35.35
Laborer brush hog feeder	\$ 20.89	\$ 27.85	\$ 34.81
Laborer carpenter tender	\$ 20.89	\$ 27.85	\$ 34.81
Laborer cement finisher tender	\$ 21.01	\$ 28.01	\$ 35.01

OKANOGAN PREVAILING WAGE SHEET/TERO APPRENTICE

OCCUPATION	ENTRY LEVEL 60%	SECOND LEVEL 80%	JOURNEYMAN 100%
Laborer chain saw operator and faller	\$ 21.21	\$ 28.28	\$ 35.35
Laborer clean up	\$ 20.89	\$ 27.85	\$ 34.81
Laborer concrete saw and walking	\$ 21.05	\$ 28.06	\$ 35.08
Laborer crusher feeder	\$ 20.89	\$ 27.85	\$ 34.81
Laborer demolition	\$ 20.89	\$ 27.85	\$ 34.81
Laborer drill, air track	\$ 21.05	\$ 28.06	\$ 35.08
Laborer drill, wagon	\$ 21.05	\$ 28.06	\$ 35.08
Laborer dumpman	\$ 20.89	\$ 27.85	\$ 34.81
Laborer final detail clean up, not construction debris	\$ 19.63	\$ 26.17	\$ 32.71
Laborer fire watch	\$ 20.89	\$ 27.85	\$ 34.81
Laborer form setter, paving	\$ 21.05	\$ 28.06	\$ 35.08
Laborer general laborer	\$ 20.89	\$ 27.85	\$ 34.81
laborer grade checker using level, optional	\$ 22.40	\$ 29.87	\$ 37.34
Laborer guardrail erector	\$ 20.89	\$ 27.85	\$ 34.81
Laborer jackhammer	\$ 21.05	\$ 28.06	\$ 35.08
Laborer jumper	\$ 20.89	\$ 27.85	\$ 34.81
Laborer Mortar Mixer	\$ 21.21	\$ 28.28	\$ 35.35
Laborer Pipelayer, corrugated metal culvert	\$ 21.05	\$ 28.06	\$ 35.08
Laborer powderman	\$ 22.20	\$ 29.60	\$ 37.00
Laborer powderman helper	\$ 21.05	\$ 28.06	\$ 35.08
Laborer power tool operator (gas electric pneumatic)	\$ 21.05	\$ 28.06	\$ 35.08
Laborer scaffold erector, wood or steel	\$ 20.89	\$ 27.85	\$ 34.81
Laders, Overhead/Front-end (4-8 yard)	\$ 23.96	\$ 31.95	\$ 39.94
Loader (360 degrees revolving Koerhring)	\$ 24.13	\$ 32.17	\$ 40.21
Loader (bucket, elevator & Conveyor	\$ 23.24	\$ 30.98	\$ 38.73
Loaders, Overhead/Front-end (10 yard and over)	\$ 24.79	\$ 33.05	\$ 41.31
Millwright & Machine erectors	\$ 16.70	\$ 22.26	\$ 27.83
Painter	\$ 17.62	\$ 23.49	\$ 29.36
Paving Machine (asphalt or concrete)	\$ 23.96	\$ 31.95	\$ 39.94
Plumbers and Pipe Fitters	\$ 34.27	\$ 45.70	\$ 57.12
Power Broom	\$ 23.24	\$ 30.98	\$ 38.73
Pump Operator (water)	\$ 23.60	\$ 31.47	\$ 39.34
Roller Operator (finishing Pavement)	\$ 23.96	\$ 31.95	\$ 39.94
Roofers	\$ 13.86	\$ 18.48	\$ 23.10
Scrapers, All Rubber Tired	\$ 23.96	\$ 31.95	\$ 39.94

OKANOGAN PREVAILING WAGE SHEET/TERO APPRENTICE

OCCUPATION	ENTRY LEVEL 60%	SECOND LEVEL 80%	JOURNEYMAN 100%
sheet metal workers	\$ 18.98	\$ 25.30	\$ 31.63
Shovel (under 3 yard)	\$ 23.96	\$ 31.95	\$ 39.94
Shovels (3 yard and over)	\$ 24.13	\$ 32.17	\$ 40.21
Sprinkler Fitters (Fire Protection)	\$ 16.60	\$ 22.14	\$ 27.67
Surveyors	\$ 10.85	\$ 14.46	\$ 18.08
Tractor, Farm Type R/T w/attachments	\$ 23.24	\$ 30.98	\$ 38.73
Truck Drivers asphalt mix (over 20 yards)	\$ 19.27	\$ 25.69	\$ 32.11
Truck Drivers asphalt mix (to 20 yards)	\$ 19.27	\$ 25.69	\$ 32.11
Truck Drivers dump truck and trailer	\$ 11.57	\$ 15.43	\$ 19.29
Truck Drivers dumpe truck	\$ 11.57	\$ 15.43	\$ 19.29
Truck drivers-other trucks	\$ 17.15	\$ 22.87	\$ 28.59
Welder	\$ 21.38	\$ 28.50	\$ 35.63

Contractor

Address

Subject: Prevailing Wage Rate Survey

During the next several years, the (Tribe/TDHE) is planning on building a number of new homes. We are very excited about this because it will provide much-needed housing for our tribal members as well as jobs for the contractors in our area.

Because we will be using federal funds, we are required to pay prevailing wages, which are either federally-determined Davis-Bacon wage rates or our own tribally-determined wage rates. In the past we have found the federally-determined rates to be very cumbersome for both us and our contractors, so to simplify the process for everyone we have elected to establish our own prevailing wage rates. This will eliminate many of the requirements we (and you) have had to follow in the past, such as submitting certified payrolls.

You can help us in this process by completing the attached survey form. Your information, plus the information gathered from other contractors in our area, will enable us to determine the wages we will be paying our contractors.

To complete the form, just list the wages and benefits (if not included in wages) for one or more projects completed during the past year. Wage information is being sought for the trades described on the enclosed List of Trades form. The following is a sample of a completed form:

Project	County, State	Trade	# of Hours	Base Rate Per Hour	Fringes Per Hour	Dates of Work
Mission Valley	Creek, OK	Carpenter	150	\$25.00	\$3.00	3/2014 – 6/2014
Wilson Ridge	Tulsa, OK	Plumber	80	\$28.50	\$3.75	4/2014 – 7/2014
Wilson Ridge	Osage, OK	Electrician	95	\$27.85	\$3.50	4/2014 – 7/2014

When your survey form is complete, you can mail it to us at the address on the form, or fax it to (Fax Number), or scan and email to (email address). **All information provided will be kept strictly confidential.**

If you have any questions, please call (Housing Program Manager) at (phone number), or email at (email address).

We appreciate your helping us with this important project.

**TRIBE/TDHE
Address**

CONSTRUCTION WAGE SURVEY

FOR WORK PERFORMED FROM JULY 1, 2019 TO JUNE 30, 2020

PLEASE NOTE: Please read the instructions before completing the survey. Contact (name) at (phone) or (email) for assistance in completing the survey. So that we can contact you if we have questions, please complete the Contact Information section below. Thank You!

1. PROJECT NAME	2. COUNTY, STATE	3. WAGE RATE CLASSIFICATION	4. # OF HOURS	5. BASE RATE PER HOUR	6. FRINGE BENEFITS PER HOUR	7. DATE(S) OF WORK (From-To)

Contact Information:

Contact Name: _____

Business Name: _____

Address: _____

City: _____ State: _____ Zip Code: _____

Phone: _____

Email: _____

INSTRUCTIONS

Tribe/TDHE WAGE SURVEY

PLEASE READ INSTRUCTIONS CAREFULLY Use a separate line on the survey form for each entry. You may make additional copies of the form as needed. For more information, contact (Housing Program Manager) at (phone number) or email (email address).

1. Project Name	Enter the name of the project. Provide an exact project name (e.g. Gateway Office Building). Projects should include any commercial or residential construction project which you have participated during the survey period (July 1, 2014 - June 30, 2015). <u>Projects do not have to be prevailing wage projects to be reported.</u> Be sure to include Federal projects (government buildings, military, Indian, or Test Site projects) and all multi-family and single family residential construction projects.
2. County and State	Please indicate the name of the county and State in which the work was performed – for example Tulsa County, OK
3. Trades	Please use only the trades as provided on the “Wage Rate Classifications” sheet.” Select the trade that most closely describes the type of work being performed. Please consider only the actual work performed rather than the job title or other affiliations.
4. Number Of Hours	Please list the total number of hours worked on projects between July 1, 2014 and June 30, 2015 by wage rate classification and wage. Report only the base rate of pay, for both regular and overtime hours. Do not report hours worked by apprentices, superintendents, or owner/operators.
5. Base Rate Per Hour	Indicate the hourly <u>base rate</u> paid each classification. Do not give a pay range or include fringe benefits. Do not include overtime rates.
6. Fringes Benefits Per Hour	Where applicable, please combine and list the hourly rates for Pension, Health and Welfare, Vacation and Holiday Pay, and the cost of Apprenticeship Training. Do not include employer’s portion of payroll taxes, worker compensation insurance, unemployment taxes, or any other taxes or assessments.
7. Date(s) of Work	Please indicate the time frame in which the work was performed. The work performed must have occurred between July 1, 2014 and June 30, 2015. Please list the months and year of work, (e.g. 10/14 to 3/15).

* **DRAFT** * **DRAFT** * **DRAFT** *

Native Village of _____

ORDINANCE / TRIBAL CODE NO. _____

**AN ORDINANCE / TRIBAL CODE OF THE NATIVE VILLAGE OF _____
TO ADOPT TRIBALLY DETERMINED
PREVAILING WAGE RATES WITHIN THE AVCP/CALISTA REGION FOR
NAHASDA FUNDED PROJECTS.**

Section 1. Title and Introduction

This Ordinance / Tribal Code may be cited as the ‘Tribally Determined Prevailing Wage Rates within the AVCP/Calista Region for NAHASDA Funded Projects.’

As of March 2004, the Association of Village Council Presidents Regional Housing Authority (AVCP RHA) is the Tribally Designated Housing Entity (TDHE) for at least 42 tribes within the AVCP/Calista Region. Furthermore, the AVCP RHA has provisions for new unit development, the modernization of current assisted stock, and the weatherization and/or rehabilitation of existing privately owned homes of eligible program participants under the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA), P.L. 104-330 as amended by P.L. 105-276, P.L. 106-568, and P.L. 107-292. The Department of Housing and Urban Development (HUD) under NAHASDA funds over 98 percent of AVCP RHA’s programs. NAHASDA was amended to allow Indian tribes to determine and apply their own prevailing wage rates in their contracts or agreements for the development and operation of affordable housing in place of Federally determined wage rates.

AVCP RHA has commenced most all construction utilizing the Force Account Method of construction. AVCP RHA recognizes the need to stay competitive throughout its region yet maximize available grant funds for labor to construct its projects. AVCP RHA strives to ensure a stable work force, reduce turnover, and provide its employees total compensation commensurate with other government, state, and private enterprises performing similar work. AVCP RHA strives to hire locally within the region.

AVCP RHA contracted with an independent contractor to survey regional employers, collect secondary data and analyze this data, as well as recommend establishment of prevailing wage rates.

Section 2: Purpose and Authority

The purpose of this Ordinance / Tribal Code is to adopt Tribally Determined Wage Rates for NAHASDA projects within or near the Native Village of _____ tribal boundaries. The Native Village of _____ or its TDHE shall oversee the enforcement of this ordinance.

Section 3: Tribally Determined Wage Rates for NAHASDA Funded Projects

The Native Village of _____ adopts the following Tribally Determined Prevailing Wage Rates as its prevailing wage rates per hour, for NAHASDA funded projects:

JOB TITLE	Entry Level	Mid-Level	High-Level
Field Project Superintendent	\$ 29.00	\$ 32.50	\$ 36.50
Electrician-Lead	\$ 33.00	\$ 34.50	\$ 35.50
Electrician	\$ 19.50	\$ 23.50	\$ 27.50
Plumber-Lead	\$ 27.00	\$ 30.50	\$ 34.00
Plumber	\$ 16.00	\$ 21.50	\$ 27.00
Carpenter-Lead	\$ 21.00	\$ 24.50	\$ 28.00
Apprentice Carpenter	\$ 16.50	\$ 19.00	\$ 21.50
Laborer	\$ 13.00	\$ 16.00	\$ 18.50
Welder	\$ 24.00	\$ 29.50	\$ 34.50
Painter	\$ 19.00	\$ 22.50	\$ 26.50
Soft Floor Layer	\$ 18.00	\$ 21.50	\$ 25.00
Pile Driver	\$ 15.00	\$ 18.75	\$ 22.50
Operating Engineer	\$ 19.00	\$ 22.50	\$ 26.00
Truck Driver	\$ 17.50	\$ 19.50	\$ 22.00
Field Mechanic	\$ 19.50	\$ 22.50	\$ 25.50
Maintenance Repairer	\$ 20.00	\$ 23.00	\$ 25.00

Section 4: Amendment Clause

The Native Village of _____ reserves the right to make any changes to this Ordinance / Tribal Code.

The Native Village of _____ or its TDHE will adopt a process to review and where needed, update the above referenced prevailing wage rates within the next five years, by tribal resolution.

Copies of this Ordinance / Tribal Code, and any future amending resolutions, shall be sent to the Honorable Alphonso Jackson, United States Acting Secretary of Housing and Urban Development, 451 7th Street S.W., Washington, DC 20410.

Section 5: Tribal Certification

The foregoing Ordinance / Tribal Code was passed by the Native Village of _____ in a duly called meeting where a quorum was present, this _____ day of _____ 2004 by a vote of _____ ayes, _____ nays and _____ abstaining.

Tribal Council President/Chief

Tribal Council Secretary



BISHOP TRIBAL COUNCIL

ORDINANCE NO. T2001-02

AS AMENDED JUNE 24, 2003

ORDINANCE OF THE TRIBAL COUNCIL OF THE BISHOP PAIUTE TRIBE REQUIRING THE PAYMENT OF TRIBALLY ESTABLISHED PREVAILING WAGES ON CERTAIN CONTRACTS WITH THE TRIBE OR TRIBAL HOUSING ENTITY

The Tribal Council of the Bishop Paiute Tribe hereby ordains as follows:

This ordinance shall be known as the "Bishop Paiute Tribal Prevailing Wage Ordinance", and is implemented pursuant to 25 USC Section 4114(b) to supercede the Davis-Bacon and Copeland Acts where applicable. Those areas not addressed by this "Law" are still governed by the Department of Labor regulations pertaining to the Davis-Bacon and related acts. This Law is only applicable to projects funded with NAHASDA and HUD 37 Act funding or where the Bishop Tribal Council (Tribe) *may* deem applicable as to funding sources.

The ordinance shall read as follows:

SECTION ONE.

§1.00 Definitions.

§1.01 "Act" shall mean the Native American Housing Assistance and Self-Determination Act of 1996, as amended, Pub. L. 104-330, 25 U.S.C. § 4101 et seq. (NAHASDA) and Public Law 106-568, 40 USC 276 a. et seq.

§1.02 "Agreement" shall mean any contract or agreement for assistance, sale or lease funded under the act.

§1.03 "C.O.D," shall mean the Bishop Paiute Tribe's Community Development Department, which has been delegated responsibility for the Indian Housing Block Grant (IHBG).

§1.04 "Prevailing Wage" shall mean the wages as determined by the Tribe as prevailing on the Bishop Paiute Reservation and within the C.D.D.'s area of operation for each class of architect, technical engineer, draftsman, technician, laborer and mechanic employed in the development and operation of affordable housing and community facility renovation projects and services utilizing IHBG or '37 Act funds.

§1.05 "Tribe" shall mean the Bishop Paiute Tribal Council.

PREVAILING WAGE ORDINANCE: AS AMENDED 6-24-03 - I.

PAIUTE PROFESSIONAL BUILDING • 50 TU SU LANE • BISHOP, CA 93514 PHONE
(760) 873-3584 • FAX (760) 873-4143

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§1.06 "Employed" means to receive compensation from another party for services (work) performed. Owners of a company working on a project are not "Employed", and may be exempt from any requirements of this "Law".

SECTION TWO.

§2.00 Payment of Prevailing Wages Required.

§2.01 Payment not less than Prevailing Wages as established under Sect. 3.00 of this Ordinance shall be paid to all architects, technical engineers, draftsman, technicians, laborers and mechanics employed in the development of housing and community facility renovation projects under the Act, and each maintenance laborer or mechanic employed in the operation of such projects funded under the Act. ,

§2.02 Payment of the above established wages shall be on a regular schedule and not less frequent than bi-monthly. (CDD Force Account will maintain a weekly payroll system)

§2.03 Payment will be made in the amount of the full wages earned without rebate, either directly or indirectly and that no deductions have been made either directly or indirectly from the ,full wages earned other than permissible as set forth in regulations 27CFR Part 3.

§2.04 Any employee covered under this law shall be compensated at the rate of 1.5 time their normal wage rate for hours worked in excess of 40 hours per week. The type of compensation will be governed by the employment policies of the employer. I.e. CDD Force Account will maintain a paid overtime policy, CDD maintenance will utilize a compensatory time policy.

§2.05 Apprentices and Trainees covered under a program approved by the Tribe may be utilized by employers covered by this Ordinance.

SECTION THREE.

§3.00 Establishment of prevailing Wages/Classifications.

§3.01 The Tribe shall establish work classifications for all positions as necessary and to be covered by this law. The Classifications shall include provisions for apprentice trainees and the wages for these classifications will be determined as outlined in 3.02.

§3.02 Tribe to Conduct Wage Survey. Not less frequently than biennially the Tribe shall arrange for a wage survey to be conducted in order to determine the Prevailing Wage under this Law.

a. The Tribe shall obtain wage rates from all available sources in the Reservation Area of each class of profession or trade included in the survey and shall establish the Prevailing Wage at not less than the average wage paid to each class of profession or trade included in the survey. The survey shall also include the classification for trainee in all trades.

b. The Tribe shall retain for not less than three years the names and addresses of all sources contacted and the wage rates reported by each source.

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- c. Wage rates shall include salary but not the value of benefits paid to or on behalf of the employees.
- d. The results of the survey and the prevailing wage shall be contained in a Schedule of Prevailing Wages which shall list each covered class of profession, trade and trainees and the hourly rate for each, and the effective dates of the schedule.
- e. In the years the Tribe does not conduct a survey, the wage rates shall be adjusted pursuant to the published rise in the Cost of Living Index for the area.

SECTION FOUR.

§4.00 Employer Requirements.

§4.01. Payment of Prevailing Wages and Access to Records. Each covered employer, including the Tribe and C.O.D., when performing work covered under this Ordinance, shall pay prevailing wages, and shall maintain payroll records reporting the hourly rates paid each employee. The payroll records shall be available for inspection and copying during regular office hours by the Tribe, C.,D.D. or other employer. Any employee shall be entitled to inspect and copy his or her payroll record.

§4.02 Schedule to be Provided. The Tribe shall provide every non-Tribal employer at the time bids or proposals are solicited with a copy of the currently effective Schedule of Prevailing Wages and a copy of this Ordinance.

§4.03 Posting of Wage Schedules. At all times while performing under an Agreement, each covered employer shall post at the job site and in its principal office a copy of the Schedule of Prevailing Wages furnished by the Tribe.

§4.04 Employee Reporting Requirements. Each Covered Employer (other than the Tribe/CDD) will submit a payroll summary with their final pay request. This summary will state all employees utilized on the project with hourly rate paid and total hours worked. Labor lien releases for all employees will also be included. Final payment will not be approved until this information has been reviewed and approved.

SECTION FIVE.

§5.00 Contracts/Agreements.

§5.01 Any Agreement covered by this Ordinance including agreements with the Tribe or C.D.D. shall contain a provision requiring that not less than Prevailing Wages as established by this Ordinance, shall be paid to all architects, technical engineers, draftsman, technicians, laborers and mechanics employed in the development of housing and community facility renovation projects under the Act and each maintenance laborer or mechanic employed in the operation of such projects funded under the Act.

§5.02 Each Agreement where the Tribal entity is not the employer shall contain a provision, which imposes as a penalty an amount equal to the amount of wages required under this Section ("the penalty"). There shall be a further penalty of \$500 per day for each day an employer fails to maintain or allow the Tribe, C.O.D. or an employee to inspect payroll records as required by this Law or fails to provide a copy of such record upon request.

b.

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§5.03 Each Agreement where the Tribal entity is not the employer shall contain a provision which imposes an additional penalty of \$500 for each day that any employer conveyed by this law fails to pay the prevailing wage:

§5.04 Each non-Tribal employer Agreement shall contain a provision that the Tribe/CDD may withhold portions of final payments and/or impose liquidation damages for the settlement of any pending labor clauses and penalties.

§5.05 A non-Tribal employer Agreement shall provide that the Tribe, C.D.D. and any adversely affected employee may bring an action, in any court of competent jurisdiction against the employer to recover the amount of wages required under this Law plus the penalty and interest at the maximum rate allowed by law and/or the further penalty for failure to allow inspection or to provide copies of payroll records. In addition, in any such action the Tribe, C.D.D. or the employee shall be entitled to recover from the employer a reasonable attorneys fee in addition to his or her other costs of suit.

SECTION SIX.

§6.01 The Tribe may delegate its authority under this Ordinance to an agent or agency of the Tribe, including, but not limited to, the C.D.D.

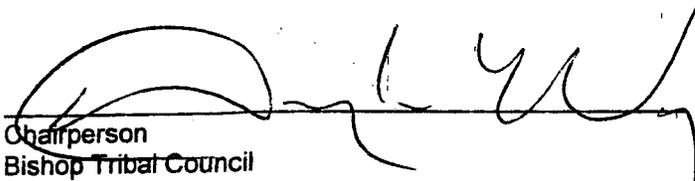
§6.112 The provisions of this Ordinance shall become effective immediately upon adoption by the Council.

SECTION SEVEN.,

§7.00 Nothing in this Ordinance is to be constructed as a waiver of sovereign immunity of the Bishop Paiute Tribe, Bishop Tribal Council, or any officer, employee or agent thereof.

This amendment to Ordinance No. T-2001-02 was introduced and adopted at a duly called meeting of the Bishop Tribal Council of the Bishop Paiute Tribe on June 24, 2003, by a vote of 4 for, against, 0 absent, and 0 abstaining.

Chairperson
Bishop Tribal Council



7/9/03

CERTIFICATION

I hereby certify that I am the Secretary for the Bishop Tribal Council of the Bishop Paiute Tribe and that the above Ordinance was adopted as indicated in said Ordinance and that the above Ordinance is a true and correct copy of the Ordinance as so enacted.

/s/ Gaylene Me. Moose
Secretary for the
Bishop Tribal Council

7/9/03
Date

BISHOP PAIUTE TRIBE,
COMMUNITY DEVELOPMENT DEPARTMENT

NAHASDA RESIDENTIAL TRIBAL MINIMUM PREVAILING

WAGE RATES

Adopted by Tribal Council on August 21,2001

Pursuant to Tribal Ordinance No. 2000-02.

Classification

<u>Classification</u>	<u>Wage</u>
Brick Layer	15.31
Brick Tender	10.00
Carpenter	18.63
Carpenter Trainee	11.18
Cement Finisher	17.20
Cement Trainee	10.32
Drywall Finisher	16.32
Drywall Finisher Trainee	10.00
Drywall Installer	16.32
Drywall Installer Trainee	10.00
Electrician	18.06
Electrician Trainee	10.84
Equipment Operator	18.96
Equipment Operator Trainee	11.21
Foreman	20.69
Glazier	12.14
Glazier Trainee	10.00
HVAC Installer	17.35
HVAC Installer Trainee	10.41
Insulation Installer	14.82
Insulation Trainee	10.00
Ironworker	17.20
Ironworker Trainee	10.32
Laborer	10.64
Painter	18.32
Painter Trainee	10.00
Plasterer	15.37
Plaster Tender	10.00
Plumber	18.28
Plumber Trainee	10.98
Roofer	16.01
Roofer Trainee	10.00
Soft Floor Installer	14.84
Soft Floor Trainee	10.00
Tile Setter	15.31
Tile Setter Trainee	10.00
Welder	18.21
Truck Driver	15.63

TITLE 9 – EMPLOYMENT AND CONTRACTING

CHAPTER 9-8 PROCUREMENT, TRIBALLY DETERMINED

PREVAILING WAGE RATES, AND AUTHORIZATION FOR ADMINISTRATIVE

DEVELOPMENT OF POLICIES SUBJECT TO COUNCIL REVIEW

ARTICLE 1

9-8-1 Effective Date

This Code is effective immediately and replaces any preexisting procurement and prevailing wage rate policies as they affect HUD-funded projects.

ARTICLE 2

PROCUREMENT PROCEDURES APPLICABLE TO HUD-FUNDED PROJECTS

GENERAL PROVISIONS

[Article 2 repealed effective September 1, 2012, pursuant to Ordinance 095A]

ARTICLE 3

TRIBALLY DETERMINED PREVAILING WAGE RATES

9-8-2 Authority and Purpose

The Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians (Tribes) wishes to establish and apply a tribally determined prevailing wage rate in its contracts or agreements for the development and operation of affordable housing activities using federal funds.

9-8-3 Application and Scope

Notwithstanding any other provision of Tribal law to the contrary, the prevailing wage rate established by the Tribes under this Chapter is intended to supersede all federal wage determinations otherwise applicable to the Tribes' expenditure of funds for the development and operation of affordable housing activities to the greatest extent allowed under federal law and to the fullest legal authority under Tribal law. Any other federally funded programs will be guided by the labor standards specified by that program.

9-8-4 Applicability, Calculation, and Management of Prevailing Wages

- (a) The Tribes require payment of the Tribally Determined Prevailing Wage Rate (“TDPWR”) to laborers and construction professionals working on all Tribal Housing construction, maintenance projects or any housing construction project utilizing federal funds that exceed \$2,000.
- (b) The TDPWR is defined to be the median wage per job classification received in the county where the project is located. The Oregon Employment Department publishes “Job Order Wage Report” which lists actual jobs offered and their offering salary. The Tribes will use this report to calculate the TDPWR. Each bid package will contain the Job Order Wage Report and state that general contractors and their subcontractors must pay these rates to all construction employees. This wage report will be updated prior to any housing construction project contract.
- (c) The General Contractor is responsible for the full compliance of all employers with this 9-9-49(a). Because of the contractual relationship between general contractors and the general contractor’s subcontractors, subcontractors should communicate with the contract administrator only through the general contractor.
- (d) General Contractors must submit to the Tribes bi-weekly certified payroll reports documenting wages earned by each employee and those of subcontractors. A sample form is available from the Tribal Housing Department. An alternative form may be used as long as the same information is documented.
- (e) The Contracting Officer shall be the Tribal Administrator or other individual the Tribal Administrator directs in writing to serve as Contracting Officer for purposes of Title 3 of this Code. The Contracting Officer is responsible for proper administration and enforcement of the TDPWR provisions. The Contracting Officer will monitor the TDPWR by reviewing payroll reports, interviewing workers at the job site, and overseeing any enforcement action necessary.
- (f) If an employer obligated to pay TDPWR fails to pay TCPWR, the employer will be required to pay wage restitution to the effected employees.

ARTICLE 4

OFFICIAL PROCUREMENT POLICY

9-8-5 Specifications

- (a) The Tribal Administrator shall, on or before August 1, 2012, create and present to the Tribal Council a comprehensive procurement policy applicable to HUD-funded contracts and to other contracts issued by the Tribes.

- (b) By resolution, the Tribal Council shall approve or reject the Tribal Administrator's procurement policy. If accepted, the policy shall govern procurement according to its terms.

- (c) The Tribal Council shall similarly approve or reject subsequent amendments to the official procurement policy.

PREVAILING WAGE ORDINANCE

HOOPA VALLEY TRIBE

TITLE 66

ORDINANCE NO: 02-01

DATE APPROVED: March 7, 2002

SUBJECT: REQUIRING THE PAYMENT OF PREVAILING WAGES ON CERTAIN CONTRACTS WITH THE TRIBE OR TRIBAL HOUSING ENTITY ON THE HOOPA VALLEY INDIAN RESERVATION

WHEREAS The Hoopa Valley Tribe, adopted a Constitution and Bylaws on June 20, 1972, approved by the Commissioner of Indian Affairs on August 18, 1972, and amended from time to time which was ratified and confirmed by Congress, 25 U.S.C. 1300i-7, PL 100-580 §8 [1988], and

WHEREAS Article V of the Hoopa Valley Tribe Constitution and Bylaws establishes the Hoopa Valley Tribal Council as the governing body of the Hoopa Valley Tribe, and

WHEREAS The Hoopa Valley Tribe desires to establish a prevailing wage for laborers, mechanics and other positions which may be designated by the Federal Government or the Tribe on the Hoopa Valley Indian Reservation in order to promote the general welfare and economic development of the Tribe on the Hoopa Valley Indian Reservation in exercise of the Tribe's inherent authority and Congressionally delegated authority, and

WHEREAS 25 United States Code Section 4114 (b)(3) expressly provides that the determination of prevailing wages by an Indian Tribe supercedes prevailing wage determinations of the Secretary and the Davis-Bacon Act 40 United States Code Section 276a et seq. and upon passage of this Ordinance the Tribally determined prevailing wage shall be applied to contracts or agreements including contracts and agreements for assistance, sale or lease pursuant to 25 United States Code Chapter 43, Sections 4101 et seq. known as the Native American Housing Assistance and Self Determination Act.

WHEREAS The prevailing wages established by the Tribe under this Ordinance are intended to supercede all Federal wage determinations to the greatest extent allowed under Federal Law and to the fullest legal authority of Tribal Law.

NOW THEREFORE BE IT RESOLVED that the Hoopa Valley Tribal Council enacts the following Ordinance to provide for prevailing wages to be determined and paid pursuant to agreements to be performed in the area of operation of the Hoopa Valley Tribe and Hoopa Valley Housing Authority.

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Section 1. TITLE

This Ordinance shall be known as the "Hoopa Valley Tribe Prevailing Wage Ordinance."

Section 2. DEFINITIONS

2.01 "Acts" shall mean any United States Federal Act containing requirements for establishment and payment of a determined prevailing wage, including but not limited to wage determinations of the Secretary or wage determinations set under the Davis-Bacon Act 40 United States Code Section 276a et seq applicable to Indian Tribes.

2.02 "Agreement" shall include any contract or agreement for assistance, sale or lease funded under any United States Act applicable to Indian Tribes and specifically including the Native American Housing Assistance and Self-Determination Act of 1996, as amended, **Pub.L. 104-330, 25 U.S.C. § 4101 et seq.** and such other Tribal agreements as may be determined by Council to be appropriate.

2.03 "HVHA" shall mean the Hoopa Valley Housing Authority, the Hoopa Valley Tribe's designated housing entity.

2.04 "Prevailing Wage" shall mean the wages as determined by the Tribe prevailing on the Tribe's Reservation and within the Tribe's and HVHA's area of operations for each category of employee including, but not limited to, architect, technical engineer, draftsman, technician, laborer, and mechanic.

2.05 "Tribe" shall mean the Hoopa Valley Tribe.

2.06 "Council" shall mean the Hoopa Valley Tribal Council.

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Section 3. Payment of Prevailing Wages Required.

3.01 **Payment Required in Agreements.** Any Agreement pursuant to Acts with the Tribe or any of its Departments or entities for construction, alteration, repair or maintenance of buildings or works or for provision of labor to be performed within the area of operation of Tribe or HVHA shall contain a provision requiring not less than Prevailing Wages as set pursuant to this Ordinance shall be paid by the contractor. Agreements not pursuant to Acts are exempt from this requirement unless Council in its discretions requires payment of determined prevailing wages.

3.02 **Volunteers.** Prevailing wages under this Ordinance shall not apply to any individual who receives no compensation or is paid expenses, reasonable benefits, or a nominal fee to perform the services for which the individual volunteered. No individual currently employed under an agreement for the

same or similar services on a project shall be considered a volunteer on the same project.

Section 4. Determination of Tribal Prevailing Wage

4.01 Tribe to Conduct Wage Survey. Not less frequently than biennially the Tribe shall arrange for a wage survey to be conducted in order to determine the Prevailing Wage.

- a. The Tribe shall obtain wage rates from available sources of each class of profession or trade included in the survey and shall establish the Prevailing Wage at not less than the average wage paid to each class of profession or trade included in the survey. The survey shall also include the classification for trainee in all trades.
- b. The Tribe shall retain for not less than three years the names and addresses of all sources contacted and the wage rates reported by each source.
- c. Wage rates shall include salary but not the value of benefits paid to or on behalf of the employees.
- d. The results of the survey and the prevailing wage shall be contained in a schedule of Prevailing Wages which shall list each covered class of profession, trade and trainees and the hourly rate for each and the effective dates of the schedule.
- e. In the years the Tribe does not conduct a survey, the wage rates shall be adjusted pursuant to the published rise in the Cost of Living Index for the area.

4.02 Delegation of Authority. The Tribe may delegate its authority to conduct surveys and/or to establish the Tribal Prevailing Wage under this Ordinance to an agent or agency of the Tribe, including, but not limited to the Tribal Employment Rights Organization or HVHA but Council shall approve the Schedule of Prevailing Wages at least annually by Motion or Resolution.

Section 5. Employer Requirements.

5.01 Payment of Prevailing Wages and Access to Records. Each employer, including the Tribe, its Departments and entities, when performing under an agreement pursuant to Acts or an agreement designated by Council, shall pay prevailing wages, and shall maintain certified payroll records reporting the hourly rates paid each employee. The certified payroll records shall be available for

inspection and copying during regular office hours by the employee. Any employee shall be entitled to inspect and copy his or her certified payroll record.

5.02 Schedule to be Provided. The Tribe shall provide every employer at the time bids or proposals are solicited with a copy of the currently effective Schedule of Prevailing Wages.

5.03 Post of Wage Schedules. At all times while performing under an Agreement pursuant to Acts, or agreement designated by Council, each employer shall post at the job site and in its principal office a copy of the Schedule of Prevailing Wages furnished by the Tribe.

Section 6. Tribal Court Action and Remedies

6.01 Agreements and Penalties Each Agreement pursuant to Acts, or agreements designated by Council shall contain a provision stating the penalties for failure to pay Tribally Determined Prevailing Wages (“Wage Penalty”) or for failing to maintain records (Records Penalty). The Wage Penalty shall be calculated by determining the difference between the amount the employee was actually paid under the agreement and the amount the employee was entitled to under this Ordinance and multiplying the sum by two (for example: employee is paid \$10.00/hour for eight hours for a total sum of \$80.00, employee is entitled to \$15.00/hour under this Ordinance for eight hours for a total sum of \$120.00; \$120 minus \$80.00 equals \$40.00; \$40.00 times two equals \$80.00 total Wage Penalty to be paid to employee). The Records Penalty of \$500 per day not to exceed a total of \$10,000.00 or 15% of the total agreement value whichever is greater shall be imposed on an employer for each day an employer fails to maintain or allow the Tribe, its Departments and entities, or an employee to inspect certified payroll records as required by this Ordinance or fails to provide a copy of such record within five work days of a written request (“Records Penalty”).

6.02 Tribal Court Action The Tribe, its departments and entities and any adversely affected employee may bring an action in the Hoopa Valley Tribal Court against any employer to recover the amount of the Wage Penalty required under this Ordinance plus 10% per annum interest from the date a lawsuit is filed and/or the Records Penalty for failure to maintain, allow inspection or to provide copies of certified payroll records. In addition, in any such action, the Tribe, its departments or entities or the employee shall be entitled to recover from the employer reasonable attorneys fees in addition to his or her other costs of suit.

6.03 Limitation of Actions No action under this Ordinance shall be filed or allowed more than 2 years after the date such wages became due and payable under the agreement.

Chapter 3.36

TRIBAL PREVAILING WAGE ORDINANCE

Sections:

[3.36.010](#) Declaration of need.

[3.36.020](#) Purposes.

[3.36.030](#) Definitions.

[3.36.040](#) Establishment of Tribal prevailing wage.

[3.36.050](#) Payment of prevailing wages required.

[3.36.060](#) Remedies.

[3.36.070](#) Sovereign immunity.

3.36.010 Declaration of need.

It is hereby declared:

- (a) That certain federal laws require the payment of “prevailing wages” when expending funds appropriated pursuant to such laws;
- (b) That under existing federal law applicable to the expenditure of Indian Housing Block Grant (“IHBG”) funds, [25 U.S.C. 4114\(b\)\(1\)](#), there is a requirement that any contract or agreement for assistance, sale, or lease must contain a provision requiring that not less than the wages prevailing in the locality shall be paid to all architects, technical engineers, draftsmen, and technicians employed in the development, and all maintenance laborers and mechanics employed in the operation of the affordable housing project involved; and must also contain a provision that not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act ([40 U.S.C. 276a et seq.](#)), shall be paid to all laborers and mechanics employed in the development of the affordable housing involved;
- (c) That this same law was amended to state that this requirement shall not apply to any contract or agreement for assistance, sale, or lease pursuant to this chapter, if such contract or agreement is otherwise covered by one or more laws or regulations adopted by an Indian tribe that requires the payment of not less than prevailing wages, as determined by the Indian tribe ([25 U.S.C. 4114\(b\)\(1\)](#));

(d) That authorizing the establishment of such prevailing wages by the Tribe to apply where required is consistent with the principles of Tribal self-determination, self-governance, and sovereignty;

(e) That the Tribe hereby finds that entities and persons who do business with the Tribe or any of its departments, entities, and instrumentalities (including but not limited to the Housing Authority) have entered into a consensual relationship with the Tribe, and that the employment activities of such entities and persons have a significant impact on the economic security, political integrity, and health and welfare of the Tribe;

(f) That the necessity in the public interest for the provisions hereinafter enacted is hereby declared as a matter of legislative determination. [Res. 120707A Art. I (07/12/07)]

3.36.020 Purposes.

(a) The Puyallup Tribe desires to establish a Tribal prevailing wage, equal to or greater than Davis-Bacon, for laborers, mechanics, architects, technical engineers, draftsmen, technicians, and other positions which may be designated by the federal government or the Tribe on the Puyallup Reservation and in other areas where the Tribe's Housing Authority undertakes construction projects or administration of affordable housing, in order to promote the general welfare and economic development of the Tribe in exercise of the Tribe's inherent authority and Congressionally delegated authority.

(b) Notwithstanding any other provision of Tribal law to the contrary, the prevailing wage established by the Tribe under this chapter is intended to supersede all federal wage determinations otherwise applicable to the Tribe's Housing Authority to the greatest extent allowed under federal law and to the fullest legal authority under Tribal law. [Res. 120707A Art. II (07/12/07)]

3.36.030 Definitions.

The following terms, wherever used or referred to in this chapter, shall have the following respective meanings, unless a different meaning clearly appears from the context:

(a) "Agreement" means any contract or agreement for assistance, sale or lease funded under any federal law applicable to Indian tribes and specifically including but not limited to NAHASDA, and such other Tribal agreements as may be determined by Tribal Council to be appropriate.

(b) "Council" means the Puyallup Tribal Council.

(c) "Federal government" includes the United States of America and its Department of Housing and Urban Development, as well as any other agency or instrumentality, corporate or otherwise, of the United States of America.

(d) “Federal law” means any statute enacted by the United States Congress or any federal regulation duly enacted by a federal agency containing requirements for establishment and payment of a determined prevailing wage, including but not limited to wage determinations of the Secretary of Labor or the Secretary of Housing and Urban Development, and further including but not limited to wage determinations set under the Davis-Bacon Act ([40 U.S.C. 276a](#) et seq.) or under NAHASDA, applicable to Indian tribes.

(e) “Housing Authority” shall mean the Puyallup Tribe Housing Authority, the Puyallup Tribe’s designated housing entity.

(f) “Housing project” or “project” means any work or undertaking to provide or assist in providing (by any suitable method, including but not limited to: rental, sale of individual units in single- or multifamily structures under conventional condominium or cooperative sales contracts or lease-purchase agreements; loans; or subsidizing of rentals or charges) decent, safe and sanitary dwellings, apartments, or other living accommodations for eligible persons. Such work or undertaking may include buildings, land, leaseholds, equipment, facilities, and other real or personal property for necessary, convenient, or desirable appurtenances, for streets, sewers, water services, utilities, parks, site preparation or landscaping, and for administrative, community, health, recreational, welfare, or other purposes. The term “housing project” or “project” also may be applied to the planning of the buildings and improvements, the acquisition of property or any interest therein, the demolition of existing structures, the construction, reconstruction, rehabilitation, alteration or repair of the improvements or other property and all other work in connection therewith, and the term shall include all other real and personal property and all tangible or intangible assets held or used in connection with the housing project.

(g) “NAHASDA” means the Native American Housing Assistance and Self-Determination Act of 1996, as amended, Pub. L. 104-330, [25 U.S.C. 4101](#) et seq.

(h) “Prevailing wage” means the wage as determined by the Tribe pursuant to this chapter as the wage prevailing on the Tribe’s Reservation and within the Tribe’s and Housing Authority’s area of operations for each category of employee including, but not limited to, architect, technical engineer, draftsman, technician, laborer, and mechanic.

(i) “Tribe” means the Puyallup Tribe. [Res. 120707A Art. III (07/12/07)]

3.36.040 Establishment of Tribal prevailing wage.

(a) The Tribe shall establish a Tribal prevailing wage pursuant to the process set out in this section. Notwithstanding any other provision of Tribal law to the contrary, the prevailing wage established pursuant to this chapter shall apply only to construction activities funded or otherwise managed by the Tribe’s Housing Authority.

(b) Tribe to Conduct Wage Survey. The Tribe shall periodically arrange for a wage survey to be conducted in order to determine and establish the Tribal prevailing wage.

- (1) The Tribe shall obtain wage rates from available sources of each class of profession or trade included in the survey and shall establish the prevailing wage at not less than the average wage paid to each class of profession or trade included in the survey. The survey shall also include the classification for trainee in all trades.
 - (2) The Tribe shall retain for not less than three years the names and addresses of all sources contacted and the wage rates reported by each source.
 - (3) Wage rates shall include salary but not the value of benefits paid to or on behalf of the employees.
 - (4) The results of the survey shall be contained in a proposed schedule of prevailing wages which shall list each covered class of profession, trade and trainees and the hourly rate for each and the effective dates of the schedule.
- (c) The Council shall review the results of the survey, and, if the survey results and methodology are acceptable, the Council shall approve such results and shall approve the schedule of prevailing wages. This approval shall establish the Tribal prevailing wage.
- (d) Delegation of Authority. The Tribe may delegate its authority to conduct surveys and/or to establish the Tribal Prevailing Wage under this chapter to the Tribe's Human Resource, Training and Education Division, but Council shall approve the schedule of prevailing wages at least annually by motion or resolution. [Res. 120707A Art. IV (07/12/07)]

3.36.050 Payment of prevailing wages required.

- (a) Payment of Prevailing Wages and Access to Records. Each employer, including the Tribe and any of its departments, entities, and instrumentalities (including but not limited to the Housing Authority), when performing construction services funded through or otherwise managed by the Housing Authority, shall pay the prevailing wage established pursuant to this chapter. Each employer shall maintain certified payroll records reporting the hourly rates paid to each employee. The certified payroll records shall be available for inspection and copying during regular office hours by the employee. Any employee shall be entitled to inspect and copy his or her certified payroll record.
- (b) Volunteers. The requirement to pay the prevailing wage under this chapter shall not apply to any individual who receives no compensation or is paid expenses, reasonable benefits, or a nominal fee to perform the services for which the individual volunteered. No individual currently employed under an agreement for the same or similar services on a project shall be considered a volunteer on the same project.
- (c) Schedule to Be Provided. The Housing Authority shall provide every employer at the time bids or proposals are solicited with a copy of the currently effective schedule of prevailing wages.

(d) **Posting of Wage Schedules.** At all times while performing under an agreement subject to this chapter, each employer shall post at the job site and in its principal office a copy of the schedule of prevailing wages furnished by the Tribe.

(e) **Payment of Prevailing Wage Required in Agreements.** Any agreement pursuant to federal law with the Housing Authority for construction, alteration, repair or maintenance of buildings or works or for provision of labor to be performed within the area of operation of the Tribe or the Housing Authority shall contain a provision requiring not less than the prevailing wage established pursuant to this chapter shall be paid by the contractor. Agreements not pursuant to federal law are exempt from this requirement unless the Council in its discretion requires payment of determined prevailing wages.

(f) **Authority to Withhold Payments.** In addition to the remedies available in PTC [3.36.060](#), the Housing Authority has the authority to withhold payment to contractors/employers if the Housing Authority in good faith believes that a contractor/employer is not complying with any provision of this chapter. [Res. 120707A Art. V (07/12/07)]

3.36.060 Remedies.

(a) **Tribal Court Action.** The Tribe, its departments, entities, and instrumentalities (including but not limited to the Housing Authority) and any adversely affected employee may bring an action in the Puyallup Tribal Court against any employer for failure to comply with the provisions of this chapter.

(b) Upon a finding by the Tribal Court based upon credible evidence and by a preponderance of the evidence that a violation of this chapter has occurred, the Court may order any of the following remedies:

(1) If the employee has been underpaid, the employer may be ordered to pay the difference in the wage paid to the employee and the prevailing wage.

(2) The Court may also order punitive damages not to exceed three times the amount of subsection (b)(1) of this section.

(3) The Court may also award reasonable attorney fees to the prevailing party.

(4) The Court may also issue an order barring the contractor/employer and/or its principal employees from performing work or services for the Tribe, its departments, entities, and instrumentalities (including but not limited to the Housing Authority) not to exceed five years.

(5) The Court may also order any other remedy that is narrowly tailored to remedy the violation.

(c) **Statute of Limitations.** No action under this chapter shall be filed or allowed more than two years after the date such wages became due and payable under the agreement. [Res. 120707A Art. VI (07/12/07)]

3.36.070 Sovereign immunity.

Nothing in this chapter provides or may be interpreted to provide a waiver of the sovereign immunity from suit of the Tribe, its departments, entities, and instrumentalities (including but not limited to the Housing Authority), or any of its governmental officers' and/or agents' and/or employees' sovereign immunity from suit. Nothing in this chapter may be construed or interpreted to grant jurisdiction to any court over the Tribe, its departments, entities, and instrumentalities (including but not limited to the Housing Authority), or any of its governmental officers and/or agents and/or employees. [Res. 120707A Art. VII (07/12/07)]

**RINCON BAND OF LUISEÑO MISSION INDIANS
RINCON INDIAN RESERVATION, CALIFORNIA**



**RINCON PREVAILING WAGE ORDINANCE
RINCON TRIBAL CODE § 5.400**

Adopted on April 9, 2013

RINCON PREVAILING WAGE ORDINANCE

Rincon Tribal Code § 5.400

Table of Contents

§ <u>5.400</u>	Purpose.....	3
§ <u>5.401</u>	Definitions.....	3
§ <u>5.402</u>	Payment of Prevailing Wage Required.....	4
§ <u>5.403</u>	Determination of Tribal Prevailing Wage.....	4
§ <u>5.404</u>	Employer Requirements.....	5
§ <u>5.405</u>	Tribal Court Action/Jurisdiction.....	6
§ <u>5.406</u>	Sovereign Immunity.....	7
§ <u>5.407</u>	Severability.....	7
§ <u>5.408</u>	Effective Date.....	7

RINCON PREVAILING WAGE ORDINANCE

Rincon Tribal Code § 5.400

§ 5.400 PURPOSE

The purpose of this Ordinance is to determine and apply the Rincon Prevailing Wage Rate in tribal contracts and agreements that shall supersede federally determined prevailing wage rates (Davis-Bacon Act, 40 U.S.C. 276) that would otherwise apply to certain federally funded agreements.

§ 5.401 DEFINITIONS

The following terms as used in this Ordinance shall have the following meanings:

(a) **“Agreement”** shall mean any contract or agreement for assistance, sale, or lease funded by any federal statute applicable to Indian tribes and specifically including the Native American Housing Assistance and Self-Determination Act of 1996, as amended, 25 U.S.C. 4101, et. seq, which permits the payment of a tribal prevailing wage rate in lieu of a federal prevailing wage rate.

(b) **“Construction”** shall mean alteration, maintenance or repair, including, but not limited to, painting and decorating, of public buildings, public housing or public works.

(c) **“Housing”** shall mean housing units managed, maintained, or otherwise subject to federal funding requirements owned by the Band.

(d) **“NAHASDA”** means the Native American Housing Assistance Self Determination Act of 1996, as amended.

(e) **“Ordinance”** means this Rincon Prevailing Wage Ordinance, as amended from time to time.

(f) **“Prevailing Wage”** means the wage paid to the majority (more than 50 percent) of laborers or mechanics in the classification on similar projects in the area during the period in question. If the same wage is not paid to a majority of those employed in the classification, the Prevailing Wage shall be the average of the wages paid, weighted by the total employed in the classification.

(g) **“Record Penalty”** means a violation of the record maintenance requirements set forth in Section 5.405 of this Ordinance.

RINCON PREVAILING WAGE ORDINANCE

Rincon Tribal Code § 5.400

(h) **“Reservation”** means all lands within the boundaries of the Rincon Reservation.

(i) **“Rincon Band”** means the Rincon Band of Luiseño Indians, a sovereign Indian tribal government recognized as such by the federal government of the United States of America. Reference to "Tribe" or “Band” in this Ordinance, or any existing or future ordinance shall mean the "Rincon Band".

(j) **“Tribal Council”** is the five-member Business Committee established under Section 3 (a) of the Articles of Association. "Tribal Council" shall be synonymous with “Business Committee” or “Rincon Business Committee” as used in this Ordinance or any existing or future Tribal ordinance.

(k) **“Tribal Court”** means the Intertribal Court of Southern California or other tribal forum designated by the Tribal Council to hear and decide violations of Tribal environmental ordinances.

(l) **“Wage Penalty”** means the difference in pay between the Prevailing Wage and the wage paid to a covered employee.

§ 5.402 PAYMENT OF PREVAILING WAGE REQUIRED

Any agreement for Construction funded by NAHASDA funds, shall contain a provision requiring not less than Prevailing Wages, as determined by the Tribe to be paid to the Contractor, Subcontractor, or other covered employees.

§ 5.403 DETERMINATION OF TRIBAL PREVAILING WAGE

(a) The Tribe may periodically commission a wage survey from time-to-time to determine the Prevailing Wage.

(1) The Tribe shall obtain wage rates from available sources of each class of profession or trade and shall establish the Prevailing Wage comparable to survey data.

(2) The Tribe shall retain for not less than three (3) years the survey report and the wage rates reported by each source.

RINCON PREVAILING WAGE ORDINANCE

Rincon Tribal Code § 5.400

(3) Wage rates shall include base hourly rate and may include the value of benefits paid to or on behalf of employees based upon eligibility.

(4) Any Prevailing Wage survey commissioned by the Tribe shall contain a list of employment classifications and the hourly rate for each.

(b) The Tribal Council may delegate its authority to conduct the wage survey to any outside agency or department of the Tribe, provided that the Tribal Council shall approve any changes to the Prevailing Wage by resolution.

§ 5.404 EMPLOYER REQUIREMENTS

(a) **Payment of Prevailing Wage.** Each contractor or employer, including the Tribe, when performing under an Agreement subject to Section 5.402, shall pay the established Prevailing Wage established pursuant to this Ordinance, and shall maintain payroll records reporting the hourly wages paid to each covered employee for up to one year.

(b) **Prevailing of Wage to be Provided.** Upon request by bidders, contractors or employers, the Tribe shall provide the Prevailing Wage in effect at the time of request.

(c) **Posting of Prevailing Wage.** Each contractor or employer, while performing under an Agreement shall:

(1) Post in a conspicuous location site the current established Prevailing Wage;

(2) Allow the Tribe's auditors, project managers, or other authorized staff to inspect and copy payroll records and/or interview employees in order to verify compliance with this Ordinance.

(d) **Payments Withheld.** In addition to the remedies available in Section 5.405, the Tribe, based on a good faith belief of non-compliance with the provisions of this Ordinance, has the authority to withhold payment to contractors or employers.

RINCON PREVAILING WAGE ORDINANCE

Rincon Tribal Code § 5.400

§ 5.405 TRIBAL COURT ACTION/JURISDICTION

(a) The Intertribal Court of Southern California shall have jurisdiction to hear actions to enforce the provisions of this Ordinance.

(b) A petition filed in Tribal Court under this Ordinance must include at least the following:

(1) The name and address of the petitioner.

(2) A statement identifying which of the provisions of this Ordinance has been violated.

(3) A brief description of the facts and events that gave rise to the alleged violation.

(4) The remedy sought.

(c) In addition to the requirements in Section 5.405(b), petitioners must comply with the filing requirements contained in the Intertribal Court of Southern California Rules of Civil Procedure.

(d) Upon a Court finding, by a preponderance of the evidence, that a violation of this Ordinance has occurred, the Court may order any of the following remedies:

(1) If the employee has been underpaid, the employer may be ordered to pay a Wage Penalty.

(A) The Court may also order punitive damages not to exceed three (3) times the amount of Section 5.405(d)(1).

(B) The Court may also award reasonable attorney fees to the prevailing party.

(C) The Court may also issue an order barring the contractor or employer and/or its principal employees from performing work or services on the Reservation, not to exceed five (5) years.

RINCON PREVAILING WAGE ORDINANCE

Rincon Tribal Code § 5.400

(D) The Court may also order any other remedy that is narrowly tailored to remedy the violation.

(2) For any other violations, including a Record Penalty, the Court may order any of the remedies from Section 5.405(d)(1)(B-D) or impose fines and interest not to exceed \$500.00 per day.

(e) Actions brought under this Ordinance must be brought with one year of the event that gave rise to the petitioner's claim.

§ 5.406 SOVEREIGN IMMUNITY

All inherent sovereign rights of the Rincon Band as a federally recognized Indian tribe with respect to provisions authorized in this Ordinance are hereby expressly reserved, including sovereign immunity from unconsented suit. Nothing in this Ordinance shall be deemed or construed to be a waiver of the Rincon Band's sovereign immunity from unconsented suit.

§ 5.407 SEVERABILITY

If any provision of this Ordinance, or the application thereof to any person or circumstances, shall be determined invalid, such determination shall not affect any other provisions or applications of this Ordinance that can be given effect without the invalid provision or application thereof, and, to this end, the provisions of this Ordinance are severable.

§5.408 EFFECTIVE DATE

The provisions of this Ordinance, and any amendments thereto, shall become effective upon the date this Ordinance is enacted and adopted by the Tribal Council.

TRIBAL CODE

CHAPTER 97:

PREVAILING WAGE ORDINANCE

CONTENTS:

97.101	Purpose and Authority	97-02
97.102	Scope.....	97-02
97.103	Definitions	97-02
97.104	Payment of Prevailing Wage Required.....	97-03
97.105	Determination of Tribal Prevailing Wage	97-03
97.106	Employer Requirements.....	97-03
97.107	Tribal Court Action and Remedies	97-04
97.108	Sovereign Immunity.....	97-04

HISTORY NOTE:

Current Ordinance:

Currently, housing projects undertaken by the Sault Tribe Housing Authority are governed by Davis-Bacon wage rules. *See* 40 U.S.C. 276a *et seq.* (1931). The amendment granting tribes a preemption of Davis-Bacon wage rates is self-implementing as written and requires no subsequent regulation. 25 U.S.C.A. 4114(b)(3) (1996).

Enacted by Tribal Resolution No. 2002-129 , on December 18, 2002 , effective immediately.

TRIBAL CODE

CHAPTER 97:

PREVAILING WAGE ORDINANCE

97.101 Purpose and Authority.

The purpose of this Chapter is to authorize the Tribe to determine area prevailing wages to the extent permitted under federal law so that the Davis-Bacon area prevailing wage determination will not apply to covered agreements.

97.102 Scope.

This Chapter shall cover all federally funded construction projects that would fall under the scope of the Davis-Bacon Act.

97.103 Definitions.

(1) "Agreement" means any contract or agreement using federal funds covered under the Davis-Bacon Act.

(2) "Authority" shall mean the Sault Tribe Housing Authority.

(3) "Board" shall mean the governing body of the Tribe.

(4) "Construction" includes alteration, maintenance or repair, including, but not limited to, painting and decorating, of public buildings, public housing or public works.

(5) "Contractor" means anyone who is awarded a contract or agreement using federal funds, or otherwise subject to the Davis-Bacon Act.

(6) "Davis-Bacon Act" means 40 U.S.C. §276a *et seq.*

(7) "Prevailing Wage" shall mean the wages, as determined by the Board, or its designee, prevailing on the Tribe's Reservation or within the Tribe's or Authority's seven county service area for each existing and future category of employees including, but not limited to: architects, technicians, engineers, draftsmen, technicians, laborers, mechanics, contractors, and subcontractors. The above list of employees requiring payment of Prevailing Wages does not apply to any unpaid volunteer, intern or any volunteer who receives a nominal fee, expenses, or reasonable benefits and who is not otherwise employed at any time in the construction of affordable housing projects.

(8) "Subcontractor" means anyone who is awarded a portion of a contract using

federal funds, or otherwise subject to the Davis-Bacon Act.

(9) "Tribe" means the Sault Ste. Marie Tribe of Chippewa Indians.

97.104 Payment of Prevailing Wage Required.

(1) Any agreement for construction funded by federal funds by the Tribe, shall contain a provision requiring not less than Prevailing Wages, as determined by the Tribe to be paid to the Contractor, Subcontractor, or other covered employees.

97.105 Determination of Tribal Prevailing Wage.

(1) The Tribe may periodically commission a wage survey from time-to-time to determine the Prevailing Wage.

(a) The Tribe shall obtain wage rates from available sources of each class of profession or trade and shall establish the prevailing wage comparable to survey data.

(b) The Tribe shall retain for not less than three years the survey report and the wage rates reported by each source.

(c) Wage rates shall include base hourly rate and may include the value of benefits paid to or on behalf of employees based upon eligibility.

(d) Any survey commissioned by the Board, or designee of Prevailing Wages shall contain a list of each covered class of profession, trade and trainees and the hourly rate for each and the collective dates of the schedule.

(2) The Board may delegate its authority to conduct and establish the Prevailing Wage under this Chapter to any outside agency, or agency of the Tribe, including, but not limited to, the Authority, or the Sault Tribe Human Resources Department, but the Board shall approve the schedule of prevailing wages by motion or resolution.

97.106 Employer Requirements.

(1) An agreement for Construction using federal funds, shall contain a provision requiring not less than Prevailing Wages, as determined by the Tribe. Each employer, including the Tribe, the Authority, Contractors, and Subcontractors, shall pay Prevailing Wages and shall maintain certified payroll records reporting the hourly rates paid to each employee. Any employee falling under the covered Agreement shall be entitled to inspect and copy his or her certified payroll record during regular office hours.

(2) The Tribe shall provide every employer at the time bids or proposals are solicited with a copy of the most current schedule of prevailing wages.

(3) At all times each employer shall post at the job site and its principal office a copy of the schedule of prevailing wages furnished by the Tribe.

97.107 Tribal Court Action and Remedies.

(1) Any covered Agreement may contain a provision stating the remedies for failure to pay Tribally determined Prevailing Wages ("Wage Penalty") or for failing to maintain records ("Records Penalty").

(2) Any adversely affected employee covered under this Chapter, may bring an action in the Sault Chippewa Tribal Court against any covered employer to recover the amount of the Wage or Records penalty and may receive reasonable attorney's fees under this Chapter.

(3) No action under this Chapter shall be allowed more than two (2) years after the date such wages became due and payable under the Agreement.

(4) Any adversely affected employee covered under this Chapter, shall first be required to exhaust all reasonable administrative remedies prior to bringing an action under this Chapter.

97.108 Sovereign Immunity.

(1) This Chapter provides only those remedies and damages identified above. This Chapter provides for no other damages or remedies. This Chapter shall not be construed or interpreted to grant jurisdiction to any other Court or individuals acting in their official Tribal Capacity. Nothing in the Chapter shall be construed to be a waiver of any Tribal sovereign immunity except as specifically provided in this Chapter.

Yurok Tribe

Prevailing Wage Ordinance

WHEREAS; the Yurok Tribal Council is the duly elected and authorized governing body of the Yurok Tribe, a federally recognized Indian Tribe which is eligible for all rights and privileges afforded to a federally recognized Indian Tribe and, as such, enacts this ordinance by the power and authority granted under the Yurok Tribal Constitution, Article IV, Section 5(a), which states that the Tribal Council may “enact legislation, rules and regulations not inconsistent with this constitution to further the objectives of the Yurok Tribe... .”, and

WHEREAS, The Yurok Tribe desires to establish a prevailing wage for certain employees as designated by the Federal Government on the Yurok Tribe Indian Reservation in order to promote the general welfare and economic development of the Tribe on the Yurok Tribe Indian Reservation in exercise of the Tribe’s inherent authority and Congressionally delegated authority, and

WHEREAS, 25 United States Code Section 4114 (b)(3) expressly provides that the determination of prevailing wages by an Indian Tribe supersedes federal prevailing wage determinations of the Secretary and the Davis-Bacon Act, 40 United States Code Section 276a et seq., and upon passage of this Ordinance the Tribally determined prevailing wage shall be

applied to contracts or agreements including contracts and agreements for assistance,

sale or lease pursuant to 25 United States Code Chapter 43, Sections 4101 et seq.,

known as the Native American Housing Assistance and Self Determination Act, and

WHEREAS, The prevailing wages established by the Tribe under this Ordinance are intended to supersede all Federal wage determinations to the greatest extent allowed under federal law and to the fullest legal authority of tribal law.

NOW THEREFORE BE IT RESOLVED that the Yurok Tribal Council enacts the following Ordinance to provide for prevailing wages to be determined and paid pursuant to certain agreements to be performed in the area of operation of the Yurok Tribe and Yurok Indian Housing Authority.

PREVAILING WAGE ORDINANCE

SECTION 1. TITLE

Adopted January 28, 2009

This Ordinance shall be known as the "Yurok Tribe Prevailing Wage Ordinance."

SECTION 2. DEFINITIONS

A. "Acts" shall mean any federal legislation, rule, regulation or contract containing requirements for establishment and payment of a determined prevailing wage, including but not limited to wage determinations of the Secretary or wage determinations set under the Davis-Bacon Act, 40 United States Code Section 276 et. seq., which are applicable to Indian Tribes.

B. "Agreement" shall include any contract, subcontract or agreement for assistance, sale or lease funded under any Acts applicable to Indian Tribes and specifically including, but not limited to, the Native American Housing Assistance and Self- Determination Act of 1996, as amended, Pub.L. 104-330, 25 U.S.C. § 4101 et.seq., and such other Tribal agreements as may be determined by the Tribal Council to be appropriate.

C. "YIHA" shall mean the Yurok Indian Housing Authority, the Yurok Tribe's designated housing entity.

D. "Prevailing Wage" shall mean the wages as determined by the Tribe prevailing on the Tribe's Reservation and within the Tribe's and YIHA's area of operations for each category of employee including, but not limited to, architect, technical engineer, draftsman, technician, laborer, carpenter, plumber, electrician, maintenance, heavy equipment operator, and mechanic.

E. "Tribe" shall mean the Yurok Tribe, its agencies, departments, enterprises, and other subdivisions thereof.

F. "Council" shall mean the Yurok Tribal Council.

SECTION 3. PAYMENT OF PREVAILING WAGES REQUIRED.

A. Payment Required in Agreements. Any Agreement pursuant to Acts with the Tribe or YIHA for construction, installation, alteration, repair or maintenance of buildings or works or for provision of labor/services/materials to be performed within the area of operation of Tribe or YIHA shall contain a provision requiring not less than Prevailing Wages as set pursuant to this Ordinance shall be paid by the contractor/employer. Agreements not pursuant to Acts are exempt from this requirement.

B. Volunteers. Prevailing wages under this Ordinance shall not apply to any individual who receives no compensation or is only reimbursed or paid expenses, reasonable benefits, or a nominal fee to perform the services for which the individual volunteered. No individual

currently employed under an agreement for the same or similar services on a project shall be considered a volunteer on the same project.

SECTION 4. DETERMINATION OF TRIBAL PREVAILING WAGE

A. Tribe to Conduct Wage Survey. Not less frequently than biennially the Tribe's Human Resources Department, in consultation with affected tribal departments and tribal entities, shall conduct a wage survey in order to determine the Prevailing Wage.

i. The Tribe shall obtain wage rates from available sources of each class of profession or trade included in the survey and shall establish the Prevailing Wage at not less than the average wage paid to each class of profession or trade included in the survey. The survey shall include the classifications for journeyman, apprentice and trainee in all trades.

ii. The Tribe shall retain for not less than two years the names and addresses of all sources contacted and the wage rates reported by each source.

iii. Wage rates shall include salary but not the value of fringe benefits paid to or on behalf of the employees.

iv. The results of the survey and the prevailing wage shall be contained in a schedule of Prevailing Wages which shall list each covered class of profession or trade and the hourly rate for each at the journeyman, apprentice and trainee categories, and the effective dates of the schedule, such schedule to be submitted to the Tribal Council for approval. The schedule attached to this Ordinance as initially adopted shall remain in effect until superseded as provided herein.

SECTION 5. EMPLOYER REQUIREMENTS.

A. Payment of Prevailing Wages and Access to Records. The Tribe and YIHA, when performing under an agreement pursuant to Acts shall pay, or be paid, prevailing wages and shall maintain certified payroll records reporting the hourly rates paid each employee. The certified payroll records of each employee shall be available for inspection and copying during regular office hours by the Tribe and affected employee.

B. Schedule to be Provided. The Tribe and YIHA shall provide every contractor/employer at the time bids or proposals are solicited for work under or pursuant to any Act with a copy of the currently effective Schedule of Prevailing Wages.

C. Posting of Wage Schedules. At all times while performing under an Agreement pursuant to Acts, each employer shall post at a conspicuous place on the job site and in its principal office a copy of the Schedule of Prevailing Wages furnished by the Tribe.

SECTION 6. TRIBAL COURT ACTION AND REMEDIES

A. Agreements and Penalties. Each Agreement pursuant to Acts, or agreements designated by the Tribal Council, shall contain provisions consenting to Yurok Tribal Court jurisdiction to hear actions to enforce this Ordinance and stating the penalties for failure to pay Tribally Determined Prevailing Wages ("Wage Penalty") or for failing to maintain records (Records Penalty).

i. The Wage Penalty shall be calculated by determining the difference between the amount the employee was actually paid under the agreement and the amount the employee was entitled to under this Ordinance and multiplying the sum by two, but in any event not less than \$500. Erroneous payments not resulting from a failure to pay the prevailing rate are not within the scope of this section.

ii. The Records Penalty of \$500 per day, not to exceed a total of \$1,000.00 or 5% of the total agreement value whichever is greater, shall be imposed on an employer for each day an employer fails to maintain certified payroll records or to allow the Tribe and any affected employee, to inspect certified payroll records as required by this Ordinance or fails to provide a copy of such employee's payroll record within five work days of a written request.

B. Tribal Court Action.

i. Any adversely affected employee may bring an action in the Yurok Tribal Court against any employer to recover the amount of the Wage Penalty required under this Ordinance and/or the Records Penalty for failure to maintain, allow inspection or to provide copies of that employee's certified payroll records, plus 12% per annum interest from the date a lawsuit is filed.

ii. The Tribe may bring an action in the Yurok Tribal Court for injunctive relief and for the Records Penalty against any employer for failure to maintain, allow inspection, or provide copies of certified payroll records to the Tribe or to any affected employee.

iii. In addition, in any such actions, the Tribe or the employee shall be entitled to recover from the employer reasonable attorneys fees in addition to its, his or her other costs of suit.

Ordinances for Training Purposes Only
Do not use without consulting your attorney

RESIDENTIAL CONSTRUCTION DEL NORTE AND HUMBOLDT COUNTIES	Trainee 75%	Apprentice 90%	Journeyman 100%
Asbestos Workers/Insulators Includes the application of all insulating materials, protective coverings, coatings, and finishings to all types of mechanical settings	\$16.20	\$19.44	\$21.60
Brick Tender	\$13.91	\$16.69	\$18.54
Brick layer, Stonemason	\$16.84	\$20.21	\$22.45
Carpenter Hardwood floor layer, Power Saw Operator, Saw filer, Shingler	\$14.31	\$17.17	\$19.08
Cement mason Swing or slip form scaffolds, Mastic, magnesite, gypsum epoxy, poylester, resin and all composition	\$14.42	\$17.31	\$19.23
	\$13.43	\$16.12	\$17.91
Communications & Systems Communications & systems technicians (including any data system whose only function is to transmit or receive information excluding all other data systems or multiple systems which include control function or power supply) inclusion or exclusion of terminations and testing of conductors determined by their function; excluding fire alarm work when installed in raceways (including wire and cable pulling) and when performed on new or major remodel building projects or jobs; excluding installation of raceway systems, line voltage work, industrial work, life-safety systems (all buildings having floors located more than 75' above the lowest floor level having building	\$13.62	\$16.34	\$18.16

SECTION 9: TRIBAL WAGE RATE CERTIFICATION

NAHASDA §§ 102(b)(2)(D)(vi), 104(b)

By signing the IHP, you certify whether you will use tribally determined wages, Davis-Bacon wages, or HUD determined wages. Check only the applicable box below.

- (1) You will use tribally determined wage rates when required for IHBG-assisted construction or maintenance activities. The Tribe has appropriate laws and regulations in place in order for it to determine and distribute prevailing wages.
- (2) You will use Davis-Bacon or HUD determined wage rates when required for IHBG-assisted construction or maintenance activities.
- (3) You will use Davis-Bacon and/or HUD determined wage rates when required for IHBG-assisted construction except for the activities described below.

(4) List the activities using tribally determined wage rates:

N/A



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[Back to Table of Contents](#)

Cheyenne-Arapaho Tribes of Oklahoma [Law and Order Code]

Last amended: 1988

[Resolution](#)

TITLE 1

ORDINANCE NO: 6147001 - AN ORDINANCE ESTABLISHING CHEYENNE-ARAPAHO TRIBAL
EMPLOYMENT RIGHTS

BE IT ORDAINED BY THE BUSINESS COMMITTEE OF THE CHEYENNE-ARAPAHO TRIBES OF
OKLAHOMA THAT THIS ORDINANCE REQUIRES PREFERENTIAL EMPLOYMENT OF INDIANS
BY NON-GOVERNMENT EMPLOYERS OPERATING WITHIN THE BOUNDARIES OF THE
CHEYENNE-ARAPAHO (TRIBAL LANDS) RESERVATION.

SECTION 1: TITLE

This Ordinance shall be cited as the "Cheyenne-Arapaho Tribal Employment Rights Ordinance".

SECTION 2: FINDINGS

The Cheyenne-Arapaho Business Committee finds as follows:

- (a) The Cheyenne-Arapaho Tribes of Oklahoma has the inherent sovereign power to form its government, administer its own land, and regulate the use of land within the Cheyenne-Arapaho Indian Reservation.

(b) The Cheyenne-Arapaho Tribes of Oklahoma is a federally recognized Tribe with a Constitution and By-Laws approved by the Secretary of the Interior;

(c) The Cheyenne-Arapaho Business Committee is the duly elected representative body of the Cheyenne-Arapaho Tribes of Oklahoma empowered to act in the responsibilities outlined in Article IV, Section 2 through 5.

(d) The Cheyenne-Arapaho Business Committee deems it essential to the orderly management, control and enforcement of Tribal Employment Rights to adopt and implement this Ordinance.

SECTION 3: PURPOSE

(a) The purpose of this Ordinance is to assist in and require the fair employment of Indians and to prevent discrimination against Indians in the employment practices of employers who are doing business with the Cheyenne-Arapaho Tribes of Oklahoma on tribal lands.

(b) Employment and Training:

(1) The Cheyenne-Arapaho Tribes believe that it is important to create employment and training opportunities for the Cheyenne-Arapaho and other Indians. An integral part of attaining this goal is by structuring employment and training opportunities on the Cheyenne-Arapaho reservation to provide for the hiring of Indians where qualified, and through the training of Indians where there are not sufficiently qualified Indians to meet the employment opportunities.

(2) Nothing contained in the Code shall violate or undermine federal requirements on Equal Employment Opportunity; namely title VII of the 1964 Civil Rights Act; and the Office of Federal Contract Compliance Program (OFCCP) or Executive Order 11246. Title VII prohibits preferential employment on the basis of race, color, sex, or national origin. However, Title VII contains a special exception which makes Indian preference permissible. Section 703 (i) states, "Nothing contained in this title shall apply to any business or enterprise on or near an Indian Reservation with regard to any publicly announced employment practice of such business or enterprise under which a preferential treatment is given to any individual because he is an Indian."

(3) The Bureau of Indian Affairs in its regulations implementing the Indian Self-Determination Act provides for Indian preference in employment and all contracts negotiated pursuant to the Act. See 25 USC 3271.44.

(4) The U.S. Congress justifies Tribes' power to impose preferential requirements on the grounds that: "This exemption is consistent with the Federal Government's policy of encouraging Indian employment and with the special legal position of Indian."

(5) In January 1977, the OFCCP issued regulations which states: "Work on or near Indian Reservations " It shall not be a violation of equal opportunity clause for a construction or non-construction contractor to extend a publicly announced preference in employment to Indians living on or near an Indian Reservation The use of the word "near" would include all that area where a person seeking employment could reasonably be expected to commute to and from in the course of a work day Contractors or sub-contractors extending such a preference shall not, however, discriminate among Indians on the basis of religion, sex, or tribal affiliation, and the use of such a preference shall not excuse a contractor from complying with the other requirements contained in the Section.

SECTION 4: DEFINITION OF TERMS

(a) "Lands" shall mean all trust lands under the jurisdiction of the Cheyenne-Arapaho Tribes, tribal or allotted and all other lands under the jurisdiction of the Cheyenne-Arapaho Tribes of Oklahoma.

(b) "Commerce" shall include all trade, traffic, distribution, communication, transportation, provision of services, manufacturing, production, agricultural production, building, maintenance, construction, banking, mining and energy production.

(c) "Employee" shall mean to include any employee or applicant for employment or former employee whose employment has ceased as a consequence of or in connection with a current labor dispute or because of an unfair labor practice The term "employee" shall not include any individual employed in the domestic services of any family or person at his home, or any individual employed by any other person who is not an employer as herein defined.

(d) "Employee on lands under the jurisdiction of the Cheyenne-Arapaho Tribes" shall mean and include any employee in a non-supervisory, supervisory, non-managerial or managerial position who spends more than one-half of his working hours per pay period, on lands under the jurisdiction of the Cheyenne- Arapaho Tribes.

(e) "Employer" shall include, but is not limited to any person who engages in commerce through paid agents or servants, or who is hired or contracts for services, upon tribal lands under the jurisdiction of the Cheyenne-Arapaho Tribes The term "employer" : includes any person acting as an agent, contractor, or sub-contractor or any employer, directly or indirectly, but shall not include the United States or wholly owned government corporation, or any state or political sub-division thereof; but shall include independent contractors and sub- [text missing].

(f) "Covered employer" shall mean any employer who employs one or more employee(s) on lands under the jurisdiction of the Cheyenne-Arapaho Tribes for an aggregate of 60 working days or more in any twelve month period.

(g) "Indian" shall mean any member of a federally recognized Indian Tribe now under federal jurisdiction.

(h) "Indian owned firm or entity" shall mean any commercial, industrial or other business activity which is owned by an Indian, or Indians, or other Indian owned firm or entity, provided that such Indian ownership constitutes not less than 51% of the enterprise.

(i) "Indian Preference" shall mean that Indians residing on lands under the jurisdiction of the Cheyenne-Arapaho Tribes are given preference over non-resident Indians in employment and training, and the Indians are given preference over nonresident Indians in employment and training, and the Indians are given preference over non-Indians in employment and training.

(j) "Indian resident on lands under the jurisdiction of the Cheyenne-Arapaho Tribes" or "resident Indian" shall mean any Indian person who, at the time any contract for on-reservation work is let or (in the case of employment) offers made by an employer permanently located on lands under the jurisdiction of the Cheyenne-Arapaho Tribes at the time any offer of individual on-reservation employment is made has resided on lands under the jurisdiction of the Cheyenne-Arapaho Tribes for not less than the preceding sixty (60) days.

(k) "Nonresident Indian" shall mean all Indians who are not resident Indians within the definition in 3.10.

(l) "Notice" as it is required to be given by the Employment rights Officer, shall be sufficient as to unnamed parties in an action, all interested persons who are not parties to an action, and in all instances where a specific person is not addressed, if it is published and posted in a public place on the lands under the jurisdiction of the Cheyenne-Arapaho Tribes for not less than five working days and is on file in the office of the Employment Rights Officer and open to public inspection.

(m) "Person" shall mean both natural person and artificial persons including, but not limited to, corporation, trusts, partnerships, unions, agents, societies, sole proprietorship, estates or descendants, associations, legal representative, mutual companies, joint-stock companies, unincorporated organizations and trustees.

(n) "Union" or "labor union" shall mean any organization, or any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment or conditions of work.

SECTION 5: FAIR LABOR STANDARD POLICY

(Reserved)

SECTION 6: EMPLOYMENT RIGHTS OFFICE

The Cheyenne-Arapaho Employment Rights Office is hereby established with the full supervisory authority to vest in the Employment Rights Officer, who shall be an independent officer of the Tribe reporting directly to the Business Manager of the Tribes.

(a) The Cheyenne-Arapaho Business Committee shall employ an Employment Rights Officer. The Employment Rights Officer shall

- (1) Hire staff.
- (2) Expend funds appropriated by the Tribal Council.
- (3) To obtain and expend funding from federal, state or other sources to carry out the purpose of the office subject to approval of the Business Committee.
- (4) Administer the policies, powers and duties prescribed in the Ordinance as delegated by the Business Committee pursuant to Section 6a
- (5) Hold hearings for the purpose of taking evidence, subpoena witnesses and documents.
- (6) Require employers to submit reports.
- (7) Issue, cease and desist orders.
- (8) Take other actions as are necessary for the fair and vigorous implementation of this Ordinance.
- (9) To establish counseling programs to assist Indians in obtaining and retaining employment.
- (10) To require employers to give preference to Tribal and other Indian-owned businesses in the award of contracts and subcontracts.

(b) The powers delegated to the Employment Rights Officer shall be enforced by means of:

- (1) cease and desist order
- (2) imposition of fines and
- (3) posting notices, not inconsistent with 25 USC 1301, et. seq.

(c) Scope of Indian Preference. All employers are hereby required to give preference to resident Indians in hiring, promotion, training, pay, benefits, and other terms and

conditions of employment All employers are further required to give preference to Indians in sub-contracting Employers shall comply with the rules, regulations and guidelines of the Cheyenne-Arapaho Tribes in regard to its Indian preference requirements.

(d) Compliance by Unions. Every union with a collective bargaining agreement with an employer must file a written agreement stating that the union will comply with this Ordinance and the rules, regulations and orders of the Commission Until such agreement is filed with the Employment Rights Officer and the Commission, the employer may not commence work within the Cheyenne-Arapaho Tribes' lands.

(e) Contents of Union Agreements. Every union agreement with an employer or filed with the Commission must provide:

(1) Indian Preference. The Union will give preference to Indians in job referrals regardless of which union referral list they are on.

(2) Cooperation with the Commission. The union will cooperate with the Commission in all respects and assist in the compliance with, and enforcement of, this Ordinance and related regulations and agreements.

(3) Registration. The union will establish a mechanism allowing Indians to register for job referral lists by telephone or mail.

(4) Training Programs. The union will establish a journeyman, upgrade and advanced apprenticeship program.

(5) Temporary Work Permits The union will grant temporary work permits to Indians who do not wish to join the union.

(f) Recognition of Unions. Nothing herein or any activity by the Commission authorized hereby shall constitute official tribal recognition of any union or tribal endorsement of any union activities within the Cheyenne-Arapaho Tribes of Oklahoma.

(g) Burden of Proof In any hearing before the Commission where the issue is compliance by an employer of any of the requirements and provisions of the foregoing subsections of Section 5, the burden of proof shall be on the employer rather than on the employee or other complainant to show said compliance.

(h) Model Union Agreements The Commission will provide a model union agreement for use by all unions who have a collective bargaining agreement with any employer.

(i) Implementation In implementing the requirements of this Section, the Employment Rights Officer is authorized to:

(1) Impose numerical hiring goals and timetables that specify the minimum number of Indians an employer must hire, by craft or skill level;

or at the Employment Rights Officer's discretion, to set percentage hiring goals by craft or skill level for specified employment fields.

(2) Require covered employers to establish or participate in such training program as the officer deems necessary to increase the pool of Indians eligible for employment on or off the Cheyenne-Arapaho reservation.

(3) Establish a Tribal Hiring Hall and impose a requirement that no covered employer may hire a non-Indian until the Tribal Hiring Hall has certified that no qualified Indian is available to fill the vacancy.

(4) Prohibit any covered employer from using job qualification criteria or other personnel requirements that serve as barriers to Indian employment unless the employer can demonstrate that such criteria or requirements are required by business necessity.

(5) Enter into agreements with unions to ensure union compliance with the Ordinance.

(6) Require employers to give preference in the award of sub- contractors to tribally and other Indian owned firms and entities.

(7) Establish programs subject to the Tribal Business Committee's approval, in conjunction with the Tribal and Federal Offices, to provide counseling and support to Indian workers, to assist them to retain employment. Employers shall be required to participate in and/or cooperate with such support and counseling programs.

(8) To promulgate such rules and regulations and guidelines consistent with the policies stated in the Ordinance and further subject to the provisions set forth in Section (j).

(j) Regulations. In issuing rules, regulations and guidelines, the Employment Rights Officer is guided by the policy and standards enumerated throughout this Ordinance, and such further resolution as the Business Committee may issue. The Employment Rights Officer shall insure that all rules, regulations, and guidelines that are issued provide notice to the public and further that all rules, regulations and guidelines accord affected parties' rights to due process of law as set forth in this Ordinance. Except in cases where the Employment Rights Officer has determined that an emergency situation exists, the Employment Rights Officer shall follow the following minimal procedures in issuing all rules, regulations and guidelines:

(1) All proposed rules, regulations and guidelines shall be sent to the Business Committee and shall be posted in a public place on the lands under the jurisdiction of the Cheyenne-Arapaho Tribes, and in a file in the Office of the Employment Rights Officer which is open to the public inspection for not less than twenty 20 days.

(2) The Employment Rights Officer shall accept comment from any interested parties during said twenty (20) days. The Employment Rights shall discuss in the preamble to such final rules, regulations and guidelines, the major issues raised by the comments, if any.

(3) The final rules, regulations and guidelines shall go into effect upon being posted in a public place on the lands under the jurisdiction of the Cheyenne-Arapaho Tribes, and in a file in the Office of the Employment Rights Officer which is open to public inspection.

(k) Employment Rights Compliance Bond. An Employment Rights Compliance Bond to encourage compliance with the Cheyenne-Arapaho Tribal Rights Ordinance is hereby authorized to be imposed by the Employment Rights Officer as follows:

(1) Every covered employer, other than construction contractors, with twenty or more employees on the lands under the jurisdiction of the Cheyenne-Arapaho Tribes, or gross sales of \$100,000 or more, regardless of sources, shall pay an annual fee of 1/2 of 1% of his employees' annual payroll. This fee shall not apply to education, health, governmental, or non-profit employers.

(2) The Employment Rights Officer is authorized to develop regulations allowing for the rebate of some or all fees paid by an employer according to the extent that an employer is found to be in compliance with the requirements imposed by this chapter and is making a substantial effort to employ, train and promote Indians.

(l) Employment Rights Fee. An Employment Rights Fee is to raise revenue for the operation of the Cheyenne-Arapaho Tribal Employment Rights Office, and is hereby authorized to be imposed by the Employment Rights Officer as follows:

(1) Every covered construction contractor with a contract of \$100,000 or more on the lands under the jurisdiction of the Cheyenne-Arapaho Tribes or an agency thereof, shall pay a one-time fee on one-half of one percent of the total amount (gross contract price) of the contract, per each contract.

(2) Such fee to be paid to the Cheyenne-Arapaho Tribes and shall be placed in a special account to be used to meet operational costs of the office. The Employment Rights Officer shall be responsible for collecting said fees and is authorized to establish such rules and regulations as are necessary to insure fair and timely collection process. An employer or contractor who fails to pay the required fee shall be subject to the remedial actions provided for in this Ordinance.

(m) Removal Authority. The Cheyenne-Arapaho Business Committee hereby expressly authorizes the Commission to petition for the issuance of removal and related orders; such action shall be initiated in the (OFR) Court of Indian Offenses.

(n) Contractors and Subcontractors. The Indian Preference requirements contained in this Ordinance and all regulations hereunder shall be binding on all contractors and sub- contractors of covered employees, regardless of tier, and shall be deemed a part of all resulting sub-contract specifications The employer shall have the initial and primary responsibility for insuring that all contractors and subcontractors comply with these requirements The employer shall be subject to penalties provided herein for violation of this Ordinance if the contractor or subcontractor fails to comply.

(o) Religious Freedom. Employers shall make a reasonable accommodation to the religious beliefs of Indian workers in accordance with guidelines to be developed by the Cheyenne- Arapaho Employment Rights Officer.

(p) Delegation of Authority. The Cheyenne-Arapaho Business Committee shall delegate such authority to the Employment Rights Officer as is convenient or necessary for the efficient administration of the Ordinance, to write rules, regulations or guidelines and submit to the Business Committee.

SECTION 7: EMPLOYMENT RIGHTS COMMISSION: MEMBERS

(a) Duties of the Commission The Commission shall administer the Employment Rights Program of the Cheyenne-Arapaho Tribes of Oklahoma in accordance with this Ordinance As part of this Ordinance the Business Committee hereby establishes the Commission to review and issue rulings and/or orders pertaining to appeals to the Employment Rights Officer decisions by aggrieved parties.

(b) Members The Commission shall consist of a five (5) member administrative review board to be appointed by the Business Committee composed of three (3) Business Committee members and two (2) Tribal Program Directors All decisions of this Commission shall be final The Commission shall develop rules of practice and procedure which will implement this Ordinance.

SECTION 8: COMPLAINTS AND HEARINGS PROCEDURES

(a) Notice. If a hearing is requested by the Commission, an individual, an employer, or union pursuant to this section, a written notice of hearing shall be given to all concerned parties stating the nature of the hearing and the evidence to be presented The notice shall advise such parties of their right to be present at the hearing, to present testimony or witnesses and other evidence, and to be represented by counsel at their own expense.

(b) Commission Complaint Procedure. If the Commission has cause to believe that an employer , contractor , subcontractor , or union has failed to comply with this Ordinance or any rules, regulations or orders of the Commission, it may file a complaint and notify such party of the alleged violations The Commission will attempt to achieve an informal settlement of the matter , but if an informal

settlement cannot be achieved the Commission may request a hearing upon the matter pursuant to Section 7.1.

(c) Individual Complaint Procedure. If any Indian believes that an employer has failed to comply with this Ordinance or rules, regulations or orders of the Commission, or believes he has been discriminated against, by an employer because he is an Indian, he may file a complaint with the Commission specifying the alleged violation Upon receipt of the complaint, the Commission shall investigate and attempt to achieve an informal settlement of the matter If an informal settlement cannot be achieved, the individual or Commission may request a hearing upon the matter pursuant to Section 7.1.

If any employer fires, lays off, or penalizes in any manner, any Indian employee for utilizing the individual complaint procedure or any other right provided herein, the employer [text missing].

(d) Employer or Union Complaint procedure. If an employer or union believes that any provision of this Ordinance or any rules, regulation or order of the Commission is illegal or erroneous, it may file a complaint with the Commission specifying the alleged illegality or error Upon receipt of the complaint, the Commission shall investigate and attempt to achieve an informal settlement of the matter If an informal settlement cannot be achieved, the employer, union or Commission may request a hearing upon the matter pursuant to Section 7.1.

(e) Hearing Procedure. Hearings shall be governed by the following rules or procedure:

(1) All parties may present testimony of witnesses and other evidence and may be represented by counsel at their expense.

(2) The Commission may have the advice and assistance at the hearing of counsel provided by the Tribe.

(3) The Chairman of the Commission or the Vice-Chairman shall preside and the Commission shall proceed to ascertain the facts in a reasonable and orderly fashion.

(4) The hearing may be adjourned, postponed and continued at the discretion of the Commission.

(5) At the final close of the hearings, the Commission may take immediate action or take the matter under advisement.

(6) The Employment Rights Officer shall notify all parties thirty (30) days after the last hearing of its decision in the matter.

SECTION 9: PENALTIES FOR VIOLATION

Any employer, contractor or union who violates this Ordinance or rules, regulations or orders of the Employment Rights Office of the Cheyenne-Arapaho Tribes or fails to obtain the necessary agreements from its signatory unions, shall be subject to penalties for such violations Also, the Employment Rights Official shall take remedial action to correct the problem These penalties include but are not limited to:

- (a) Denial of right to commence or continue business within the lawful jurisdiction of the Cheyenne-Arapaho Tribes of Oklahoma.
- (b) Suspension of operations within the lawful jurisdiction of the Cheyenne-Arapaho Tribes of Oklahoma.
- (c) Payment of back pay and damages to compensate any injured party.
- (d) An order to summarily remove employees hired in violation of this Ordinance or rules, regulations and orders of the Commission.
- (e) Imposition of monetary civil penalties.
- (f) Prohibition from engaging in future operations within the Cheyenne-Arapaho Tribes of Oklahoma service area.
- (g) An order requiring employment, promotion and training of Indians injured by the violation.
- (h) An order making any other provision deemed by the Employment Rights Officer necessary to alleviate, eliminate or compensate for any violation The maximum penalty which may be imposed is \$500.00 for each violation Each day during which a violation exists shall constitute a separate violation.

SECTION 10: APPEALS

Any party to a hearing shall have the right to appeal any decision of the TERO Commission to the CFR Court so long as the CFR Court exists The jurisdiction of the CFR Court shall be limited to a declaratory judgment only Once the Cheyenne-Arapaho Tribal Court has been established and implemented, a party shall have the right to appeal any decision of the TERO Commission to the Cheyenne-Arapaho Tribal Court.

SECTION 11: PUBLICATION OF ORDINANCE

- (a) The Commission shall notify all employers of this Ordinance and their obligations to comply. All bid announcements issued by any Tribal, Federal, State or other private or public entity shall contain a statement that the successful bidder will be obligated to comply with this Ordinance and all rules, regulations and orders of the Commission.
- (b) All Tribal agencies responsible for issuing business permits for activities within

the Cheyenne-Arapaho Tribes or otherwise engaged in activities involving contact with prospective employers within the Cheyenne-Arapaho Tribes of Oklahoma service area shall be responsible for advising such prospective employers of their obligations under this Ordinance and rules, regulations and orders of the Commission.

(c) The Commission shall send a copy of this Ordinance to every employer doing business with the Cheyenne-Arapaho Tribes of Oklahoma.

SECTION 12: COMPLIANCE PLAN

As of the effective date of this Ordinance, no new employer may do business with the Cheyenne-Arapaho Tribes of Oklahoma until it has consulted with the Commission for meeting its obligations under this Ordinance.

SECTION 13: REPORTING AND ON-SITE INSPECTION

Employers shall submit reports, and other information requested by the Commission. The Commission and its representative shall have the right to make on-site inspections during regular working hours in order to monitor any employer's compliance with this Ordinance and rules, regulations and orders of the Commission. The Commission shall have the right to inspect and copy all relevant records of any employer, or any signatory union or subcontractor and shall have a right to speak to workers and conduct investigations on job sites.

SECTION 14: COVERAGE

This chapter of the Ordinance shall be binding on all covered employers whether or not they have previously operated on the lands under the jurisdiction of the Cheyenne-Arapaho Tribes and whether or not they are doing so at the time of the implementation of this Section of the Ordinance. All employers are required to give preference to Indians in hiring, promotion, training and all other aspects of employment, contracting or subcontracting and must comply with this Ordinance and the rules, regulations and orders of the Commission.

SECTION 15: SEVERABILITY

If any portion of this Ordinance shall be ruled invalid by a court of competent jurisdiction, that portion shall cease to be operative, but the remainder of the Ordinance shall continue in full force and effect.

SECTION 16: AMENDMENTS

This Ordinance may be amended by the Cheyenne-Arapaho Business Committee upon recommendations from the Employment Rights Officer. Action must be taken by resolution of the Cheyenne-Arapaho Business Committee.

SECTION 17: EFFECTIVE DATE

This Ordinance shall become effective five (5) days after being filed with the C.F.R Court of Indian Offenses.

CHEYENNE-ARAPAHO TRIBES OF OKLAHOMA

26TH BUSINESS COMMITTEE

COMMITTEE RESOLUTION NO. #050788R102

WHEREAS: The Cheyenne-Arapaho Tribes are a federally recognized Tribe and have their own form of self-government, and

WHEREAS: This self-government and sovereign status promotes economic and social welfare and protects religious freedom and tribal customs of all members, and

WHEREAS: The Tribal Business Committee of the Cheyenne-Arapaho Tribes, in accordance with the Constitution and By-Laws, has the power to act for the Tribes on all matters not otherwise restricted, and

WHEREAS: The 26th Business Committee of the Cheyenne-Arapaho Tribes did authorize the establishment of a Tribal Employment Rights Office (TERO) to enforce Indian preference and to protect tribal employment, training opportunities, contracting rights, and subcontracting rights within the jurisdiction of The Cheyenne-Arapaho Tribes through adoption of Resolution No. 1984-BC24-245-RS-11 as Tribal Law, and

WHEREAS: This ordinance, was reviewed by the Area Director, Anadarko Area Office, Bureau of Indian Affairs, and subsequent review by the Office of the Solicitor, Department of the Interior, and

WHEREAS: The said review found this Ordinance weak in content in reference to rights of hearing and appeals. Accordingly the Ordinance, Section 10, has been rewritten to provide clarity and precision in said Section, and

WHEREAS: The 26th Business Committee of the Cheyenne-Arapaho Tribes recognize the importance of providing the initiative and protection to persons and organizations operating within the jurisdiction of the Tribes, and

WHEREAS: The modification of said TERO Ordinance has been made, recommended, and reviewed by the 6th Business Committee, and

NOW, THEREFORE BE IT RESOLVED, that no substantive change has been to the TERO Ordinance, changes will be made in accordance with the Cheyenne-Arapaho Ordinance Procedure Act.

BE IT FURTHER RESOLVED, that the 26th Business Committee of the Cheyenne-Arapaho Tribes does hereby adopt the amended Cheyenne-Arapaho Tribal Employment Rights Resolution, which shall supersede Resolution No. 1984-BC24-245-RS-11.

BE IT FURTHER RESOLVED, that the adopted revised Ordinance is hereby authorized for submission for appropriate review and approval for implementation and funding;

BE IT FINALLY RESOLVED, that this action is effective immediately and shall remain in full force and effect until revised, amended, or revoked by official act of the Business Committee.

BUSINESS COMMITTEE OF THE
CHEYENNE-ARAPAHO TRIBES
OF OKLAHOMA

/s/
Juanita L. Learned, Chairperson

ATTEST:

/s/
Edgar Heap of Birds, Secretary

CERTIFICATION

I, the undersigned as Secretary for the 26th Business Committee, do hereby certify that a quorum was present at the meeting duly called and convened on the 7th day of May, 1968, and that the foregoing resolution was adopted with the affirmative vote of 4 for, 0 opposed, 3 absent and 1 not voting.

/s/
Edgar Heap of Birds, Secretary

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- E. **Special instructions concerning expiration of project wage decisions.** A project wage decision is void if it is not locked-in before the expiration date. HUD may request an extension when it appears that a project wage decision may expire after the bid opening date but before contract award. The LRS shall follow the instructions at 3-10(D), above, in submitting such a request. (See also DOL Regulations *29 CFR Part 1, §1.6(a)(1).*)
- F. **Special instructions concerning FHA-insured, Section 202 and Section 811 projects.** When a modification or supersedeas decision is published or received by HUD before initial endorsement or initial closing but *after* the issuance of the firm commitment by HUD *and* less than 90-days has transpired between firm commitment and the prospective initial endorsement/closing date, HUD may request a variance in the application of DOL regulations at 29 CFR Part 1, §1.6 such that the project may proceed with the wage decision as it was published on the date of firm commitment issuance. The LRS shall follow the instructions at 3-10(D), above, in submitting a request for variance. (See also DOL Regulations *29 CFR Part 5, §5.14.*)

- 3-11 **Retroactive wage decisions.** If HUD funding or assistance under a statute requiring the payment of Davis-Bacon wage rates is approved *after* contract award (or start of construction where there is no contract award), the LRS/LCA shall identify and obtain the Davis-Bacon wage decision in effect as of the contract award/construction start date. The applicable wage decision shall be incorporated into the contract specifications *retroactively* to the start of construction. (See also DOL Regulations *29 CFR Part 1, §1.6(g).*)

Exception. The DOL Wage and Hour Administrator may issue a wage decision to be effective on the date of approval of HUD funding or assistance whenever the Administrator finds that it is necessary and proper in the public interest to prevent an injustice or undue hardship. *And*, provided further that the Administrator finds no evidence of intent to apply for Federal funding or assistance prior to contract award or start of construction, as appropriate. Such requests shall be prepared and submitted in the same manner, including appropriate supporting statements of fact and reasoning, as described at 3-10(D), above.

- 3-12 **Incorporation of wage decision and labor standards provisions in bid specifications and contracts.** The applicable Davis-Bacon wage decision, including modifications, and the applicable Federal labor standards provisions must be made a part of the bid documents (if any) and/or contract specifications for any construction work subject to Davis-Bacon prevailing wage requirements. (See also DOL Regulations, *29 CFR Part 5, §5.5(a).*)

- A. **Incorporation in contracts and subcontracts.** Every ensuing construction contract, subcontract and any lower-tier subcontracts must include the

applicable Davis-Bacon wage decision and its modifications, and the Federal labor standards provisions. The prime contractor is responsible for ensuring the incorporation of the wage decision and labor standards provisions in all subcontracts.

- B. Contract labor standards provisions.** HUD has four forms containing Davis-Bacon labor standards provisions applicable to various HUD programs. These are applicable as follows:
1. **HUD-2554, Supplementary Conditions of the Contract for Construction** - HUD-administered projects including FHA-insured multifamily development, Section 202/811 and Section 8 projects.
 2. **HUD-4010, Federal Labor Standards Provisions** – CPD programs including CDBG, Section 108, EDI/BEDI, and HOME
 3. **HUD-5370, General Conditions of the Contract for Construction** - Public Housing programs (may also be used for Indian housing programs)
 4. **HUD-5370-EZ, General Conditions for Small Construction/Development Contracts** - Public Housing programs (may also be used for Indian housing programs)

These forms are available at HUDClips and multiple copies are available through the HUD Customer Service Center.

- C. Acceptable methods of incorporation.** The applicable wage decision and Federal labor standards provisions may be incorporated into bid specifications and contracts by one or more the following methods. (See also *Labor Relations Letter LR-2006-02.*)
1. **Incorporation by “hard-copy”.** The applicable HUD form and wage decision may be physically bound/attached to the contract (and bid specifications, if applicable) as issued by HUD (HUD forms) or DOL (Davis-Bacon wage decisions).
 2. **Incorporation into other documents.** The clauses/text of the applicable HUD form and wage decision may be incorporated into other documents (e.g., into a program participant’s own forms) that are bound/attached to the contract (and bid documents, if applicable) or incorporated by reference (see paragraph 3, below). The program participant is responsible for the accuracy of the content. In all cases, the requirements imposed by the applicable HUD form and wage decision remain in force.

3. **Incorporation by reference.** The applicable HUD form and wage decision, or other documents containing the HUD form clauses/wage decision, may be incorporated into the contract and any bid specifications by reference. The reference must be specific as to the exact form or clauses that are incorporated, and where the form or clauses may be accessed or obtained (e.g., HUDClips, agency web site). Davis-Bacon wage decisions may be incorporated by reference to www.wdol.gov and to the specific number, modification number, and date of the applicable wage decision. Hard-copies of any referenced form, clauses, and/or Davis-Bacon wage decision must be provided upon request.
- 3-13 **Use of the wrong wage decision/failure to include a wage decision.** The use of the wrong wage decision and/or labor standards provisions in the bid documents/contract specifications, or the failure to include the required wage decision and appropriate labor standards provisions does not relieve the prime contractor from potential liabilities for compliance and enforcement actions related to meeting the obligations of the proper wage decision and labor standards. Any such error must be promptly rectified. (See also DOL Regulations *29 CFR Part 1, 1.6(f).*)
- A. **Correcting the wage decision.** If the wrong wage decision or no wage decision was included in the contract specifications, the contract shall either be terminated and resolicited with the correct wage decision, or the correct wage decision shall be incorporated into the existing contract through supplemental agreement or change order, and the contractor shall be compensated for any increases in wages resulting from such change. The LRS or LCA shall issue the correct wage decision applicable to the contract/project based upon the appropriate “lock-in” date. A corrective wage decision incorporated into an existing contract shall be effective retroactively to the start of construction.
- 3-14 **Project Wage Rate Sheet.** Some general wage decisions cover large areas (e.g., several counties or different characters of construction) and may contain wage rates that do not apply to the contract/project to which the wage decision applies. Such wage decisions can be difficult to decipher and confusing to contractors and subcontractors, and to the laborers and mechanics who would review the wage decision to determine whether they are being paid correctly. For ease of reference for the LRS/ LCA, the prime contractor and any subcontractors, and the laborers and mechanics, the LRS/LCA shall prepare a *Project Wage Rate Sheet* (form HUD-4720) which shall reflect the most commonly used work classifications and wage rates as they are contained in the wage decision applicable to the project. The Project Wage Rate Sheet shall be provided to the prime contractor who shall be informed that the Project Wage Rate Sheet does not in any way replace the wage decision, but is provided as a convenience. In the event of any conflict between the Project Wage Rate Sheet and the wage decision, the wage decision shall prevail.

- 3-15 **Posting of the wage decision.** A copy of the applicable wage decision and any additional classifications shall be posted by the prime contractor at the site of work in a prominent place accessible to the workers, and protected from “wear and tear” (e.g., wind, rain, vandalism, etc.). A copy of the poster, WH-1321, *Employee Rights under the Davis-Bacon Act*, with the name, address, and telephone number of the LRS/LCA or other responsible contract officer shall also be posted at the job site with the applicable wage decision. A Project Wage Rate Sheet may be posted at the job site with the poster and wage decision so that the construction workers may more readily determine the wage rate(s) to which they are entitled.
- 3-16 **Review for missing work classifications and wage rates.** The LRS/LCA shall review the applicable wage decision to determine whether all work classifications required for the construction work are contained in the classifications and wage rates listed within the applicable wage decision. The prime contractor is also responsible for identifying whether any classifications that are required for the project are included in the wage decision. The LRS/LCA shall notify the prime contractor of any missing work classifications; likewise, the prime contractor shall inform the LRS/LCA of any missing work classifications it may detect during its review. The LRS/LCA shall provide instructions and assistance to the prime contractor concerning requests for additional classifications and wage rates.
- 3-17 **Additional work classifications and wage rates.** Whenever it is found that a work classification required for the contract/project is lacking from the wage decision, the responsible employer(s) (e.g., the prime contractor and/or subcontractors that will employ workers in such classification) shall request an additional work classification and propose a wage rate for such classification. The request shall be made through the LCA/LRS. In every case, the LRS must submit the request to DOL for a final decision. The LRS/LCA shall assist the employer in the preparation of the request, if necessary, and provide guidance as to the policies and procedures involved

Note: Additional work classifications and wage rates may be requested *only* after the wage decision effective (“lock-in”) date. (See DOL Regulations *29 CFR Part 5, §5.5(a)(1)(ii).*)

- A. Additional work classification and wage rate parameters.** Additional work classifications and wage rates may be approved by the LRS where:
1. The requested work classification is used in the area of the project by the construction industry;
 2. The work that will be performed by the requested work classification is not performed by a work classification that is already contained within the applicable wage decision;
 3. The proposed wage rate for the requested work classification bears a reasonable relationship to the wage rates on the wage decision; and

PHYSICAL INCLUSION OF WAGE DETERMINATION(S) IN BID SPECIFICATIONS AND CONTRACT

DOL regulations, at 29 C.F.R. Part 1, establish the procedures for predetermining the **wage rates required to be included in bid specifications/contracts** for construction projects to which the Davis-Bacon and related Acts apply. (See excerpt, above, from the Davis-Bacon Act.) The Federal Acquisition Regulations (FAR) also discuss the application of proper wage determinations in 48 C.F.R. Subpart 22.4 – “Labor Standards for Contracts Involving Construction.”

It is important for the actual wage determination(s) to be physically included in the bid specifications/contract. Contractors need to see the minimum wages they will be required to pay while they develop their cost estimates for work to be performed. Most Davis-Bacon wage determinations are available at www.wdol.gov.

It is generally the responsibility of the **federal agency** that funds or assists Davis-Bacon covered construction:

- ◇ To **ensure that the proper Davis-Bacon wage determination(s) is/are applied** to such construction contract(s). (See 29 C.F.R. § 1.5, and 1.6(b)).
- ◇ To **advise contractors which schedule of prevailing wages applies to various construction items** if a contract includes multiple wage schedules.
- ◇ To be able/ready to advise contractors regarding the duties performed by the various crafts in the wage determination, if they inquire. If two or more classifications in the applicable wage determination may perform the work in question, an area practice survey may be required. Where the classifications are from a single sector of the industry (union or non-union), data needs to be collected only from that sector of the construction industry (for the type of construction involved). Where union and non-union-based classifications are involved, the data should be obtained from both segments. (See the “area practice” section of the materials in the “DB/DBRA Compliance Principles” chapter, below, for a detailed discussion of area practice surveys.)

Questions and disputes regarding the application of the proper Davis-Bacon wage determination(s) to covered construction projects should be referred to the WHD Branch of Construction Wage Determinations.

It can be disruptive and costly for an agency to correct a situation where a covered contract is awarded without a wage determination, or with the wrong wage determination (i.e., a

wage determination that by its terms or according to the requirements of 29 C.F.R. Part 1, further discussed below, clearly does not apply to the contract). When this happens, **corrective action** is required:

The agency shall terminate and resolicit the contract with the valid wage determination, or incorporate the valid wage determination retroactive to the beginning of construction through supplemental agreement or through change order provided that the contractor is compensated for any increases in wages resulting from such change. The method of incorporation of the valid wage determination and adjustment in contract price, where appropriate, should be in accordance with applicable procurement law. [29 C.F.R. § 1.6(f)].

General Conditions for Construction Contracts - Public Housing Programs

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing
OMB Approval No. 2577-0157 (exp. 1/31/2017)

Applicability. This form is applicable to any construction/development contract greater than \$100,000.

This form includes those clauses required by OMB's common rule on grantee procurement, implemented at HUD in 24 CFR 85.36, and those requirements set forth in Section 3 of the Housing and Urban Development Act of 1968 and its amendment by the Housing and Community Development Act of 1992, implemented by HUD at 24 CFR Part 135. The form is required for construction contracts awarded by Public Housing Agencies (PHAs).

The form is used by Housing Authorities in solicitations to provide necessary contract clauses. If the form were not used, HAs would be unable to enforce their contracts.

Public reporting burden for this collection of information is estimated to average 1.0 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Responses to the collection of information are required to obtain a benefit or to retain a benefit.

The information requested does not lend itself to confidentiality.

HUD may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB number.

Clause		Page	Clause		Page
1.	Definitions	2	Administrative Requirements		
2.	Contractor's Responsibility for Work	2	25.	Contract Period	9
3.	Architect's Duties, Responsibilities and Authority	2	26.	Order of Precedence	9
4.	Other Contracts	3	27.	Payments	9
Construction Requirements			28.	Contract Modifications	10
5.	Preconstruction Conference and Notice to Proceed	3	29.	Changes	10
6.	Construction Progress Schedule	3	30.	Suspension of Work	11
7.	Site Investigation and Conditions Affecting the Work	3	31.	Disputes	11
8.	Differing Site Conditions	4	32.	Default	11
9.	Specifications and Drawings for Construction	4	33.	Liquidated	12
10.	As-Built Drawings	5	34.	Termination of Convenience	12
11.	Material and Workmanship	5	35.	Assignment of Contract	12
12.	Permits and Codes	5	36.	Insurance	12
13.	Health, Safety, and Accident Prevention	6	37.	Subcontracts	13
14.	Temporary Buildings and Transportation Materials	6	38.	Subcontracting with Small and Minority Firms, Women's Business Enterprise, and Labor Surplus Area Firms	13
15.	Availability and Use of Utility Services	6	39.	Equal Employment Opportunity	13
16.	Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvements	6	40.	Employment, Training, and Contracting Opportunities for Low-Income Persons, Section 3 of the Housing and Urban Development Act of 1968	14
17.	Temporary Buildings and Transportation Materials	7	41.	Interest of Members of Congress	15
18.	Clean Air and Water	7	42.	Interest of Members, Officers, or Employees and Former Members, Officers, or Employees	15
19.	Energy Efficiency	7	43.	Limitations on Payments Made to Influence	15
20.	Inspection and Acceptance of Construction	7	44.	Royalties and Patents	15
21.	Use and Possession Prior to Completion	8	45.	Examination and Retention of Contractor's Records	15
22.	Warranty of Title	8	46.	Labor Standards-Davis-Bacon and Related Acts	15
23.	Warranty of Construction	8	47.	Non-Federal Prevailing Wage Rates	19
24.	Prohibition Against Liens	9	48.	Procurement of Recovered Materials	19

41. Interest of Members of Congress

No member of or delegate to the Congress of the United States of America shall be admitted to any share or part of this contract or to any benefit that may arise therefrom.

42. Interest of Members, Officers, or Employees and Former Members, Officers, or Employees

No member, officer, or employee of the PHA, no member of the governing body of the locality in which the project is situated, no member of the governing body of the locality in which the PHA was activated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the project, shall, during his or her tenure, or for one year thereafter, have any interest, direct or indirect, in this contract or the proceeds thereof.

43. Limitations on Payments made to Influence Certain Federal Financial Transactions

- (a) The Contractor agrees to comply with Section 1352 of Title 31, United States Code which prohibits the use of Federal appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative agreement; or the modification of any Federal contract, grant, loan, or cooperative agreement.
- (b) The Contractor further agrees to comply with the requirement of the Act to furnish a disclosure (OMB Standard Form LLL, Disclosure of Lobbying Activities) if any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a Federal contract, grant, loan, or cooperative agreement.

44. Royalties and Patents

The Contractor shall pay all royalties and license fees. It shall defend all suits or claims for infringement of any patent rights and shall save the PHA harmless from loss on account thereof; except that the PHA shall be responsible for all such loss when a particular design, process or the product of a particular manufacturer or manufacturers is specified and the Contractor has no reason to believe that the specified design, process, or product is an infringement. If, however, the Contractor has reason to believe that any design, process or product specified is an infringement of a patent, the Contractor shall promptly notify the Contracting Officer. Failure to give such notice shall make the Contractor responsible for resultant loss.

45. Examination and Retention of Contractor's Records

- (a) The PHA, HUD, or Comptroller General of the United States, or any of their duly authorized representatives shall, until 3 years after final payment under this contract, have access to and the right to examine any of the Contractor's directly pertinent books, documents, papers, or other records involving transactions related to this contract for the purpose of making audit, examination, excerpts, and transcriptions.
- (b) The Contractor agrees to include in first-tier subcontracts under this contract a clause substantially the same as paragraph (a) above. "Subcontract," as used in this clause, excludes purchase orders not exceeding \$10,000.
- (c) The periods of access and examination in paragraphs (a) and (b) above for records relating to (1) appeals under the Disputes clause of this contract, (2) litigation or settlement of claims arising from the performance of this contract, or (3) costs and expenses of this contract to which the PHA, HUD, or Comptroller General or any of their duly authorized representatives has taken exception shall continue until disposition of such appeals, litigation, claims, or exceptions.

46. Labor Standards - Davis-Bacon and Related Acts

If the total amount of this contract exceeds \$2,000, the Federal labor standards set forth in the clause below shall apply to the development or construction work to be performed under the contract.

- (a) Minimum Wages.
- (1) All laborers and mechanics employed under this contract in the development or construction of the project(s) involved will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the regular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits in the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321) shall

be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

- (2) (i) Any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate and fringe benefits therefor only when all the following criteria have been met: (A) The work to be performed by the classification requested is not performed by a classification in the wage determination; and (B) The classification is utilized in the area by the construction industry; and (C) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
- (ii) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division, Employee Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary.
- (iii) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator of the Wage and Hour Division for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary.
- (iv) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (a)(2)(ii) or (iii) of this clause shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in classification.
- (3) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
- (4) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the

amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program; provided, that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

- (b) Withholding of funds. HUD or its designee shall, upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the Contractor under this contract or any other Federal contract with the same prime Contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working in the construction or development of the project, all or part of the wages required by the contract, HUD or its designee may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased. HUD or its designee may, after written notice to the Contractor, disburse such amounts withheld for and on account of the Contractor or subcontractor to the respective employees to whom they are due.
- (c) Payrolls and basic records.
- (1) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working in the construction or development of the project. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found, under 29 CFR 5.5(a)(1)(iv), that the wages of any laborer or mechanic include the amount of costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

- (2) (i) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Contracting Officer for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under subparagraph (c)(1) of this clause. This information may be submitted in any form desired. Optional Form WH-347 (Federal Stock Number 029-005-00014-1) is available for this purpose and may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. The Contractor is responsible for the submission of copies of payrolls by all subcontractors. (Approved by the Office of Management and Budget under OMB Control Number 1214-0149.)
- (ii) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:
- (A) That the payroll for the payroll period contains the information required to be maintained under paragraph (c) (1) of this clause and that such information is correct and complete;
- (B) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR Part 3; and
- (C) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.
- (iii) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirements for submission of the "Statement of Compliance" required by subparagraph (c)(2)(ii) of this clause.
- (iv) The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 3729 of Title 31 of the United States Code.
- (3) The Contractor or subcontractor shall make the records required under subparagraph (c)(1) available for inspection, copying, or transcription by authorized representatives of HUD or its designee, the Contracting Officer, or the Department of Labor and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to

make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

- (d) (1) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship and Training, Employer and Labor Services (OATELS), or with a State Apprenticeship Agency recognized by OATELS, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by OATELS or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in this paragraph, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event OATELS, or a State Apprenticeship Agency recognized by OATELS, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
- (2) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under

the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed in the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate in the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate in the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate in the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- (3) Equal employment opportunity. The utilization of apprentices, trainees, and journeymen under this clause shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.
- (e) Compliance with Copeland Act requirements. The Contractor shall comply with the requirements of 29 CFR Part 3, which are hereby incorporated by reference in this contract.
- (f) Contract termination; debarment. A breach of this contract clause may be grounds for termination of the contract and for debarment as a Contractor and a subcontractor as provided in 29 CFR 5.12.
- (g) Compliance with Davis-Bacon and related Act requirements. All rulings and interpretations of the Davis-Bacon and related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.
- (h) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this clause shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the PHA, HUD, the U.S. Department of Labor, or the employees or their representatives.
- (i) Certification of eligibility.
 - (1) By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded contracts by the United States Government by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

- (2) No part of this contract shall be subcontracted to any person or firm ineligible for award of a United States Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
 - (3) The penalty for making false statements is prescribed in the U. S. Criminal Code, 18 U.S.C. 1001.
- (j) Contract Work Hours and Safety Standards Act. As used in this paragraph, the terms "laborers" and "mechanics" include watchmen and guards.
- (1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics, including watchmen and guards, shall require or permit any such laborer or mechanic in any workweek in which the individual is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.
 - (2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the provisions set forth in subparagraph (j)(1) of this clause, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic (including watchmen and guards) employed in violation of the provisions set forth in subparagraph (j)(1) of this clause, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by provisions set forth in subparagraph (j)(1) of this clause.
 - (3) Withholding for unpaid wages and liquidated damages. HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any Federal contract with the same prime Contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the provisions set forth in subparagraph (j)(2) of this clause.
- (k) Subcontracts. The Contractor or subcontractor shall insert in any subcontracts all the provisions contained in this clause, and such other clauses as HUD or its designee may by appropriate instructions require, and also a clause requiring the subcontractors to include these provisions in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all these provisions.

47. Non-Federal Prevailing Wage Rates

- (a) Any prevailing wage rate (including basic hourly rate and any fringe benefits), determined under State or tribal law to be prevailing, with respect to any employee in any trade or position employed under the contract, is inapplicable to the contract and shall not be enforced against the Contractor or any subcontractor, with respect to employees engaged under the contract whenever such non-Federal prevailing wage rate exceeds:
 - (1) The applicable wage rate determined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 3141 et seq.) to be prevailing in the locality with respect to such trade;
- (b) An applicable apprentice wage rate based thereon specified in an apprenticeship program registered with the U.S. Department of Labor (DOL) or a DOL-recognized State Apprenticeship Agency; or
- (c) An applicable trainee wage rate based thereon specified in a DOL-certified trainee program.

48. Procurement of Recovered Materials.

- (a) In accordance with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, the Contractor shall procure items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition. The Contractor shall procure items designated in the EPA guidelines that contain the highest percentage of recovered materials practicable unless the Contractor determines that such items: (1) are not reasonably available in a reasonable period of time; (2) fail to meet reasonable performance standards, which shall be determined on the basis of the guidelines of the National Institute of Standards and Technology, if applicable to the item; or (3) are only available at an unreasonable price.
- (b) Paragraph (a) of this clause shall apply to items purchased under this contract where: (1) the Contractor purchases in excess of \$10,000 of the item under this contract; or (2) during the preceding Federal fiscal year, the Contractor: (i) purchased any amount of the items for use under a contract that was funded with Federal appropriations and was with a Federal agency or a State agency or agency of a political subdivision of a State; and (ii) purchased a total of in excess of \$10,000 of the item both under and outside that contract.

General Contract Conditions for Small Construction/Development Contracts

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing
OMB Approval No. 2577-0157 (exp. 1/31/2017)

Applicability. The following contract clauses are applicable and must be inserted into small construction/development contracts, greater than \$2,000 but not more than \$100,000.

1. Definitions

Terms used in this form are the same as defined in form HUD-5370

2. Prohibition Against Liens

The Contractor is prohibited from placing a lien on the PHA's property. This prohibition shall apply to all subcontractors at any tier and all materials suppliers. The only liens on the PHA's property shall be the Declaration of Trust or other liens approved by HUD.

3. Disputes

- (a) Except for disputes arising under the **Labor Standards** clauses, all disputes arising under or relating to this contract, including any claims for damages for the alleged breach thereof which are not disposed of by agreement, shall be resolved under this clause.
- (b) All claims by the Contractor shall be made in writing and submitted to the Contracting Officer for a written decision. A claim by the PHA against the Contractor shall be subject to a written decision by the Contracting Officer.
- (c) The Contracting Officer shall, within 30 days after receipt of the request, decide the claim or notify the Contractor of the date by which the decision will be made.
- (d) The Contracting Officer's decision shall be final unless the Contractor (1) appeals in writing to a higher level in the PHA in accordance with the PHA's policy and procedures, (2) refers the appeal to an independent mediator or arbitrator, or (3) files suit in a court of competent jurisdiction. Such appeal must be made within 30 days after receipt of the Contracting Officer's decision.
- (e) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under or relating to the contract, and comply with any decision of the Contracting Officer.

4. Default

- (a) If the Contractor refuses or fails to prosecute the work, or any separable part thereof, with the diligence that will insure its completion within the time specified in this contract, or any extension thereof, or fails to complete said work within this time, the Contracting Officer may, by written notice to the Contractor, terminate the right to proceed with the work (or separable part of the work) that has been delayed. In the event, the PHA may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, equipment, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the PHA resulting from the Contractor's refusal or failure to complete the work within the specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the PHA in completing the work.

- (b) The Contractor's right to proceed shall not be terminated or the Contractor charged with damages under this clause if –
 - (1) The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor; and
 - (2) The Contractor, within 10 days from the beginning of such delay notifies the Contracting Officer in writing of the causes of delay. The Contracting Officer shall ascertain the facts and the extent of the delay. If, in the judgment of the Contracting Officer, the findings of Fact warrant such action, time for completing the work shall be extended by written modification to the contract. The findings of the Contracting Officer shall be reduced to a written decision which shall be subject to the provisions of the **Disputes** clause of this contract.
- (c) If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligation of the parties will be the same as if the termination had been for convenience of the PHA.

5. Termination for Convenience

- (a) The Contracting Officer may terminate this contract in whole, or in part, whenever the Contracting Officer determines that such termination is in the best interest of the PHA. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which the performance of the work under the contract is terminated, and the date upon which such termination becomes effective.
- (b) If the performance of the work is terminated, either in whole or in part, the PHA shall be liable to the Contractor for reasonable and proper costs resulting from such termination upon the receipt by the PHA of a properly presented claim setting out in detail: (1) the total cost of the work performed to date of termination less the total amount of contract payments made to the Contractor; (2) the cost (including reasonable profit) of settling and paying claims under subcontracts and material orders for work performed and materials and supplies delivered to the site, payment for which has not been made by the PHA to the Contractor or by the Contractor to the subcontractor or supplier; (3) the cost of preserving and protecting the work already performed until the PHA or assignee takes possession thereof or assumes responsibility therefore; (4) the actual or estimated cost of legal and accounting services reasonably necessary to prepare and present the termination claim to the PHA; and (5) an amount constituting a reasonable profit on the value of the work performed by the Contractor.
- (c) The Contracting Officer will act on the Contractor's claim within days (60 days unless otherwise indicated) of receipt of the Contractor's claim.
- (d) Any disputes with regard to this clause are expressly made subject to the provisions of the Disputes clause of this contract.

6. Insurance

- (a) Before commencing work, the Contractor and each subcontractor shall furnish the PHA with certificates of insurance showing the following insurance is in force and will insure all operations under the Contract:

(1) Workers' Compensation, in accordance with state or Territorial Workers' Compensation laws.

(2) Commercial General Liability with a combined single limit for bodily injury and property damage of not less than \$ _____ [Contracting Officer insert amount] per occurrence to protect the Contractor and each subcontractor against claims for bodily injury or death and damage to the property of others. This shall cover the use of all equipment, hoists, and vehicles on the site(s) not covered by Automobile Liability under (3) below. If the Contractor has a "claims-made" policy, then the following additional requirements apply: the policy must provide a "retroactive date" which must be on or before the execution date of the Contract; and the extended reporting period may not be less than five years following the completion date of the Contract.

(3) Automobile Liability on owned and non-owned motor vehicles used on the site(s) or in connection therewith for a combined single limit for bodily injury and property damage of not less than \$ _____ [Contracting Officer insert amount] per occurrence.

(b) Before commencing work, the Contractor shall furnish the PHA with a certificate of insurance evidencing that Builder's Risk (fire and extended coverage) Insurance on all work in place and/or materials stored at the building site(s), including foundations and building equipment, is in force. The Builder's Risk Insurance shall be for the benefit of the Contractor and the PHA as their interests may appear and each shall be named in the policy or policies as an insured. The Contractor in installing equipment supplied by the PHA shall carry insurance on such equipment from the time the Contractor takes possession thereof until the Contract work is accepted by the PHA. The Builder's Risk Insurance need not be carried on excavations, piers, footings, or foundations until such time as work on the superstructure is started. It need not be carried on landscape work. Policies shall furnish coverage at all times for the full cash value of all completed construction, as well as materials in place and/or stored at the site(s), whether or not partial payment has been made by the PHA. The Contractor may terminate this insurance on buildings as of the date taken over for occupancy by the PHA. The Contractor is not required to carry Builder's Risk Insurance for modernization work which does not involve structural alterations or additions and where the PHA's existing fire and extended coverage policy can be endorsed to include such work.

(c) All insurance shall be carried with companies which are financially responsible and admitted to do business in the State in which the project is located. If any such insurance is due to expire during the construction period, the Contractor (including subcontractors, as applicable) shall not permit the coverage to lapse and shall furnish evidence of coverage to the Contracting Officer. All certificates of insurance, as evidence of coverage, shall provide that no coverage may be canceled or non-renewed by the insurance company until at least 30 days prior written notice has been given to the Contracting Officer.

7. Contract Modifications

(a) Only the Contracting Officer has authority to modify any term or condition of this contract. Any contract modification shall be authorized in writing.

(b) The Contracting Officer may modify the contract unilaterally (1) pursuant to a specific authorization stated in a contract clause (e.g., Changes); or (2) for administrative matters which

do not change the rights or responsibilities of the parties (e.g., change in the PHA address). All other contract modifications shall be in the form of supplemental agreements signed by the Contractor and the Contracting Officer.

(c) When a proposed modification requires the approval of HUD prior to its issuance (e.g., a change order that exceeds the PHA's approved threshold), such modification shall not be effective until the required approval is received by the PHA.

8. Changes

(a) The Contracting Officer may, at any time, without notice to the sureties, by written order designated or indicated to be a change order, make changes in the work within the general scope of the contract including changes:

- (1) In the specifications (including drawings and designs);
- (2) In the method or manner of performance of the work;
- (3) PHA-furnished facilities, equipment, materials, services, or site; or,
- (4) Directing the acceleration in the performance of the work.

(b) Any other written order or oral order (which, as used in this paragraph (b), includes direction, instruction, interpretation, or determination) from the Contracting Officer that causes a change shall be treated as a change order under this clause; provided, that the Contractor gives the Contracting Officer written notice stating (1) the date, circumstances and source of the order and (2) that the Contractor regards the order as a change order.

(c) Except as provided in this clause, no order, statement or conduct of the Contracting Officer shall be treated as a change under this clause or entitle the Contractor to an equitable adjustment.

(d) If any change under this clause causes an increase or decrease in the Contractor's cost of, or the time required for the performance of any part of the work under this contract, whether or not changed by any such order, the Contracting Officer shall make an equitable adjustment and modify the contract in writing. However, except for a adjustment based on defective specifications, no proposal for any change under paragraph (b) above shall be allowed for any costs incurred more than 20 days (5 days for oral orders) before the Contractor gives written notice as required. In the case of defective specifications for which the PHA is responsible, the equitable adjustment shall include any increased cost reasonably incurred by the Contractor in attempting to comply with the defective specifications.

(e) The Contractor must assert its right to an adjustment under this clause within 30 days after (1) receipt of a written change order under paragraph (a) of this clause, or (2) the furnishing of a written notice under paragraph (b) of this clause, by submitting a written statement describing the general nature and the amount of the proposal. If the facts justify it, the Contracting Officer may extend the period for submission. The proposal may be included in the notice required under paragraph (b) above. No proposal by the Contractor for an equitable adjustment shall be allowed if asserted after final payment under this contract.

(f) The Contractor's written proposal for equitable adjustment shall be submitted in the form of a lump sum proposal supported with an itemized breakdown of all increases and decreases in the contract in at least the following details:

- (1) Direct Costs. Materials (list individual items, the quantity and unit cost of each, and the aggregate cost); Transportation and delivery costs associated with materials; Labor

breakdowns by hours or unit costs (identified with specific work to be performed); Construction equipment exclusively necessary for the change; Costs of preparation and/ or revision to shop drawings resulting from the change; Worker's Compensation and Public Liability Insurance; Employment taxes under FICA and FUTA; and, Bond Costs - when size of change warrants revision.

- (2) Indirect Costs. Indirect costs may include overhead, general and administrative expenses, and fringe benefits not normally treated as direct costs.
- (3) Profit. The amount of profit shall be negotiated and may vary according to the nature, extent, and complexity of the work required by the change.

The allowability of the direct and indirect costs shall be determined in accordance with the Contract Cost Principles and Procedures for Commercial Firms in Part 31 of the Federal Acquisition Regulation (48 CFR 1-31), as implemented by HUD Handbook 2210.18, in effect on the date of this contract. The Contractor shall not be allowed a profit on the profit received by any subcontractor. Equitable adjustments for deleted work shall include a credit for profit and may include a credit for indirect costs. On proposals covering both increases and decreases in the amount of the contract, the application of indirect costs and profit shall be on the net-change in direct costs for the Contractor or subcontractor performing the work.

- (g) The Contractor shall include in the proposal its request for time extension (if any), and shall include sufficient information and dates to demonstrate whether and to what extent the change will delay the completion of the contract in its entirety.
- (h) The Contracting Officer shall act on proposals within 30 days after their receipt, or notify the Contractor of the date when such action will be taken.
- (i) Failure to reach an agreement on any proposal shall be a dispute under the clause entitled Disputes herein. Nothing in this clause, however, shall excuse the Contractor from proceeding with the contract as changed.
- (j) Except in an emergency endangering life or property, no change shall be made by the Contractor without a prior order from the Contracting Officer.

9. Examination and Retention of Contractor's Records

The HA, HUD, or Comptroller General of the United States, or any of their duly authorized representatives shall, until three years after final payment under this contract, have access to and the right to examine any of the Contractor's directly pertinent books, documents, papers, or other records involving transactions related to this contract for the purpose of making audit, examination, excerpts, and transcriptions.

10. Rights in Data and Patent Rights (Ownership and Proprietary Interest)

The HA shall have exclusive ownership of, all proprietary interest in, and the right to full and exclusive possession of all information, materials, and documents discovered or produced by Contractor pursuant to the terms of this Contract, including but not limited to reports, memoranda or letters concerning the research and reporting tasks of this Contract.

11. Energy Efficiency

The Contractor shall comply with all mandatory standards and policies relating to energy efficiency which are contained in the energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub.L. 94-163) for the State in which the work under this contract is performed.

12. Procurement of Recovered Materials

- (a) In accordance with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, the Contractor shall procure items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition. The Contractor shall procure items designated in the EPA guidelines that contain the highest percentage of recovered materials practicable unless the Contractor determines that such items: (1) are not reasonably available in a reasonable period of time; (2) fail to meet reasonable performance standards, which shall be determined on the basis of the guidelines of the National Institute of Standards and Technology, if applicable to the item; or (3) are only available at an unreasonable price.
- (b) Paragraph (a) of this clause shall apply to items purchased under this contract where: (1) the Contractor purchases in excess of \$10,000 of the item under this contract; or (2) during the preceding Federal fiscal year, the Contractor: (i) purchased any amount of the items for use under a contract that was funded with Federal appropriations and was with a Federal agency or a State agency or agency of a political subdivision of a State; and (ii) purchased a total of in excess of \$10,000 of the item both under and outside that contract.

13. Training and Employment Opportunities for Residents in the Project Area (Section 3, HUD Act of 1968; 24 CFR 135)

- (a) The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- (b) The parties to this contract agree to comply with HUD's regulations in 24 CFR Part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.
- (c) The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the

-
- qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- (d) The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.
 - (e) The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR Part 135.
 - (f) Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

14. Labor Standards - Davis-Bacon and Related Acts

(a) Minimum Wages.

(1) All laborers and mechanics employed under this contract in the construction or development of the project(s) involved will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the regular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits in the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in

a prominent and accessible place where it can be easily seen by the workers.

- (2) (i) Any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate and fringe benefits therefor only when all the following criteria have been met:
 - (a) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
 - (b) The classification is utilized in the area by the construction industry; and
 - (c) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
- (ii) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division, Employee Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary.
- (iii) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator of the Wage and Hour Division for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary.
- (iv) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (a)(2)(ii) or (iii) of this clause shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.
- (3) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
- (4) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part

of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program; **provided**, that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(b) **Withholding of Funds.** HUD or its designee shall, upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the Contractor under this contract or any other Federal contract with the same prime Contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working in the construction or development of the project, all or part of the wages required by the contract, HUD or its designee may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased. HUD or its designee may, after written notice to the Contractor, disburse such amounts withheld for and on account of the Contractor or subcontractor to the respective employees to whom they are due.

(c) **Payrolls and Basic Records.**

(1) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working in the construction or development of the project. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found, under 29 CFR 5.5(a)(1)(iv), that the wages of any laborer or mechanic include the amount of costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of

the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

- (2) (i) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Contracting Officer for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under subparagraph (c)(1) of this clause. This information may be submitted in any form desired. Optional Form WH-347 (Federal Stock Number 029-005-00014-1) is available for this purpose and may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. The prime Contractor is responsible for the submission of copies of payrolls by all subcontractors. (Approved by the Office of Management and Budget under OMB Control Number 1214-0149.)
- (ii) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:
- (A) That the payroll for the payroll period contains the information required to be maintained under paragraph (c)(1) of this clause and that such information is correct and complete;
- (B) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR Part 3; and
- (C) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.
- (iii) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirements for submission of the "Statement of Compliance" required by subparagraph (c)(2)(ii) of this clause.
- (iv) The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 3729 of Title 31 of the United States Code.
- (3) The Contractor or subcontractor shall make the records required under subparagraph (c)(1) available for inspection, copying, or transcription by authorized representatives of HUD or its designee, the Contracting Officer, or the Department of Labor and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

- (d) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services (OATELS), or with a State Apprenticeship Agency recognized by OATELS, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by OATELS or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.
- The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in this paragraph, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event OATELS, or a State Apprenticeship Agency recognized by OATELS, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- (e) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate

specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed in the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate in the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate in the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate in the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- (f) Equal Employment Opportunity. The utilization of apprentices, trainees, and journeymen under this clause shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.
- (g) Compliance with Copeland Act Requirements. The Contractor shall comply with the requirements of 29 CFR Part 3, which are hereby incorporated by reference in this contract.
- (h) Contract Termination; Debarment. A breach of the labor standards clauses in this contract may be grounds for termination of the contract and for debarment as a Contractor and a subcontractor as provided in 29 CFR 5.12.
- (i) Compliance with Davis-Bacon and related Act Requirements. All rulings and interpretations of the Davis-Bacon and related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.
- (j) Disputes Concerning Labor Standards. Disputes arising out of the labor standards provisions of this clause shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the PHA, HUD, the U.S. Department of Labor, or the employees or their representatives.
- (k) Certification of Eligibility.
- (1) By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded contracts by the United States Government by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
 - (2) No part of this contract shall be subcontracted to any person or firm ineligible for award of a United States Government

contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(3) The penalty for making false statements is prescribed in the U. S. Criminal Code, 18 U.S.C. 1001.

(l) Subcontracts. The Contractor or subcontractor shall insert in any subcontracts all the provisions contained in this clause, and such other clauses as HUD or its designee may by appropriate instructions require, and also a clause requiring the subcontractors to include these provisions in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all these provisions.

(m) Non-Federal Prevailing Wage Rates. Any prevailing wage rate (including basic hourly rate and any fringe benefits), determined under State law to be prevailing, with respect to any employee in any trade or position employed under the contract, is inapplicable to the contract and shall not be enforced against the Contractor or any subcontractor, with respect to employees engaged under the contract whenever such non-Federal prevailing wage rate exceeds:

- (i) the applicable wage rate determined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 3141 et seq.) to be prevailing in the locality with respect to such trade;
- (ii) an applicable apprentice wage rate based thereon specified in an apprenticeship program registered with the U.S. Department of Labor (DOL) or a DOL-recognized State Apprenticeship Agency; or
- (iii) an applicable trainee wage rate based thereon specified in a DOL-certified trainee program.

INVITATION FOR BIDS

NOTICE IS HEREBY GIVEN that Yolo County Housing, hereafter referred to as "YCH," or "Owner" will receive sealed Bids until 2:00 p.m. Wednesday, April 2, 2014 at 147 West Main Street, Woodland, California, 95695, at which time and place, bids will be publicly opened and read aloud. Bids received after 2:00 p.m., Wednesday, April 2, 2014 will not be considered.

The proposed project consists of ADA Site and Building improvements to the Davis Migrant Center located at 31150 County Road 105, Dixon CA, 95620.

The Project work shall include the furnishing of all labor, materials, and equipment in accordance with all Contract Documents.

All Project work must be completed on or before one hundred twenty (120) calendar days from receipt by the successful bidder of the Notice to Proceed.

This Project is funded by the U.S. Department of Agriculture Rural Development Farm Service Agency and the State of California Housing and Community Development Department. Pursuant to Public Contract Code section 20103.5, all bidders and their sub-contractors will be required to be appropriately licensed by the California Contractor's State License Board at the time of the award and at all times while performing the work.

Some of the trades that may be required to perform the Work encompassed by this project may include, but not necessarily be limited, to the following:

Cement Mason/Concrete Finisher	Carpenter
Laborer	Electrician
Painter	Plumber/Pipefitter
Teamster/Truck Driver	Power Equipment Operator

All interested licensed Contractors and their agents are advised to attend the non-mandatory Pre-Bid Conference to be held on Wednesday March 12, 2014 @ 10:00 a.m. All interested parties should meet at the Davis Migrant Center, 31150 County Road 105, Dixon, CA 95620. Non-attendance on the part of a prospective bidder shall not relieve the bidder of any responsibility for adherence to any of the provisions of the bid package or any addenda thereto.

Plans and Specifications may be examined at the office of the McCandless and Associates, 428 ½ First Street, Woodland CA 95695.

Copies of the Contract Documents may be obtained through PlanWell Enterprise™ at http://order.e-arc.com/arcEOC/PWELL_Main.asp?mem=23 or by contacting ARC at (916) 443-1322.

The Plans and Specifications are provided as a convenience to assist in bidding on and in execution of work. Incomplete and/or inaccurate Plans and Specifications do not relieve the successful bidder from providing a complete project as intended by the Contract Documents. The Contract Documents, which include but are not necessarily limited to, the Contract, Project Manual, Plans, Specifications, and any addenda thereto shall represent the complete agreement between the parties.

Bidder's attention is called to the fact that the Yolo County Housing is a public Authority formed and existing under the laws of the State of California. The successful bidder will be required to satisfy all current legal requirements applicable to the Owner's project. This Contract is subject to Executive Order 11246 entitled "Equal Employment Opportunity" as amended by Executive Order 11375 and as supplemented by Department of Labor regulations (41 CFR Part 60) this

Yolo County Housing
ADA Site and Building Improvements
Davis Migrant Center
Invitation for Bid

Contract is subject to the Davis Bacon Act (40 U.S.C. § 276a) and other applicable Federal and State requirements. All labor on this project shall be paid at no less than the minimum wage rate as established by the Davis-Bacon Act and California State Department of Industrial Relations.

The Federal and State Prevailing Wage Rates are set forth in schedules located at the Owner's office at the address above and within the Project Manual. The higher of the established Federal or State Prevailing Wage Rate shall be paid by the contractor and their sub-contractors to all workers working on this project. These schedules are available for review by any interested party on request. Prevailing wage rates shall be posted at the job site by the General Contractor.

YCH hereby notifies all bidders that it will affirmatively ensure that in any contract entered into pursuant to this advertisement, minority and women's business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, sex or national origin in consideration for an award.

Each Bid must be accompanied by a certified check, cashier's check, or Bid Bond submitted on the prescribed form and made payable to the Owner in an amount not less than five percent (5%) of the total amount bid.

The successful bidder will be required to furnish both a Faithful Performance Bond in the amount of one hundred percent (100%) and a Payment Bond in the amount of one hundred percent (100%) of the Contract price.

Bidders are hereby notified that in accordance with the provisions of California Public Contract Code section 22300, securities may be substituted for any monies which the Owner may withhold pursuant to the terms of the Contract to insure performance.

Bids received after the time established for receiving bids will not be considered. No bidder may withdraw his/her bid after the time established for receiving bids or before the award and execution of the contract, unless the award is delayed for a period exceeding sixty (60) days.

YCH reserves the rights to reject any or all bids and to determine which bid should be accepted in the best interest of YCH. YCH also reserves the right to waive any informality in any bid, and to delete certain items listed in the bid, as set forth herein. YCH will award the Contract to the lowest responsive, responsible bidder.

Questions pertaining to this Notice may be directed to, Fred Ichtertz, Facilities Director, Yolo County Housing, by calling 530-669-2240 or by e-mail at fichtertz@ych.ca.gov

Lisa A. Baker

Lisa A. Baker
Executive Director
Yolo County Housing
147 West Main St.
Woodland, CA 95776

Yolo County Housing
ADA Site and Building Improvements
Davis Migrant Center
Invitation for Bid

State of Washington
 Department of Labor & Industries
 Prevailing Wage Section - Telephone 360-902-5335
 PO Box 44540, Olympia, WA 98504-4540

Washington State Prevailing Wage

The PREVAILING WAGES listed here include both the hourly wage rate and the hourly rate of fringe benefits. On public works projects, worker's wage and benefit rates must add to not less than this total. A brief description of overtime calculation requirements are provided on the Benefit Code Key.

Journey Level Prevailing Wage Rates for the Effective Date: 3/6/2015

County	Trade	Job Classification	Wage	Holiday	Overtime	Note
Franklin	<u>Residential Brick Mason</u>	Journey Level	\$22.00		<u>1</u>	
Franklin	<u>Residential Carpenters</u>	Journey Level	\$19.00		<u>1</u>	
Franklin	<u>Residential Cement Masons</u>	Journey Level	\$38.85	<u>7B</u>	<u>1N</u>	
Franklin	<u>Residential Drywall Applicators</u>	Journey Level	\$18.00		<u>1</u>	
Franklin	<u>Residential Drywall Tapers</u>	Journey Level	\$17.00		<u>1</u>	
Franklin	<u>Residential Electricians</u>	Journey Level	\$20.00		<u>1</u>	
Franklin	<u>Residential Glaziers</u>	Journey Level	\$17.88		<u>1</u>	
Franklin	<u>Residential Insulation Applicators</u>	Journey Level	\$10.00		<u>1</u>	
Franklin	<u>Residential Laborers</u>	Journey Level	\$12.00		<u>1</u>	
Franklin	<u>Residential Marble Setters</u>	Journey Level	\$22.00		<u>1</u>	
Franklin	<u>Residential Painters</u>	Journey Level	\$11.59		<u>1</u>	
Franklin	<u>Residential Plumbers & Pipefitters</u>	Journey Level	\$23.00		<u>1</u>	
Franklin	<u>Residential Refrigeration & Air Conditioning Mechanics</u>	Journey Level	\$9.47		<u>1</u>	
Franklin	<u>Residential Sheet Metal Workers</u>	Journey Level (Field or Shop)	\$38.97	<u>5A</u>	<u>1X</u>	
Franklin	<u>Residential Soft Floor Layers</u>	Journey Level	\$23.11	<u>5A</u>	<u>1N</u>	
Franklin	<u>Residential Sprinkler Fitters (Fire Protection)</u>	Journey Level	\$9.47		<u>1</u>	
Franklin	<u>Residential Stone Masons</u>	Journey Level	\$22.00		<u>1</u>	
Franklin	<u>Residential Terrazzo Workers</u>	Journey Level	\$9.47		<u>1</u>	
Franklin	<u>Residential Terrazzo/Tile Finishers</u>	Journey Level	\$9.47		<u>1</u>	
Franklin	<u>Residential Tile Setters</u>	Journey Level	\$9.47		<u>1</u>	
Franklin	<u>Roofers</u>	Journey Level	\$16.77		<u>1</u>	



DEVAL L. PATRICK
Governor

THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF LABOR AND WORKFORCE DEVELOPMENT
DEPARTMENT OF LABOR STANDARDS

Prevailing Wage Rates

As determined by the Director under the provisions of the
Massachusetts General Laws, Chapter 149, Sections 26 to 27H

JOANNE F. GOLDSTEIN
Secretary
HEATHER E. ROWE
Director

Awarding Authority: City of Lowell
Contract Number: IFB14-40 **City/Town:** LOWELL
Description of Work: Street Paving and Cold Planning
Job Location: Lowell

Information about Prevailing Wage Schedules for Awarding Authorities and Contractors

- This wage schedule applies only to the specific project referenced at the top of this page and uniquely identified by the “Wage Request Number” on all pages of this schedule.
- Awarding authorities must request an updated wage schedule from the Department of Labor Standards (“DLS”) if it has not opened bids or selected a contractor within 90 days of the date of issuance of the wage schedule.
- The wage schedule shall be incorporated in any advertisement or call for bids for the project as required by M.G.L. c. 149, § 27. Once a contractor has been selected by the awarding authority, the wage schedule shall be made a part of the contract for that project. The wage schedule must be posted in a conspicuous place at the work site during the life of the project in accordance with M.G.L. c. 149, § 27. The wages listed on the wage schedule must be paid to employees performing construction work on the project regardless of whether they are employed by the prime contractor, a filed sub-bidder, or any sub-contractor.
- All apprentices working on the project are required to be registered with the Massachusetts Division of Apprentice Training (DAT). Apprentices must keep his/her apprentice identification card on his/her person during all work hours on the project. If an apprentice rate is listed on the prevailing wage schedule for the trade in which an apprentice is registered with the DAT, the apprentice may be paid the lower apprentice wage rate at the applicable step as provided on the prevailing wage schedule. **If an apprentice rate is not listed on the prevailing wage schedule for the trade in which an apprentice is registered with the DAT, the apprentice must be paid the journeyworker’s rate for the trade.**
- The wage rates will remain in effect for the duration of the project, except in the case of multi-year public construction projects. For construction projects lasting longer than one year, awarding authorities must request an updated wage schedule. Awarding authorities are required to request these updates no later than two weeks before the anniversary of the date the contract was executed by the awarding authority and the general contractor. Contractors are required to obtain the wage schedules from awarding authorities, and to pay no less than these rates to covered workers. The annual update requirement is not applicable to 27F “rental of equipment” contracts.
- Every contractor or subcontractor which performs construction work on the project is required to submit weekly payroll reports directly to the awarding authority and keep them on file for three years. Each weekly payroll report must contain: the employee’s name, address, occupational classification, hours worked, and wages paid. Do not submit weekly payroll reports to DLS. A sample of a payroll reporting form may be obtained at <http://www.mass.gov/dols/pw>.
- Contractors with questions about the wage rates or classifications included on the wage schedule have an affirmative obligation to inquire with DLS at (617) 626-6953.
- Employees not receiving the prevailing wage rate set forth on the wage schedule may report the violation to the Fair Labor Division of the office of the Attorney General at (617) 727-3465.
- Failure of a contractor or subcontractor to pay the prevailing wage rates listed on the wage schedule to all employees who perform construction work on the project is a violation of the law and subjects the contractor or subcontractor to civil and criminal penalties.

Classification	Effective Date	Base Wage	Health	Pension	Supplemental Unemployment	Total Rate
CAISSON & UNDERPINNING TOP MAN <i>LABORERS - FOUNDATION AND MARINE</i>	12/01/2013	\$33.30	\$7.30	\$12.90	\$0.00	\$53.50
	06/01/2014	\$34.05	\$7.30	\$12.90	\$0.00	\$54.25
	12/01/2014	\$34.80	\$7.30	\$12.90	\$0.00	\$55.00
	06/01/2015	\$35.55	\$7.30	\$12.90	\$0.00	\$55.75
	12/01/2015	\$36.30	\$7.30	\$12.90	\$0.00	\$56.50
	06/01/2016	\$37.05	\$7.30	\$12.90	\$0.00	\$57.25
	12/01/2016	\$38.05	\$7.30	\$12.90	\$0.00	\$58.25
For apprentice rates see "Apprentice- LABORER"						
CARBIDE CORE DRILL OPERATOR <i>LABORERS - ZONE 2</i>	12/01/2013	\$30.10	\$7.30	\$12.10	\$0.00	\$49.50
	06/01/2014	\$30.60	\$7.30	\$12.10	\$0.00	\$50.00
	12/01/2014	\$31.10	\$7.30	\$12.10	\$0.00	\$50.50
	06/01/2015	\$31.60	\$7.30	\$12.10	\$0.00	\$51.00
	12/01/2015	\$32.10	\$7.30	\$12.10	\$0.00	\$51.50
	06/01/2016	\$32.60	\$7.30	\$12.10	\$0.00	\$52.00
	12/01/2016	\$33.35	\$7.30	\$12.10	\$0.00	\$52.75
For apprentice rates see "Apprentice- LABORER"						
CARPENTER <i>CARPENTERS -ZONE 2 (Eastern Massachusetts)</i>	09/01/2013	\$34.53	\$9.80	\$15.61	\$0.00	\$59.94
	03/01/2014	\$35.13	\$9.80	\$15.61	\$0.00	\$60.54
	09/01/2014	\$35.90	\$9.80	\$15.61	\$0.00	\$61.31
	03/01/2015	\$36.67	\$9.80	\$15.61	\$0.00	\$62.08

Classification

Effective Date Base Wage Health Pension Supplemental Unemployment Total Rate

Apprentice - CARPENTER - Zone 2 Eastern MA

Effective Date - 09/01/2013

Step	percent	Apprentice Base Wage	Health	Pension	Supplemental Unemployment	Total Rate
1	50	\$17.27	\$9.80	\$1.57	\$0.00	\$28.64
2	60	\$20.72	\$9.80	\$1.57	\$0.00	\$32.09
3	70	\$24.17	\$9.80	\$10.90	\$0.00	\$44.87
4	75	\$25.90	\$9.80	\$10.90	\$0.00	\$46.60
5	80	\$27.62	\$9.80	\$12.47	\$0.00	\$49.89
6	80	\$27.62	\$9.80	\$12.47	\$0.00	\$49.89
7	90	\$31.08	\$9.80	\$14.04	\$0.00	\$54.92
8	90	\$31.08	\$9.80	\$14.04	\$0.00	\$54.92

Effective Date - 03/01/2014

Step	percent	Apprentice Base Wage	Health	Pension	Supplemental Unemployment	Total Rate
1	50	\$17.57	\$9.80	\$1.57	\$0.00	\$28.94
2	60	\$21.08	\$9.80	\$1.57	\$0.00	\$32.45
3	70	\$24.59	\$9.80	\$10.90	\$0.00	\$45.29
4	75	\$26.35	\$9.80	\$10.90	\$0.00	\$47.05
5	80	\$28.10	\$9.80	\$12.47	\$0.00	\$50.37
6	80	\$28.10	\$9.80	\$12.47	\$0.00	\$50.37
7	90	\$31.62	\$9.80	\$14.04	\$0.00	\$55.46
8	90	\$31.62	\$9.80	\$14.04	\$0.00	\$55.46

Notes:

Apprentice to Journeyworker Ratio:1:5

CEMENT MASONRY/PLASTERING	01/01/2014	\$39.29	\$10.90	\$18.71	\$1.30	\$70.20
BRICKLAYERS LOCAL 3 (LOWELL)	07/01/2014	\$40.12	\$10.90	\$18.71	\$1.30	\$71.03
	01/01/2015	\$40.80	\$10.90	\$18.71	\$1.30	\$71.71
	07/01/2015	\$41.63	\$10.90	\$18.71	\$1.30	\$72.54
	01/01/2016	\$42.32	\$10.90	\$18.71	\$1.30	\$73.23

(2) In completing SF-308, the agency shall furnish:

(i) A sufficiently detailed description of the work to indicate the type of construction involved. Additional description or separate attachment, if necessary for identification of type of project, shall be furnished.

(ii) The county (or other civil subdivision) and State in which the proposed project is located.

(3) Such request for a wage determination shall be accompanied by any pertinent wage payment information that may be available. When the requesting agency is a State highway department under the Federal-Aid Highway Acts as codified in 23 U.S.C. 113, such agency shall also include its recommendations as to the wages which are prevailing for each classification of laborers and mechanics on similar construction in the area.

(c) The time required for processing requests for wage determinations varies according to the facts and circumstances in each case. An agency should anticipate that such processing in the Department of Labor will take at least 30 days.

[48 FR 19533, Apr. 29, 1983, as amended at 48 FR 50313, Nov. 1, 1983; 50 FR 49823, Dec. 4, 1985; 70 FR 50894, Aug. 26, 2005]

[↑ Back to Top](#)

§1.6 Use and effectiveness of wage determinations.

(a)(1) Project wage determinations initially issued shall be effective for 180 calendar days from the date of such determinations. If such a wage determination is not used in the period of its effectiveness it is void. Accordingly, if it appears that a wage determination may expire between bid opening and contract award (or between initial endorsement under the National Housing Act or the execution of an agreement to enter into a housing assistance payments contract under section 8 of the U.S. Housing Act of 1937, and the start of construction) the agency shall request a new wage determination sufficiently in advance of the bid opening to assure receipt prior thereto. However, when due to unavoidable circumstances a determination expires before award but after bid opening (or before the start of construction, but after initial endorsement under the National Housing Act, or before the start of construction but after the execution of an agreement to enter into a housing assistance payments contract under section 8 of the U.S. Housing Act of 1937), the head of the agency or his or her designee may request the Administrator to extend the expiration date of the wage determination in the bid specifications instead of issuing a new wage determination. Such request shall be supported by a written finding, which shall include a brief statement of the factual support, that the extension of the expiration date of the determination is necessary and proper in the public interest to prevent injustice or undue hardship or to avoid serious impairment in the conduct of Government business. The Administrator will either grant or deny the request for an extension after consideration of all of the circumstances, including an examination to determine if the previously issued rates remain prevailing. If the request for extension is denied, the Administrator will proceed to issue a new wage determination for the project.

(2) General wage determinations issued pursuant to §1.5(a), notice of which is published on WDOL, shall contain no expiration date.

(b) Contracting agencies are responsible for insuring that only the appropriate wage determination(s) are incorporated in bid solicitations and contract specifications and for designating specifically the work to which such wage determinations will apply. Any question regarding application of wage rate schedules shall be referred to the Administrator, who shall give foremost consideration to area practice in resolving the question.

(c)(1) Project and general wage determinations may be modified from time to time to keep them current. A modification may specify only the items being changed, or may be in the form of a supersedeas wage determination, which replaces the entire wage determination. Such actions are distinguished from a determination by the Administrator under paragraphs (d), (e) and (f) of this section that an erroneous wage determination has been issued or that the wrong wage determination or wage rate schedule has been utilized by the agency.

(2)(i) All actions modifying a project wage determination received by the agency before contract award (or the start of construction where there is no contract award) shall be effective except as follows:

(A) In the case of contracts entered into pursuant to competitive bidding procedures, modifications received by the agency less than 10 days before the opening of bids shall be effective unless the agency finds that there is not a reasonable time still available before bid opening, to notify bidders of the modification and a report of the finding is inserted in the contract file. A copy of such report shall be made available to the Administrator upon request. No such report shall be required if the modification is received after bid opening.

(B) In the case of projects assisted under the National Housing Act, modifications shall be effective if received prior to the beginning of construction or the date the mortgage is initially endorsed, whichever occurs first.

(C) In the case of projects to receive housing assistance payments under section 8 of the U.S. Housing Act of 1937, modifications shall be effective if received prior to the beginning of construction or the date the agreement to enter into a housing assistance payments contract is executed, whichever occurs first.

(ii) Modifications to project wage determinations and supersedeas wage determinations shall not be effective after contract award (or after the beginning of construction where there is no contract award).

(iii) Actual written notice of a modification shall constitute receipt.

(3) All actions modifying a general wage determination shall be effective with respect to any project to which the determination applies, if notice of such actions is published before contract award (or the start of construction where there is no contract award), except as follows:

(i) In the case of contracts entered into pursuant to competitive bidding procedures, a modification, notice of which is published less than 10 days before the opening of bids, shall be effective unless the agency finds that there is not a reasonable time still available before bid opening to notify bidders of the modification and a report of the finding is inserted in the contract file. A copy of such report shall be made available to the Administrator upon request. No such report shall be required if notice of the modification is published after bid opening.

(ii) In the case of projects assisted under the National Housing Act, a modification shall be effective if notice of such modification is published prior to the beginning of construction or the date the mortgage is initially endorsed, whichever occurs first.

(iii) In the case of projects to receive housing assistance payments under section 8 of the U.S. Housing Act of 1937, a modification shall be

effective if notice of such modification is published prior to the beginning of construction or the date the agreement to enter into a housing assistance payments contract is signed, whichever occurs first.

(iv) If under paragraph (c)(3)(i) of this section the contract has not been awarded within 90 days after bid opening, or if under paragraph (c)(3)(ii) or (iii) of this section construction has not begun within 90 days after initial endorsement or the signing of the agreement to enter into a housing assistance payments contract, any modification, notice of which is published on WDOL prior to award of the contract or the beginning of construction, as appropriate, shall be effective with respect to that contract unless the head of the agency or his or her designee requests and obtains an extension of the 90-day period from the Administrator. Such request shall be supported by a written finding, which shall include a brief statement of the factual support, that the extension is necessary and proper in the public interest to prevent injustice or undue hardship or to avoid serious impairment in the conduct of Government business. The Administrator will either grant or deny the request for an extension after consideration of all the circumstances.

(v) A modification to a general wage determination is "published" within the meaning of this section on the date notice of a modification or a supersedeas wage determination is published on WDOL or on the date the agency receives actual written notice of the modification from the Department of Labor, whichever occurs first. Archived versions of Davis-Bacon and Related Acts wage determinations that are no longer current may be accessed in the "Archived DB WD" database of WDOL for information purposes only. Contracting officers should not use an archived wage determination in a contract action without prior approval of the Department of Labor.

(vi) A supersedeas wage determination or a modification to an applicable general wage determination, notice of which is published after contract award (or after the beginning of construction where there is no contract award) shall not be effective.

(d) Upon his/her own initiative or at the request of an agency, the Administrator may correct any wage determination, without regard to paragraph (c) of this section, whenever the Administrator finds such a wage determination contains clerical errors. Such corrections shall be included in any bid specifications containing the wage determination, or in any on-going contract containing the wage determination in question, retroactively to the start of construction.

(e) Written notification by the Department of Labor prior to the award of a contract (or the start of construction under the National Housing Act, under section 8 of the U.S. Housing Act of 1937, or where there is no contract award) that: (1) There is included in the bidding documents or solicitation the wrong wage determination or the wrong schedule or that (2) a wage determination is withdrawn by the Department of Labor as a result of a decision by the Administrative Review Board, shall be effective immediately without regard to paragraph (c) of this section.

(f) The Administrator may issue a wage determination after contract award or after the beginning of construction if the agency has failed to incorporate a wage determination in a contract required to contain prevailing wage rates determined in accordance with the Davis-Bacon Act, or has used a wage determination which by its terms or the provisions of this part clearly does not apply to the contract. Further, the Administrator may issue a wage determination which shall be applicable to a contract after contract award or after the beginning of construction when it is found that the wrong wage determination has been incorporated in the contract because of an inaccurate description of the project or its location in the agency's request for the wage determination. Under any of the above circumstances, the agency shall either terminate and resolicit the contract with the valid wage determination, or incorporate the valid wage determination retroactive to the beginning of construction through supplemental agreement or through change order, *Provided* That the contractor is compensated for any increases in wages resulting from such change. The method of incorporation of the valid wage determination, and adjustment in contract price, where appropriate, should be in accordance with applicable procurement law.

(g) If Federal funding or assistance under a statute requiring payment of wages determined in accordance with the Davis-Bacon Act is not approved prior to contract award (or the beginning of construction where there is no contract award), the agency shall request a wage determination prior to approval of such funds. Such a wage determination shall be issued based upon the wages and fringe benefits found to be prevailing on the date of award or the beginning of construction (under the National Housing Act, under section 8 of the U.S. Housing Act of 1937 or where there is no contract award), as appropriate, and shall be incorporated in the contract specifications retroactively to that date, *Provided*, That upon the request of the head of the agency in individual cases the Administrator may issue such a wage determination to be effective on the date of approval of Federal funds or assistance whenever the Administrator finds that it is necessary and proper in the public interest to prevent injustice or undue hardship, *Provided further* That the Administrator finds no evidence of intent to apply for Federal funding or assistance prior to contract award or the start of construction, as appropriate.

[48 FR 19533, Apr. 29, 1983, as amended at 50 FR 49823, Dec. 4, 1985; 70 FR 50894, Aug. 26, 2005]

[↑ Back to Top](#)

§1.7 Scope of consideration.

(a) In making a wage determination, the *area* will normally be the county unless sufficient current wage data (data on wages paid on current projects or, where necessary, projects under construction no more than one year prior to the beginning of the survey or the request for a wage determination, as appropriate) is unavailable to make a wage determination.

(b) If there has not been sufficient similar construction within the area in the past year to make a wage determination, wages paid on similar construction in surrounding counties may be considered, *Provided* That projects in metropolitan counties may not be used as a source of data for a wage determination in a rural county, and projects in rural counties may not be used as a source of data for a wage determination for a metropolitan county.

(c) If there has not been sufficient similar construction in surrounding counties or in the State in the past year, wages paid on projects completed more than one year prior to the beginning of the survey or the request for a wage determination, as appropriate, may be considered.

(d) The use of *helpers*, *apprentices* and *trainees* is permitted in accordance with part 5 of this subtitle.

[48 FR 19533, Apr. 29, 1983, as amended at 50 FR 4507, Jan. 31, 1985; 55 FR 50149, Dec. 4, 1990; 65 FR 69692, Nov. 20, 2000]

[↑ Back to Top](#)

§1.8 Reconsideration by the Administrator.



Addendum # 5
Issue Date: 5/10/12

Newport News Redevelopment & Housing Authority
Division of Purchasing
227 27th Street P.O. Box 797
Newport News, VA 23607
Phone: (757) 928-2623 Fax: (757) 245-2144
www.nnrha.com

Invitation for Bid
IFB#001-ROAM-04-12
4/13/12

**The Roam Building-The Lofts at 2713
Bid Due Date: No Change**

Invitation for Bids, subject to the conditions and instructions contained herein, will be received at the above office until the date and hour shown (local prevailing time) for furnishing the items or services described in the Invitation for Bid.

It is agreed and understood that this page will constitute addendum #5, and shall be made part of the IFB document. This document must be signed and returned with the Bid.

Davis Bacon Wage Rates Decision Number VA20100210 is replaced with Decision Number VA20100117.

Procurement Officer: _____
Nina T. Britton, Procurement Officer, nbritton@nnrha.org

Company Name: _____

Print Name: _____ Title: _____

Signature: _____ Date: _____

This Form Must Be Signed

first four letters , PLUM, indicate the international union and the four-digit number, 0198, that follows indicates the local union number or district council number where applicable , i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. The date, 07/01/2011, following these characters is the effective date of the most current negotiated rate/collective bargaining agreement which would be July 1, 2011 in the above example.

Union prevailing wage rates will be updated to reflect any changes in the collective bargaining agreements governing the rate.

Non-Union Identifiers

Classifications listed under an "SU" identifier were derived from survey data by computing average rates and are not union rates; however, the data used in computing these rates may include both union and non-union data. Example: SULA2004-007 5/13/2010. SU indicates the rates are not union rates, LA indicates the State of Louisiana; 2004 is the year of the survey; and 007 is an internal number used in producing the wage determination. A 1993 or later date, 5/13/2010, indicates the classifications and rates under that identifier were issued as a General Wage Determination on that date.

Survey wage rates will remain in effect and will not change until a new survey is conducted.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- * an existing published wage determination
- * a survey underlying a wage determination
- * a Wage and Hour Division letter setting forth a position on a wage determination matter
- * a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to: