

Local Agency Program & Florida Highway Administration Certification & Recertification Computer Based Training

Module 4 Part 2 – Federal Statutes and Regulations

This section sets forth the general requirements for the contractor, and subcontractors, to pay employees working at a site at least the minimum wage rate and fringe benefits specified for the classification of work performed.

The Davis-Bacon Act applies to all Federal-aid construction contracts within the right-of-way of a Federal-aid highway exceeding \$2,000 and to all related subcontracts.

Highway construction projects located on roadways classified as local roads or rural minor collectors do not have to comply with Davis-Bacon.

Although an exempt project may not require Davis-Bacon wages to satisfy Federal aid requirements, if other Federal funds are involved in the project, for example, HUD, community development, etc, Davis Bacon may be required by the other Federal agency.

In addition, if the work is non-highway construction (restoration of a train depot, recreational trail) and is being administered by a local agency under the Common Rule (49 CFR 18), Davis-Bacon may apply.

Wage rates must be physically incorporated into the contract. Until recently, FHWA required that wage rates be physically incorporated into the bid package. However, with new era of electronic bid packages, wage rates only have to be physically in the contract.

Davis Bacon was enacted as a means to prevent contractors from importing cheap labor from outside the area, thereby, keeping capital at home with the local labor force where it would do the most good.

The State Transportation Agency or STA is responsible for incorporating the applicable wage rate decision into each Federal-aid contract. The states may request a wage rate determination if there has been a change in market conditions.

The US Department of Labor requires that an amendment for a general wage rate determination be incorporated into a Federal-aid contract if notification of the change is published in the *Federal Register* 10 days or more prior to the opening of bids.

If a significant portion of the work is to be constructed off-site, the contracting agency should attempt to include the wage determinations covering potential off-site location in the bid proposal. Reference is made to comments on page 80275 in the December 20, 2000 Federal Register.

There are 15 states who have indicated their wage rates exceed the federal rate. Sometimes the state inspectors are paid less than laborers on certain projects.

Part V "Statements and Payrolls" is applicable to all Federal-aid highway construction contracts exceeding \$2,000 and to all related subcontracts, except for projects located on roadways classified as local roads or rural minor collectors, which are not covered. Non-highway construction projects administered under 49 CFR 18 are subject to Davis-Bacon, Copeland and Contract Work Hours and Safety Standards Act requirements as required under federal regulation. No pay stubs are required; Workers are protected from paying "kickbacks" to employers for the "privilege" of being employed.

These regulations require that the contractor and subcontractors furnish weekly certified payroll statements to the STA. The weekly payroll statement is to include information on employees and wages in order that compliance with the Davis-Bacon requirement of Section IV can be verified.

On December 19, 2008, the Department of Labor issued a final rule revising their regulations in 29 CFR Part 3 and 5. The primary change in the rule is a provision that requires construction contractors to limit amount of personal info on the weekly payroll submissions. Personal addresses and full social security numbers may no longer be used.

Current FHWA policy requires that the prime contractor perform at least 30 percent of contract work with its own organization. This percentage shall be of the original contract price, exclusive of specialty items, but include the cost of materials and manufactured products purchased or produced by the prime contractor. This does not apply to design-build projects.

State requirements may be more stringent; and, although the STA approves the subcontracts, the contractor remains responsible for their performance and overall completion of the project.

When it comes to "Safety: Accident Prevention," Occupational Safety Health Act or OSHA has the administrative responsibility; however, by law, FHWA must ensure compliance. STA shares enforcement responsibility, which includes cooperating with OSHA, and alerting the contractor and OSHA to problem situations. There may be a State agency with OSHA-type responsibilities. AASHTO "Informational Guide on Occupational Safety," 1972, remains a good general reference

The making or use of false statements is a felony, punishable by fine of not more than \$10,000, or imprisonment of not more than five years, or both. Making or using false claims for the purpose of obtaining payment against Federal funds, subjects violators to forfeiture of \$2,000 for each violation.

A false statement is one classified as "WILLFUL FALSIFICATION, DISTORTION OR MISREPRESENTATION OF ANY PROJECT RELATED FACT"

The STA is to conduct investigations on complaints and to review records that are potentially vulnerable to fraud. It is also the STA's responsibility to furnish the prime contractor with a required poster warning against false statements (Form FHWA 1022) and to ensure that it is posted accordingly.

“Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion” applies to all Federal-aid contracts, and related subcontracts, purchase orders, and other lower tier transactions of \$25,000 or more. The prime contractor and lower tier participants are required to certify as to their current eligibility status. Certification is also required of all prospective participants in lower tier transactions. This includes subcontractors, material suppliers, vendors, etc. Each participant in the Federal-aid highway program must certify "that it and its principals are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency ... and that they have not been convicted or had civil judgment rendered within the past three years for certain types of offenses."

Review Questions

Are the following workers covered under Davis-Bacon?

Timekeepers – NO

Inspectors – NO

Owners of subcontractors firms who are themselves performing the work of laborers and mechanics – YES

Does Davis-Bacon cover truck drivers under the following circumstances?

Truck drivers transporting materials or supplies between a facility that is deemed part of the site of the work and the actual construction site - YES

Drivers of a contractor or subcontractor traveling between the site of the work and a commercial supply facility - NO

Material delivery truck drivers whose time spent on the site of the work is de minimus, such as only a few minutes at a time merely to pick up or drop off materials or supplies. - NO

Truck drivers hauling shoulder material from a plant set up in a commercial quarry specifically for the project and are adjacent to the site of the work. - YES

A woman was driving in the left lane of a high speed (50 mph), heavily traveled 4-lane road when the car directly in front of her moved into the right lane. The woman found herself confronted by a large excavation, guarded by a barricade, completely blocking the left lane. She was unable to stop before driving through the barricade and into the excavation. A construction site warning sign was posted closer than 500 feet, and the only barricade prior to the excavation was located approx. 75-100 feet away.

Did the highway agency adequately warn oncoming traffic of the construction site ahead?

The Traffic Control Design Handbook defines a "traffic control work zone" as the distance between the first advance warning sign and the point beyond the work area where traffic is no longer affected. It was the trial court's decision that there was ample evidence that the defendant failed to provide a proper traffic control work zone to adequately warn drivers of the existence of an excavation. Therefore the breach of that duty caused damage to the plaintiff.

A construction site that is not properly guarded will impose a liability.

LINKS

LAP Website

<http://www.dot.state.fl.us/projectmanagementoffice/LAP/default.shtm>

Florida Statutes

<http://www.leg.state.fl.us/statutes/>

Wage Tables and related info

<http://www.dot.state.fl.us/construction/wage.htm>

Federal Statutes and Regulations

<http://www.fhwa.dot.gov/programadmin/contracts/core02.cfm#s2A02>

Environmental Process Acronyms

<http://www.fhwa.dot.gov/programadmin/contracts/coregloss.cfm>

FHWA 1273

<http://ecfr.gpoaccess.gov/cgi/t/text/textidx?c=ecfr&rgn=div6&view=text&node=23:1.0.1.7.22.1&idno=23>

Civil Rights Act of 1964

http://www.fhwa.dot.gov/environment/title_vi.htm

Section II.1 EEO

<http://www.fhwa.dot.gov/programadmin/contracts/core02.cfm#s2A02>

Davis Bacon Act

<http://www.gpo.gov/davisbacon/>

Federal aid policy guide 6011.10 has additional information:

<http://www.access.gpo.gov/nara/cfr/cfr-table-search.html#page1>

“Guidelines on Preparing Engineer's Estimate, Bid Reviews and Evaluation”

<http://www.fhwa.dot.gov/programadmin/contracts/ta508046.cfm>