DEPARTMENT OF THE ARMY

U.S. Army Corps of Engineers
441 G. Street, NW
Washington, D.C. 20314-1000

ER 1180-1-8

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Pamphlet
No. 1180-1-8

15 August 2022

Contracts
LABOR RELATIONS IN CONSTRUCTION

1-1. Purpose. This regulation is designed to provide guidelines for all U.S. Army Corps of Engineers (USACE) employees tasked with the administration and enforcement of statutory and contractual labor standards on construction contracts. Its primary aim is to affect a uniform enforcement program throughout USACE. Achieving compliance with labor standards requires the understanding of the underlying regulations, initiative, and cooperation on the part of all personnel. This ER contains the answers to the questions that most generally arise in connection with contract labor relations functions on USACE acquisitions. Official acquisition policy is found in the Federal Acquisition Regulation (FAR) and its supplements. If there is any conflict between the FAR and its supplements and this regulation, the current FAR and its supplements apply.

1-2. Applicability. This regulation is applicable to all Major Subordinate Commands districts, laboratories, centers, and field operating activities under the jurisdiction of the Chief of Engineers.

1-3. Distribution Statement. Approved for public release; distribution is unlimited.

FOR THE COMMANDER:

JAMES J. HANDURA
COL, EN
CHIEF OF STAFF

SUMMARY of CHANGE

ER 1180-1-8
Labor Relations In Construction

Significant changes are as follows:

- Paragraph 1-4, General References, has been updated to make current various laws and citations related to the Davis-Bacon Bacon Act, Page 1
- Paragraph 1-10, General Accountability Office Audit 2020, has been added to address the outcome and results of the Audit, Page 5
- Paragraph 2-9, Executive Orders, has been updated to include current Executive Orders', Page 7
- Paragraph 2-10, Solicitation Provisions/Contract Clauses, has been updated to make current various provisions and clauses required under the Davis-Bacon Act, Page 8
- Paragraph 3-6, System for Award Management, has been updated to remove wdol.gov language, Page 16
- Paragraph 4-16, Use of Electronic Software for Processing Davis-Bacon Act Certified Payrolls on USACE Construction Contracts, has been updated to address recommendations from General Accountability Office Audit 2020, Page 32
- Paragraph 4-17, Non-Use of Electronic Software for Processing Davis-Bacon Act Certified Payrolls on USACE Construction Contracts, has been included to address instances where ePayroll systems are not used to ensure labor compliance on a construction procurement, Page 33
- Paragraph 9-3, Labor Compliance Information Portal, has been updated, Page 73
- Appendix J, Labor Compliance Roles, Details, and Responsible Officials, has been added to provide clarity to the execution of labor compliance on USACE procurements, Page 96
- Appendix K, USACE Weekly Payroll Review Checklist, has been added to provide common list of potential violations that must be checked when ensuing labor compliance, Page 98
- Appendix O, ePayroll-Frequently Asked Questions, has been added, Page 101

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*This ER supersedes ER 1180-1-8 dated 30 December 2016

Figure List:

Chapter 1
General Provisions

1-1. Purpose. This regulation is designed to provide guidelines for all U.S. Army Corps of Engineers (USACE) employees tasked with the administration and enforcement of statutory and contractual labor standards on construction contracts.[1] Its primary aim is to affect a uniform enforcement program throughout USACE. Achieving compliance with labor standards requires the understanding of the underlying regulations, initiative, and cooperation on the part of all personnel. This ER contains the answers to the questions that most generally arise in connection with contract labor relations functions on USACE acquisitions. Official acquisition policy is found in the Federal Acquisition Regulation (FAR) and its supplements. If there is any conflict between the FAR and its supplements and this regulation, the current FAR and its supplements apply.

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1-4. General References.

a. Davis-Bacon Act (DBA) of 1931, as amended (now called "Wage Rate Requirements (Construction)" in the FAR) (40 USC chapter 31)

b. Contract Work Hours and Safety Standards Act (CWHSSA) (40 USC chapter 37)

c. Code of Federal Regulations (CFR), Title 29, Parts 1, 3, 5, 6, 7, 10, 13, and 541

d. FAR, Subparts 22.3, 22.4, and 22.5

e. Defense Federal Acquisition Regulation Supplement (DFARS), Part 222

f. Army Federal Acquisition Regulation (AFARS), Part 5122

g. Department of Labor All Agency Memorandums (AAM's)

1-5. Records Management Requirements. The records management requirement for all record numbers, associated forms and reports required by this regulation are addressed in the Army

[1] For USACE guidance on service contracting, see Engineer Pamphlet (EP) 1180-1-1, Service Contract Act Labor Relations.

Records Retention Schedule-Army (RRS-A). Detailed information for all related record numbers are in ARIMS/RRS-A at https://www.arims.army.mil. If any record numbers, forms and reports are not current, addressed and/or published correctly in ARIMS/RRS-A, see Department of the Army (DA) PAM 25-403, Guide to Recordkeeping in the Army.

1-6. Positive Law Codification of Titles 40 and 41. On 29 April 2014, the FAR Council published the final FAR Rule in the Federal Register (79 FR 24192) (FAC 2005-73) concerning the positive law codification of Titles 40 and 41. See FAR 1.110. The codification changed the names of several laws referenced in this ER. To remain consistent with the U.S. Department of Labor's (DOL) terminology for these laws, which, to date, DOL has not changed, each law will be referenced using its traditional name. For a full list of the renamed laws, see Appendix I of this ER.

1-7. Policy. The development and maintenance of good relations between management, labor, and USACE is required for the efficient and expeditious conduct of the USACE construction contract mission. Accomplishment of this objective requires a continuous effort on the part of all personnel assigned to contractor surveillance activities. The proper enforcement of these provisions must be given the same consideration as all other requirements of the contract and specifications.

1-8. Background.

a. The administration of the contract labor program within USACE is governed by the basic labor policy in Part 22 of the FAR. This has been further supplemented by Part 222 of the DFARS, Part 5122 of the AFARS, the USACE Acquisition Instruction (UAI) and USACE Desk Guide (UDG). Additionally, the Secretary of Labor has issued regulations implementing the labor statutes which are published in Title 29 of the CFR, Subtitle A, Office of the Secretary of Labor. DOL also publishes labor-related guidance, including AAM and the Field Operation Handbook (FOH). DOL has sole jurisdiction to issue legal and administrative decisions on labor standards, via the DOL Administrative Review Board (ARB). USACE, as the contracting agency, has joint responsibility with DOL ensuring labor compliance on construction contracts. See FAR 22.406-7, 22.406-8, and 22.406-12.

b. The various labor laws were enacted by Congress to prevent exploitation of labor on Government contracts. The laws incorporated within USACE contracts via the DBA and related clauses afford each laborer and mechanic employed on the contract the right to receive a prescribed minimum rate subject to certain overtime requirements without subsequent rebate or "kickback." Regulations that implement the labor laws are also applicable to the contractors. Failure of a contractor to comply with the labor requirements, coupled with lax enforcement, results in expensive investigations which may require the imposition of penalties, termination of the contract, debarment, and, in some cases, criminal prosecution. A contractor's disregard for

labor standards obligations is frequently accompanied by a disregard for the technical requirements of the contract. Contract quality assurance is a multi-faceted task.

c. Many labor relations problems involve interpretation of law, and for this reason, questions will arise in the field that are not covered in this regulation. Such problems should be brought to the immediate attention of the District Counsel, the District Labor Advisor/ Contractor Industrial Relations Specialist (CIRS), and the HQ Labor Advisor, as appropriate.

1-9. Responsibilities.

a. Policies, procedures, and guidance for assuring compliance are established under the contract, the FAR and its supplements, and the regulations of the Secretary of Labor. All Major Subordinate Commands, districts, laboratories, centers, and field operating activities under the jurisdiction of the Chief of Engineers shall establish a system(s) that ensures the successful implementation of the Davis-Bacon Act labor requirements. Specific actions include the following:

(1) The incorporation of the appropriate wage determination(s), and labor provisions and clauses in solicitations and contracts. See, e.g., FAR 22.404-2 for general requirements, and FAR 22.407 for DBA solicitation provisions and contract clauses.

(2) Conformance requests: The review and evaluation of all contractor requests for authorization of additional classification(s) and rate(s) when such classifications are not provided in the applicable contract wage determination, as well as the subsequent submission of such actions to the Administrator, Wage and Hour Division at DOL. See FAR 22.406-3.

(3) Expeditious withholding or suspension of contract payments if the agency believes a violation exists or upon written request from DOL. See FAR 22.406-9.

b. Contracting Officer (CO). The CO (or via their designated representative(s)) is responsible for the administration and enforcement of labor standards, from the incorporation of the appropriate wage determination(s) in solicitations and contracts, and designation of the work to which each determination or part thereof applies (see FAR 22.404-1 – 22.404-9); to updating of wage decisions and equitable adjustment to the contract price as applicable (see FAR 22.404-12); to investigation and disposition of complaints (see FAR 22.406-8 – 22.406-12). The CO is assisted in this endeavor by both local and field personnel as discussed further below and elsewhere in this regulation.

c. Administrative Contracting Officers (ACO). ACOs and their staffs must fully understand the basic labor clauses and requirements and are responsible for specific duties to accomplish program objectives. The labor requirements must be viewed in the same light and enforced just as

vigorously as all other requirements of the contract. For example, ACOs and their staffs are responsible for:

(1) The performance of required review of all prime and subcontractors' payrolls and field operations to determine their compliance with the labor standards requirements of the contract.

(2) The implementation of the instructions contained in this regulation to assure compliance by all contractors and subcontractors.

(3) The maintenance of the records and submission of the reports prescribed in this regulation, and as required by the FAR and its supplements.

(4) The appropriate delegation of functions. Although the enforcement methods and procedures in this regulation typically are the responsibility of the ACO, there are advantages to sharing responsibilities with the Project Engineer (PE), Quality Assurance (QA) Representative, or other field personnel as appropriate, as to more effectively utilize the available personnel. For example, the PE or QA Representative at the site of the work will have the knowledge and background necessary to perform certain activities of the enforcement procedures. It is strongly recommended that "detailed checking of all payrolls" be specifically delegated to a core set of employees as directed by the District, Division, or Center.

d. CIRS/Labor Advisor. The CIRS is responsible for labor standards programs within the district/center. The CIRS advises, assists, and instructs USACE personnel on labor standards matters during all phases of the construction mission. Based on statutory obligations, regulatory requirements, organizational demands, and public expectations, the CIRS are essential to the success of the district/center's mission. The CIRS is responsible for "preventive industrial relations," and through pro-active measures, seeks to prevent contractor non-compliance as well as disruption of the USACE construction mission.

(1) Contracting agencies are tasked with the primary responsibility for the conduct of labor standards compliance activities for construction contracts subject to DBA. The CIRS will conduct full-scale investigations (when applicable or when requested by higher headquarters) in accordance with the applicable regulations in the FAR and its supplements. The CIRS' investigation will be based on the guidelines contained within AAM No. 118. See Appendix N, 3.

(2) The CIRS also serves as the point of contact for any DOL-initiated investigations. The CIRS will coordinate such investigations and apprise USACE personnel of the status and findings of these investigations. (NOTE: If other USACE personnel are contacted by DOL (such as ACO, Contracting Officer's Representative (COR)) about a labor investigation or any labor issue, CIRS at the district/center level should be immediately notified.)

e. Contractors. The contract labor standards requirements apply to all contractors and subcontractors at all tiers, regardless of their employment policies. The contractor is responsible for: procurement, supervision, and management of all labor required for the completion of the work; compliance with Federal labor standards applicable to the contract and regulations pertaining thereto; and subcontractors' compliance with the contract labor standards requirements.

1-10. General Accountability Office Audit 2020. During the period of May 2020 to March 2021, USACE's labor compliance program underwent a U.S. General Accountability Office (GAO) Audit. In accordance with the FY2020 National Defense Authorization Act, the audit assessed USACE contracting practices, with a specific focus on how USACE monitors and enforces the Davis-Bacon Act. Focus points for the audit included:

a. what guidance USACE has in place for the Davis-Bacon Act monitoring and enforcement, and

b. how selected USACE districts reported monitoring and enforcing compliance with the Davis-Bacon Act. The results of the audit yielded the following results which have been incorporated in this updated version of this ER:

(1) Language at 7-4 (a), General, has been edited to highlight the responsibilities and roles of onsite inspection activities

(2) Language at 7-4 (h), Examination of Payrolls, has been edited to ensure that all payrolls submitted are reviewed for maximum labor compliance

(3) Use of Electronic Software, section 4-16, has been added to assist in addressing Recommendation # 1 of the GAO Audit and to present a more unform method of review of certified payrolls across the USACE Enterprise

(4) The inclusion of a USACE Labor Compliance Roles, Details, and Responsible Official tool has been added to identify roles and responsibilities at the District level, see Appendix J

(5) The inclusion of a USACE Payroll Review Checklist tool that should be used in tandem with the requirements specified at Chapter 4, see Appendix K

Chapter 2
Labor Laws, Regulations and Contractor Requirements

2-1. General. Each of the statutes and their implementing regulations discussed below reflect the Federal Government's commitment to a policy of labor protection. These statutes establish a base hourly wage requirement that must be adhered to ensure labor compliance.

2-2. The Davis-Bacon Act (40 USC chapter 31) (FAR 22.4). This Act applies to contracts in excess of $2,000 for construction, alteration, or repair, including painting and decorating, of public buildings and public works, within the United States, to which the Federal Government or the District of Columbia is a party, or as otherwise specified by law. It specifies that no laborer or mechanic employed directly upon the site of work shall receive less than the prevailing wage rates as determined by the Secretary of Labor. PL 88-349 amended the Act as of July 2, 1964, to include fringe benefits in the "prevailing rate." Both DOL and the contracting agency maintains enforcing authority and oversight requirements under DBA.

2-3. The McNamara-O'Hara Service Contract Act (41 USC chapter 67) (FAR 22.10). This Act applies to Federal contracts in excess of $2,500, the principal purpose of which is to furnish services in the United States (as defined at FAR 22.1001) through the use of service employees, except as otherwise exempted. Service employees include all employees working under a contract except those in bona fide executive, administrative or professional capacities as those terms are defined in 29 CFR Part 541. This definition therefore includes many "white collar" employees formerly excluded prior to the 1976 amendment to the Act. The Act requires minimum wages and fringe benefits as determined to be prevailing by the Secretary of Labor. DOL has primary enforcement responsibility for this law.

2-4. The Walsh-Healey Public Contracts Act (41 USC 6501-6511). This Act prescribes minimum wages to be paid contractor's employees on contracts in excess of $15,000 for the manufacture or furnishing of materials, supplies, articles, or equipment. Further, contracts principally for remanufacturing of equipment which is so extensive as to be equivalent to manufacturing are subject to the Walsh-Healey Act. See FAR Subpart 22.6, 22.1003-3(b), 22.1003-6, and 29 CFR 4.117. The DOL has not issued wage determinations under the Act for many years. Accordingly, the Fair Labor Standards Act minimum wage generally applies. Enforcement responsibility rests with DOL.

2-5. The Contract Work Hours and Safety Standards Act (40 USC chapter 37) (FAR 22.3). This Act applies to both service and construction contracts in excess of $150,000 and requires employees to be paid time and one-half for all hours worked in excess of 40 per week. The Act carries a monetary penalty that applies per day, per employee, and contains certain health and safety standards.

2-6. The Copeland (Anti-Kickback) Act (40 USC chapter 87 and 18 USC 874). This Act makes it unlawful to induce, by force or otherwise, any person employed within the United States in the construction or repair of public works (including those financed in whole or in part by loans or grants from the United States) to give up any part of the compensation to which they are entitled under their contract of employment.

2-7. The Fair Labor Standards Act of 1938 (29 USC 201 et seq). This Act provides for the establishment of minimum wage and maximum hour standards, creates a Wage and Hour Division within the DOL for purposes of interpretation and enforcement (including investigations and inspections of Government contracts), and prohibits oppressive child labor. The Act applies to all employees, unless otherwise exempted, who are engaged in: (1) interstate commerce or foreign commerce; (2) the production of goods for such commerce; or (3) any closely related process or occupation essential to such production. Enforcement responsibilities lie with DOL. Under Final Rule, the Department of Labor revised its regulations located at 29 CFR Part 541 with an effective date of 1 January 2020, implementing exemptions from minimum wage and overtime pay requirements for executive, administrative, and professional, outside sales, and computer employees. See Appendix N,12.

2-8. The Miller Act (40 USC chapter 31) (FAR 28.102). As amended by subsequent legislation and as implemented in the FAR, this Act requires a performance bond for any construction contract exceeding $150,000. In the event of a default termination, or other situation wherein the surety takes over the contract, the surety is bound by the contract terms and conditions, and takes over contractual obligations, including the labor standards requirements. Note that the presence of a performance bond on a construction contract does not void or reduce USACE's responsibilities with respect to labor standards administration and enforcement.

2-9. Executive Orders. Federal contract labor standards can also be established or affected by the President through the promulgation of Executive Orders. Among the most relevant Executive Orders are those noted below:

a. Executive Order 14026, Increasing the Minimum Wage for Federal Contractors (April 27, 2021, 86 FR 22835), which requires that the Federal hourly minimum wage on covered contracts be increased to $15.00 beginning January 30, 2022, and beginning January 1, 2023, and annually thereafter, an amount determined by the Secretary of Labor. As of January 30, 2022, this EO supersedes EO 13658, Establishing a Minimum Wage for Contractors (Feb. 12, 2014, 79 FR 9851), to the extent EO 13658 is inconsistent with EO 14026. This EO also revokes EO 13838 of May 25, 2018 (Exemption from Executive Order 13658 for Recreational Services on Federal Lands) as of January 30, 2022. See FAR 22.19 and clause 52.222-55.

b. Executive Order 11246, Equal Employment Opportunity (Sept. 24, 1965, 30 FR 12319), provides that contractors and subcontractors will act affirmatively to ensure that applicants are

employed, and that employees are treated equally during employment, without regard to race color, religion, sex, or national origin. See FAR 22.8 and Appendix N,13.

c. Executive Order 13496, Notification of Employee Rights Under Federal Labor Laws (Jan. 30, 2009, 74 FR 6107), requires covered contractors to post notice of employee rights under the National Labor Relations Act (NLRA), the law that governs relations between unions and employees in the private sector. See FAR 22.16.

d. Executive Order 13502, Use of Project Labor Agreements for Federal Construction Projects (Feb. 6, 2009, 74 FR 6985), encourages federal agencies, when awarding any contract in connection with a large-scale construction project (defined as a construction project where the total cost to the Federal Government is $25 million or more), to consider requiring the use of a project labor agreement (PLA) to promote economy and efficiency in Federal procurement. Accordingly, an agency may require use of a PLA if the agency decides that use of a PLA will: (1) advance the Federal Government's interest in achieving economy and efficiency in Federal procurement; produce labor-management stability; and ensure compliance with laws and regulations governing safety and health, equal employment opportunity, labor and employment standards, and other matters; plus (2) be consistent with law. See FAR 22.5.

e. On February 4, 2022, President Joseph Biden signed Executive Order 14063, Use of Project Labor Agreements for Federal Construction Projects (87 FR 7363). This EO will revoke EO 13502 as of the effective date of the final regulations issued by the FAR Council to implement EO 14063. EO 14063 makes key changes to the use of PLAs on Federal construction contracts: (1) large-scale construction projects are those that have a total estimated cost to the Federal Government of $35 million or more (with allowance for inflation-related adjustments); and (2) use of a PLA on such projects is mandatory, unless a specifically enumerated exception exists.

f. Executive Order 13706, Establishing Paid Sick Leave for Federal Contractors (Sept. 7, 2015, 80 FR 54697), which requires parties that enter into covered contracts with the Federal Government to provide covered employees with up to seven days of paid sick leave annually, including paid leave allowing for family care. See FAR 22.21.

2-10. Solicitation Provisions/Contract Clauses. Each of the above-noted labor related statutes is incorporated within particular contracts depending upon the nature (construction/service /supply) of the contract, via implementing solicitation provisions and contract clauses. To illustrate, listed below are provisions and clauses which are generally required for fixed-price solicitations and contracts subject to the Davis-Bacon Act (this is not meant to be an exclusive list). (Note that the FAR uses the official statutory name for the Davis-Bacon Act, i.e., "Construction Wage Rate Requirements.") See FAR and DFARS guidance for specific prescriptions on the use of the below listed provisions and clauses.

a. Notice to the Government of Labor Disputes (FAR 52.222-1)

b. Convict Labor (FAR 52.222-3)

c. Contract Work Hours and Safety Standards-Overtime Compensation (FAR 52.222-4)

d. Construction Wage Rate Requirements-Secondary Site of the Work (FAR 52.222-5)

e. Construction Wage Rate Requirements (FAR 52.222-6)

f. Withholding of Funds (FAR 52.222-7)

g. Payrolls and Basic Records (FAR 52.222-8)

h. Apprentices and Trainees (FAR 52-222-9)

i. Compliance with Copeland Act Requirements (FAR 52.222-10)

j. Subcontracts (Labor Standards) (FAR 52.222-11)

k. Contract Termination-Debarment (FAR 52.222-12)

l. Compliance with Construction Wage Rate Requirements and Related Regulations (FAR 52.222-13)

m. Disputes Concerning Labor Standards (FAR 52.222-14)

n. Certification of Eligibility (FAR 52.222-15)

o. Prohibition of Segregated Facilities (FAR 52.222-21)

p. Previous Contracts and Compliance Reports (FAR 52.222-22)

q. Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity for Construction (FAR 52.222-23)

r. Equal Opportunity (FAR 52.222-26)

s. Affirmative Action Compliance Requirements for Construction (FAR 52.222-27)

t. Construction Wage Rate Requirements–Price Adjustment (None or Separately Specified Method) (FAR 52.222-30); Construction Wage Rate Requirements–Price Adjustment (Percentage Method) (FAR 52.222-31); or Construction Wage Rate Requirements–Price Adjustment (Actual Method) (FAR 52.222-32)[2]. See FAR 22.407(e)-(g).

u. Notice of Requirement for Project Labor Agreement (FAR 52.222-33); Project Labor Agreement (FAR 52.222-34)[3]

v. Equal Opportunity for Veterans (FAR 52.222-35)

w. Affirmative Action for Workers with Disabilities (FAR 52.222-36)

x. Employment Reports on Veterans (FAR 52.222-37)

y. Compliance with Veterans' Employment Reporting Requirements (FAR 52.222-38)

z. Notification of Employee Rights under the National Labor Relations Act (FAR 52.222-40)

aa. Combating Trafficking in Persons (FAR 52.222-50)

bb. Employment Eligibility Verification (FAR 22.222-54)

cc. Minimum Wages Under Executive Order 14026 (FAR 52.222-55)

dd. Paid Sick Under Executive Order 13706 (FAR 52.222-62)

ee. Restrictions on Employment of Personnel (DFARS 252.222-7000)[4]

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[2] One of these clauses must be used in fixed-price construction contracts when the contract will contain options by which the Contracting Officer may extend the term of the contract. See FAR 22.407(e)-(g).

[3] Used only if the agency has made the determination that a PLA will be required or optional on a project in accordance with EO 13502 (subject to change upon implementation of EO 14063).

[4] Applicable in solicitations and contracts for work on construction and service contracts performed in noncontiguous states, when the unemployment rate in the noncontiguous state is in excess of the national average rate of unemployment as determined by the Secretary of Labor. See DFARS 222.70.

Chapter 3
Pre-Award Construction Contract Formation Issues

3-1. General. The issues and duties discussed herein apply generally to the CIRS and supporting staff. However, close coordination with the operating elements to include Counsel, Contracting, Engineering, Construction and/or Operations is critical to the successful performance of the tasks noted below. Many of the more contentious and protracted labor matters confronting USACE may be directly attributed to a failure to communicate essential informational needs in a timely and effective manner during the pre-solicitation phase. The DBA terms listed below relate to key elements in the determination of applicability and coverage in the pre-solicitation phase of a construction project.

a. Construction, alteration, or repair. As defined at FAR 22.401, for Davis-Bacon purposes, "construction, alteration, or repair" means all types of work done by laborers and mechanics employed by the construction contractor or construction subcontractor on a particular building or work at the site thereof, including without limitations: altering, remodeling, installation (where appropriate) on the site of the work items fabricated off-site; painting and decorating; manufacturing or furnishing of materials, articles, supplies or equipment on the site of the building or work; transportation of materials and supplies between the "site of the work" and a facility which is dedicated to the construction of the building or work, and thus is deemed part of the site of the work; and transportation of portions of the building or work between a secondary site where a significant portion of the building or the work is constructed, which is part of the "site of the work" and the physical place(s) where the building or work will remain (see "site of the work" definitions, paragraph 4-8, below).

b. "Substantial" Construction. DBA applies to nonconstruction contracts when the contract requires a "substantial" amount of construction work, i.e., greater than $2000, the threshold for Davis-Bacon, as well as the work is segregable and to be performed on a public building or public work. The word "substantial" relates to the types and quantity of construction work to be performed and not merely to the total value of the construction work as compared to the total value of the contract. See FAR 22.402(b) and DOL AAM 130, 131, and 236, Appendix N, 3.

c. "Building" Construction. For purposes of selecting the proper wage determination (see FAR 22.404-2), this includes construction of sheltered enclosures with walk-in access for housing persons, machinery, equipment, or supplies. It typically includes all construction of such structures, the installation of utilities and equipment (both above and below grade level), as well as incidental grading, utilities, and paving. Such structures need not be habitable to be building construction. The installation of heavy machinery and/or equipment does not generally change the project's character as a building. See FAR 22.404-2(c)(1) and DOL AAM 130, 131, and 236, Appendix N, 3.

d. "Residential" Construction. For purposes of selecting the proper wage determination (see FAR 22.404-2), this includes the construction, alteration, or repair of single-family houses or apartment buildings of no more than four stories in height. It typically includes all incidental items such as site work, parking areas, utilities, streets, and sidewalks. See FAR 22.404-2(c)(2) and DOL AAM 130, 131, and 236, Appendix N, 3.

e. "Highway" Construction. For purposes of selecting the proper wage determination (see FAR 22.404-2), this includes construction, alteration, or repair of roads, streets, highways, runways, taxiways, alleys, trails, paths, parking areas, and other similar projects not incidental to building, residential, or heavy construction. See FAR 22.404-2(c)(3) and DOL AAM 130, 131 and 236, Appendix N, 3.

f. "Heavy" Construction. For purposes of selecting the proper wage determination (see FAR 22.404-2), this includes those projects that are not properly classified as either building, residential, or highway. Unlike these other classifications, heavy construction is not a homogenous classification. Because of this catch-all nature, projects within the heavy classification may sometimes be distinguished on the basis of their particular project characteristics, and separate schedules may be issued for dredging projects, water and sewer line projects, dams, major bridges, and flood control projects. See FAR 22.404-2(c)(4) and DOL AAM 130, 131, and 236, Appendix N, 3.

3-2. Rates to be Included in Solicitations. Selection of the proper schedule of rates for a project (i.e., Building, Residential, Highway, Heavy, as discussed above) shall be done in accordance with FAR 22.404-2 and DOL AAM 130, 131, and 236. (Note that wage determinations (WDs) issued by DOL may contain one or more schedule of rates, e.g., Building; Highway & Heavy; etc.).

a. To determine whether more than one rate schedule applies to a particular project, the CO (typically with the assistance of the CIRS) determines whether there is also "substantial" construction of a type that is different from the overall project. The thresholds for this determination are found in DOL AAM 130, 131, and 236. DOL AAM 236, issued December 14, 2020, updated the threshold for the use of multiple Davis-Bacon wage determinations in one contract. Specifically, AAM 236 increased the threshold for needing additional wage determinations from $1M or 20%, to $2.5M or 20%. See Appendix N, 3.

b. Note the threshold requires calculation of the different construction types by both dollar amount and percentage.[5] For example, if a $100M project for construction of a building includes at least $2,500,000 worth of "highway" type work (e.g., parking lots, etc.), the project shall include both a Building and a Highway schedule of rates, even though the highway type work is

[5] The Government estimate is used for purposes of making this calculation. All options shall be included in the project total for this calculation.

less than 20% of the total project value. Likewise, if a $25M project for construction of a building includes at least $500,000 worth of "highway" type work, the project shall include both a Building and a Highway schedule of rates, because this is 20% of the total project value. In accordance with FAR 22.404-2(b), if the WD contains more than one rate schedule (e.g., Heavy & Highway, combined), the CO shall either include only the rate schedules that apply to the particular types of construction (building, heavy, highway, etc.), or include the entire WD and clearly state in the solicitation the parts of the work to which each rate schedule shall be applied.[6] Likewise, when multiple separate WDs apply to one project (such as, separate Building and Highway decisions), the CO shall clearly state in the solicitation the parts of the work to which each WD shall be applied.

c. DOL's regulation states that inclusion by reference is not permitted. This is necessary to eliminate uncertainties with respect to the application of the wage rates on various parts of the work for pricing purposes. Accordingly:

(1) Where only one type of work, such as building construction, is contemplated under a given project, include the applicable Building WD in the advertised specifications. If the WD is only for Building, the solicitation needs only to state that the attached Building WD is applicable to the work. If the WD includes multiple schedules (sch as, a combined Building and Highway WD), the solicitation must state that only the Building schedule of rates within the WD is applicable to the work.

(2) Where a proposed contract involves more than one type of work, such as both building and highway, the applicable Building and Highway WDs shall be included in the advertised specifications. Where these are separate WDs, the solicitation shall state the parts of the work to which each WD shall be applied. Likewise, if the WD includes both Building and Highway, or the Building and/or Highway is combined with another construction type (such as, Highway & Heavy), the solicitation shall either include only the rate schedules that apply to the particular types of construction or include the entire WD(s) and clearly state in the solicitation the parts of the work to which each rate schedule shall be applied.

3-3. Classes of Employees. Because of the differences in coverage of labor laws, construction employees will usually be divided into two basic groups, manual and nonmanual employees.

a. Manual Employees. The DBA applies to construction laborers and trades craftsmen (mechanics), including apprentices, trainees, and working foremen (these latter workers must be listed on the payrolls in the same manner as those they supervise (hours worked, hourly rate paid,

[6] Experience indicates that it is generally better to include an entire wage determination where the WD contains multiple rate schedules (e.g., combined Highway & Heavy), rather than attempt to pull out the rates applicable to only one schedule.

etc.)).

b. Nonmanual Employees. The DBA does not apply to nonmanual employees, including supervisory, engineering, architectural, clerical, and administrative personnel. Also included in the nonmanual class, and thus not subject to the Act, are factory representatives, technical engineers, scientific workers and watchmen. Although the DBA does not apply to watchmen, the Contract Work Hours and Safety Standards Act does apply to watchmen and guards for purpose of overtime compensation.

3-4. Wage Determinations (WDs). DOL is responsible for issuing WDs reflecting prevailing wages, including fringe benefits. See FAR 22.404. Two types of WDs are issued by DOL: general WDs and project WDs. It is critical that the CIRS be cognizant of the distinctions between these types of determinations. The differences between them extend not only to the method of obtaining the determinations but also to their use and terms of effectiveness.

a. General WDs (FAR 22.404-1(a)) reflect those rates determined by the DOL to be prevailing in a specific area for the type(s) of construction described in the determination. The general WDs contain no expiration date and remain in effect until modified, superseded, or cancelled by DOL.

b. Once incorporated in a contract, a general wage determination normally remains effective for the life of the contract, unless the CO exercises an option to extend the term of the contract (see 22.404-12).

c. These determinations shall be used whenever possible. General WDs are available through SAM.gov. General WDs are effective on the publication date of the WD on SAM.gov, or upon receipt of the WD by the contracting agency, whichever occurs first. See FAR 22.404-3(a) for procedures for requesting general WDs.

d. Project WDs (FAR 22.404-1(b)) are issued at the specific request of a contracting agency; are applicable to the named project only; and expire 180 calendar days from the date of issuance unless an extension is requested by an agency and approved by DOL. Once incorporated in a contract, a project WD normally remains effective for the life of the contract, unless the CO exercises an option to extend the term of the contract (see 22.404-12). Project WDs are used only when no general WD applies. The agency may request a project WD through the use of SF 308, Request for Wage Determination and Response to Request.[7] See FAR 22.404-3(b) for procedures for requesting general WDs. The time required for DOL to process project WDs varies according to the facts and circumstances in each case, but at a minimum, expect processing to take at least 30 days.

[7] SF 308 is available at SAM.gov. See Appendix N, 1.

e. In 2022 DOL deactivated several specialty wage decisions at SAM.gov. These decisions were largely specific to dredging procurements. The list, while not inclusive, of deactivated wage decisions can be found at Appendix N, 22. It is critical that maximum effort be undertaken to anticipate the need for WDs and request them in a timely manner. It is thus recommended that the requesting officials coordinate closely with the Project Management Division, and HQs Labor Advisor as needed.

f. The CO should be cognizant of the expiration date of project WDs. New project WDs should be requested prior to contract award if it is anticipated that a determination will expire before contract award. However, there may be unanticipated circumstances such as, bid protests) which preclude contract award before the expiration of the wage determination. While FAR 22.404-5, Expiration of Project Wage Determinations, contains specific guidance concerning the expiration of project wage determinations, Figure 3-1, which follows Chapter 3, outlines the general procedure for extension requests.

g. If a project is contemplated in an area where problems concerning wage rates and classifications are known or may exist because they are controversial in nature (such as, where unions claim building rates apply and contractors or contractors' associations contend heavy or highway rates apply), or where unusual circumstances prevail, a report to the Headquarters Labor Advisor should be prepared giving pertinent data relating to the project, well in advance of the need for a wage determination. Such report will include all available wage data, plans, specifications, a map pinpointing the exact site location(s), and a statement as to the anticipated schedule of bid opening and award. The HQ Labor Advisor will provide the report to DOL so as to minimize the probability of delay due to controversy during the advertising and bid opening period.

3-5. Modifications and Superseded Determinations. General and project WDs may be modified by DOL in order to ensure that prevailing wage rates are maintained. A modification may specify only the items being changed or by reissuing the entire determination with changes incorporated.

a. A new WD may also be in the form of a superseded wage determination; this is typically seen at the start of a new calendar year when WDs are replaced and renumbered to reflect the new calendar year (so it is key to check WD updates at the start of a new year for solicitations out on the street at that time). The need for inclusion of the modification of a general WD for the primary site of the work in a solicitation is determined by the date the modified WD is published on the Wage Determinations page at SAM.gov, or by the date the agency receives actual written notice of the modification from DOL, whichever occurs first. (Note the distinction between receipt by the agency (modification is effective) and receipt by the CO, which may occur later.)

b. During the course of the solicitation, the CO (or their designated representative) shall monitor Wage Determinations at SAM.gov website to determine whether the applicable WD has

been revised. Revisions published on Wage Determinations at SAM.gov website or otherwise communicated to the CO within the timeframes prescribed at FAR 22.404-6(b) and (c) are applicable and must be included in the resulting contract. See FAR 22.404-6 relating to the Agency's responsibilities regarding the effective dates of modifications.

c. While CIR personnel should be totally cognizant of these requirements, the principal (and often, most troublesome) requirements are outlined below:

(1) "10 Day Rule" – applicable to sealed bidding only; requires contracting agencies to accept modifications to WDs received less than 10 days before bid opening unless the CO finds that there is not reasonable time available before bid opening to notify prospective bidders of the change, in which case such finding must be documented in the contract file and submitted to DOL upon request. See FAR 22.404-6(b)(ii).

(2) "90 Day Rule" – applicable to sealed bidding only; provides that if a contract with a general WD is not awarded within 90 days after bid opening, any modification published prior to contract award shall be effective unless the agency obtains an extension of the 90-day period from the Administrator, Wage and Hour Division, DOL. See FAR 22.404-6(b)(6).

(3) See FAR 22.404-6(c) for the effective dates of WD modifications when contracting by negotiation.

(4) See FAR 22.404-6(d) for the effective dates of WD modifications when exercising an option to extend the term of a contract.

(5) Monitoring of DBA WD modifications to ensure compliance with the above requirements may be facilitated through the Alert Service feature at SAM.gov discussed below in paragraph 3-6(b).

3-6. System for Award Management. The website SAM.gov, maintained by the General Services Administration, allows for access to DBA and SCA WDs.

a. Application. Neither SAM.gov nor its accompanying guides relieve the CO or other program users of the requirement to carefully review the solicitation or contract, the FAR and its supplements, and/or DOL regulations related to these actions. Where the CO selects a DBA WD using tSAM.gov, and DOL later determines, whether before or after contract award, that the appropriate DBA WD was not incorporated in a covered contract, the CO, within 30 days of notification by DOL, shall modify the contract to incorporate the applicable WD (retroactive to the date of award) and equitably adjust the contract price if appropriate. See FAR 22.404-9. Similarly, see FAR 22.404-7 for corrections of WDs containing clerical errors.

b. Alert Service Option. To ensure that the CO (or any other interested party) is aware of revisions made by DOL to DBA WDs selected for a specific contract action, the SAM.gov user may register for automatic email notification. Upon selection of an appropriate DBA WD, the user may request email notice of future revisions for a specific period of time, or until a specific date. USACE COs are strongly encouraged to request this automatic notification process.

3-7. Davis-Bacon Act Covered Contracts With Options That Extend the Term of the Contract. Each time the CO exercises an option to extend the term of a contract for construction, or a contract that includes substantial and segregable construction work, the CO must modify the contract to incorporate the most current WD. Note that this is not applicable to regular changes to the contract that extend the period of performance (e.g., a change triggered by a differing site condition); it is only applicable to options that extend the term of the contract.

a. In such contracts, the CO must include a clause that specifies the method by which the contractor shall price such options: FAR 52.222-30, 52.222-31, or 52.222-32. See FAR 22.404-12 and 22.407(e)-(g).

b. If a contract with an option to extend the term of the contract has indefinite-delivery or indefinite-quantity (IDIQ) construction requirements for a single location (or limited number of locations), the CO shall incorporate the WD(s) that was incorporated into the contract at the exercise of the option into all task orders issued during that option period. The WD(s) will be effective for the complete period of performance of those task orders without further revision. See FAR 22.404-12(b). Note that this process will not work with the majority of USACE construction IDIQs, which cover large regions, where the place of performance is not known until issuance of the task order. For such IDIQs, the WD(s) applicable to the task order location will be issued with each task order and shall be effective at the time of task order award, as if the task order were a stand-alone contract.

3-8. Project Labor Agreements.[8] On 6 February 2009, President Obama issued EO 13502 encouraging federal agencies to consider requiring the use of PLAs on federal construction projects. EO 13502 encourages federal agencies, as a part of the procurement planning process for construction projects with a total estimated cost to the Federal Government of $25 million or more, to consider including a solicitation provision requiring a PLA. Pursuant to EO 13502, the CO will determine whether the use of a PLA will advance the Government's procurement interests in cost, efficiency, and quality and in promoting labor-management stability as well as compliance with applicable legal requirements governing safety and health, equal employment opportunity, labor and management standards, and other matters. See FAR Subpart 22.5, Use of Project Labor

[8] PLAs are pre-hire agreements (permissible in the construction industry under the National Labor Relations Act) which are negotiated between organized labor and contractors or contractor associations.

Agreements for Federal Construction Projects.

a. Policy. See UAI 5122.5 for policy regarding the use of PLAs on USACE construction projects, and UDG 5122 for PLA frequently asked questions and the PLA Determination Tool.

b. Documenting the Decision. Each Division is required to submit a report of its PLA actions to the HQs Labor Advisor, on a semi-annual basis. The report should identify all contracts awarded in connection with "large-scale construction projects," as defined in the Order, including the contract number, dollar value of the total contract award, and the product and service code describing the project. For each contract, agencies are to indicate whether a PLA was required in the solicitation, provide a brief explanation of the considerations in deciding whether a PLA was appropriate for the project, and specify at what organizational level the decision was made. Accordingly, it is critical that USACE PCOs document the rationale supporting the decision to either require or not require a PLA and include the decision memorandum in the contract file.

c. As discussed above, on February 4, 2022, President Joseph Biden signed Executive Order 14063, Use of Project Labor Agreements for Federal Construction Projects (87 FR 7363). This EO will revoke EO 13502 as of the effective date of the final regulations issued by the FAR Council to implement EO 14063. Therefore, this section is subject to change upon issuance of the final rule implementing the new EO.

3-9. Prospective Contractor's Compliance with VETS-4212 Reporting Requirement. One of the contracting agency's pre-award obligations is to ensure that prospective contractors have complied with certain affirmative action reporting requirements as described below.

a. Under the Vietnam Era Veterans' Readjustment Assistance Act (VEVRAA), any contractor or subcontractor with a contract of $150,000 or more with the Federal Government must take affirmative action to hire and promote qualified covered veterans as defined by 38 USC 4212.[9] As addressed in FAR 22.1302, contractors and subcontractors must list all employment openings with the appropriate employment service delivery system where the opening occurs, except for executive and senior management positions, positions to be filled from within the contractor's organization, and positions lasting three days or less. The requirement applies to vacancies at all locations of a business not otherwise exempt under the company's Federal contract.

[9] 41 U.S.C. § 1908 requires the FAR Council to review the dollar threshold amounts in certain federal agency procurement related laws, including VEVRAA, every five years to determine whether they need to be adjusted for inflation. This threshold was set at $150,000 in 2015.

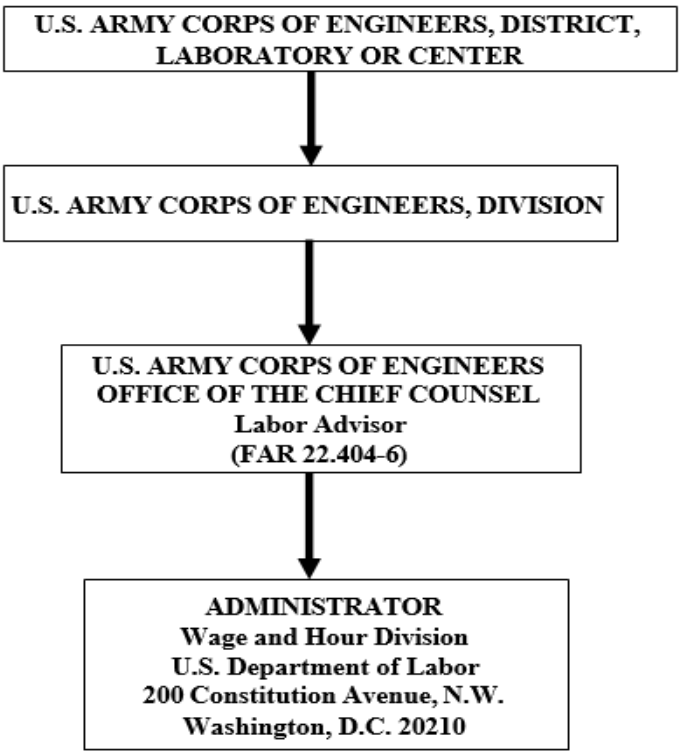
b. Qualified Vietnam-era and special disabled veterans receive priority for referral to Federal contractor job openings listed at those offices. The priority for referral is not a guarantee that referred veterans will be hired. Federal contractors are not required to hire those referred but must have affirmative action plans.

c. Contractors with 50 employees and a $150,000 contract must have a written affirmative action plan. They must be able to show they have followed the plans and that they have not discriminated against veterans or other covered groups. They also must show that they have actively recruited Special disabled veterans, veterans of the Vietnam-era and any other veterans who served on active duty during a war on in a campaign or expedition for which a campaign badge has been authorized, as well as disseminated all information internally regarding promotion activities.

d. As provided by FAR 22.1303(c) and 22.103(b), covered employers must file at least annually a VETS-4212 report, which reflects the number of protected veterans (such as active-duty wartime or campaign badge veterans, Armed Forces service medal veterans, disabled veterans, and recently separated veterans), unless all of the terms of the clause at 52.222-35, Equal Opportunity for Veterans, have been waived (see 22.1305). Instructions, information, and follow-up assistance is provided to employers who do not understand the reporting and other legal requirements. See Appendix N, 14.

e. USACE personnel tasked with ensuring prospective contractor compliance with this obligation may access DOL's VETS-4212 Database. See Appendix N, 15. Additionally, the CO may contact the VETS-4212 customer support via e-mail at VETS4212-customersupport@dol.gov for confirmation, if the proposed contractor represents that it has submitted the VETS-4212 Report and is not listed on the verification file.

3-10. Equal Employment Opportunity. Construction contractors that hold a nonexempt (see FAR 22.807) Government construction contract are required to meet: (1) the contract terms and conditions citing affirmative action requirements applicable to covered geographical areas or projects; and (2) applicable requirements of 41 CFR 60-1 and 60–4. See FAR 22.804-2. See also 22.805(b) (furnishing posters), 22.806 (inquiries), 22.807 (exemptions), 22.808 (complaints), 22.809 (enforcement), and 22.810 (solicitation provisions and contract clauses), as well as the corresponding sections in the DFARS, AFARS, and UAI.



Reference: 29 CFR 1.6(a)(1)
29 CFR 1.6[c](3)(iv)
FAR 22.404-5

Figure 3-1. Processing request for extension of a project wage determination that expires after bid opening but prior to contract award

Chapter 4
Compliance Procedures - Davis-Bacon and Related Acts

4-1. General. This chapter deals with the scope and application of contract labor requirements affecting the district's enforcement program. Each district should maintain a continuing program including:

a. Training appropriate contract administration, labor relations, quality assurance, and other labor standards enforcement personnel in their responsibilities.

b. Assuring that contractors and subcontractors are informed, prior to commencement of work, of their obligations under the labor standards requirements of their contracts. This will occur as part of the pre-construction conference.

c. Adequate payroll review, on site surveillance, and contractor/subcontractor employee interviews to determine compliance, and prompt initiation of corrective action when required.

d. Prompt investigation and disposition of complaints.

e. Prompt submission of all reports required by FAR 22.406-8, Investigations.

f. Periodic review of field enforcement activities to assure compliance with applicable regulations.

g. Semi-annual reporting requirements (see FAR 22.406-13 and 9-5, Semi-Annual Labor Standards Enforcement Report, below).

4-2. Davis-Bacon Act (DBA). The provisions of the DBA apply to contracts in excess of $2,000, for the construction, alteration, and/or repair, including painting and decorating, of public buildings or public works. The Act requires that every such contract contain certain stipulations concerning the rate of wages to be paid laborers and mechanics, and requirements to be met by contractors and subcontractors with respect to the payment of wages earned. The application of the DBA and certain rulings as to its coverage have generated much discussion in the construction industry. Cases involving coverage questions of a borderline nature should be submitted to the CIRS as early as possible.

4-3. Basic Hourly Rates and Fringe Benefits. All WD decisions set forth the minimum basic hourly rates to be paid classes of workers employed by contractors and subcontractors on the contract work. Some decisions also specify certain types of fringe benefits which must be paid to all or some classes of workers. There is considerable variation in the type and amount of fringe benefits in wage decisions applicable to different areas as well as different kinds of

construction. Note that EO 14026, Increasing the Minimum Wage for Federal Contractors, requires that the Federal hourly minimum wage on covered contracts is $15.00 beginning January 30, 2022, and beginning January 1, 2023, and annually thereafter, an amount determined by the Secretary of Labor.

a. Payment of Basic Hourly Rates and Fringe Benefits. FAR 52.222-6, Construction Wage Rate Requirements, explains how the contractor may discharge his obligation to workers in any classification for which the wage decision contains only a basic hourly rate, or both a basic hourly rate and fringe benefits. The method and/or combination of methods by which a contractor discharges his obligation for payment of fringe benefits will depend upon whether or not he is obligated pursuant to approved funds, plans or programs to make payments (contributions) to funds set up and administered for purpose of the particular fringe benefits. Typically, labor agreements obligate the contractor to make payments to trust funds set up, for example, for pensions, health and welfare, and vacations. Some contractors (generally those who operate non-union) do not participate in plans or programs as just mentioned; however, they must still pay the fringe benefits to all workers according to the wage decision. In such cases, the fringe benefits must be paid "in cash" (i.e., included in payroll check).

b. Payroll Information. For details concerning what information should be shown on contractor's weekly payrolls, and statement of compliance to be submitted with payrolls, see Paragraph 4-18.

4-4. Classification of Workers and Minimum Basic Rates. Experience has shown that the most common violation of the DBA is the improper classification of workers. It must be stressed that the workers be classified according to, and in conformance with, the work they perform.

a. The contractor is in violation of the Act when it pays a worker at a wage rate less than that contained in the contract for the classification actually performed. If an individual worker is utilized in performing work of more than one classification, he or she must be paid not less than the contract minimum rate applicable to the respective classifications (for example, if a worker spends 5 hours working as an electrician, and 3 hours working as a plumber, he or she must be paid for 5 hours at the electrician rate and 3 hours at the plumber rate).

b. The contractor's payroll records must show clearly that the worker's total wages have been computed on the basis of not less than the respective contract minimum rates. There may be instances when a worker performs work within two or more trade classifications, each of which are performed intermittently or only occasionally. In such instances, the contractor may elect to pay only one rate for all work performed if the worker is paid not less than the contract minimum rate applicable to the classification with the highest rate in which he works. In any case, payroll records must accurately reflect the classifications of work performed (see, for example, Palisades Urban Renewal Enter., LLP, ARB No. 07-124, ALJ No. 2006-DBA-0001 (ARB Jul. 30, 2009).

c. Working Foremen. Some contractors pay key employees on a weekly or monthly basis, and salary is paid year-round whether they work or not. Generally, those key employees are supervisory personnel in the contractor's organization who are also experienced equipment operators or mechanics. There may be occasions when a contractor, for lack of work elsewhere, will use those regular salaried employees as operators or mechanics on Government work subject to the DBA. As a general rule, working foremen who devote more than 20% of their time during a workweek to mechanical or laborer duties are laborers and mechanics for the time so spent. Accordingly, when they perform covered work, the payroll must show the classifications of work performed, daily and weekly number of hours worked, as well as all other required payroll data. It should be noted that a weekly salary is permissible and may be paid for non-manual (supervisory) work. In cases where the employee performs both covered and non-covered work in the same pay period, one line should show the daily hours worked and wages paid for supervisory work, and one line should show the daily and weekly hours worked as a laborer or mechanic with wages computed on an hourly rate basis.

d. "Independent" Contractors. It is not uncommon for a contractor or subcontractor to claim that a worker performing covered DBA work on site is an "independent contractor" and thus exempt from DBA requirements. The DBA and implementing regulations and clauses make clear that Congress intended that individuals performing the work of laborers and mechanics on construction sites be guaranteed the prevailing wage rate "regardless of any contractual relationship which may be alleged to exist between the contractor or subcontractor and such laborers and mechanics." See, e.g., 52.222-6(b)(1). See Appendix N, 25 - IRS Guidance on Independent Contractors. For questions on this issue, please contact the District or Center CIRS or the Headquarters Labor Advisor.

e. One exception to the "independent contractor" general premise is that, as a matter of administrative policy, the provisions of DBA and CWHSSA are not applied to bona fide owner-operators of trucks who are independent contractors. For purposes of these Acts, the certified payrolls including the names of such owner-operators need not show hours worked nor rates paid, but only the notation owner-operator. This only applies to owner-operators of trucks; it does not pertain to owner-operators of other equipment such as bulldozers, scrapers, backhoes, cranes, drilling rigs, welding machines, and the like. Moreover, employees hired by truck owner-operators are subject to DBA in the usual manner. See the DOL Field Operations Handbook, Chap. 15, para. 15e17 at Appendix N, 4; and paragraph 5-3 of this ER.

4-5. Piece Rate Work. The payment of employees on a piece rate work basis is not, of itself, contrary to the DBA. To ensure that piece rate employees are properly paid guidance should be followed at Wage and Hour Field Operation Handbook, Chapter 15, 15f10 – Piece rate employees at Appendix N, 4.

4-6. Additional Classifications and Rates (Conformances). FAR 52.222-6(c) states that the CO shall require that any class of laborers or mechanics not listed in the wage decision, and which is

to be employed on the contract shall be classified in conformance with the applicable WD. For details concerning the administrative action to be taken by contractors and Government personnel, see Paragraphs 4-22 through 4-24 of this regulation; and AAM's 213 and 233, at Appendix N, 3.

4-7. Wage Rate Posting. Contracts subject to DBA require that a copy of the wage rates be posted at the site of the work. See contract clause 52.222-6(b)(4). This is mandatory by the express language of the DBA, which says, "... the scale of wages to be paid shall be posted by the contractor in a prominent and easily accessible place at the site of the work... ". Sometimes the employees of the subcontractors work in an area on the site which is a considerable distance from the operations of other groups of employees (e.g., constructing ridges, dams, reservoirs, sodding operations). The wage rates must be posted so as to be in a prominent and easily accessible place to them. Thus, a sufficient number of postings of wage rates on each work site will depend upon the circumstances. Additionally, 52.222-6(b)(4) requires display of the Davis-Bacon Act (Construction Wage Rates Requirements) poster WH-1321. See Appendix N, 16. WH-1321 should be posted with the DBA contract WD. The poster contains a space to list the name of the CO; however, for USACE contracts, include in this space the name of the ACO or a member of the ACO's staff designated by the ACO, together with the location of that person's office, rather than the name and address of the CO.

4-8. Site of Work. The wage requirements apply to all mechanics and laborers employed or working directly upon the site of the work. The meaning of the words "directly upon the site of the work" has been extremely contentious over the years, but is currently defined in the FAR and the DOL CFR regulations as follows:

a. Site of the work means –

(1) The primary site of the work. The physical place or places where the construction called for in the contract will remain when work on it is completed; and

(2) The secondary site of the work, if any. Any other site where a significant portion of the building or work is constructed, provided that such site is-

(a) Located in the United States; and

(b) Established specifically for the performance of the contract or project;

b. Except as provided in paragraph (3) of this definition, includes fabrication plants, mobile factories, batch plants, borrow pits, job headquarters, tool yards, etc., provided-

(1) They are dedicated exclusively, or nearly so, to performance of the contract or project; and

(2) They are adjacent or virtually adjacent to the "primary site of the work" as defined in paragraphs (1)(i) of "the secondary site of the work" as defined in paragraph (1)(ii) of this definition;

c. Does not include permanent home offices, branch plant establishments, fabrication plants, or tool yards of a contractor or subcontractor whose locations and continuance in operation are determined wholly without regard to a particular Federal contract or project. In addition, fabrication plants, batch plants, borrow pits, job headquarters, yards, etc., of a commercial or material supplier which are established by a supplier of materials for the project before opening of bids and not on the project site, are not included in the "site of the work." Such permanent, previously established facilities are not a part of the "site of the work", even if the operations for a period of time may be dedicated exclusively, or nearly so, to the performance of a contract. See FAR 22.401 and 29 CFR 5.2(1).

d. Coverage questions. Questions regarding coverage of possible off-site operations should be discussed during preconstruction conferences. Contractors should be questioned about their plans regarding work to be subcontracted and how they propose to conduct operations involving features of the work which lend themselves to an off-site operation. All unresolved questions regarding coverage of off-site operations must be referred to the CIRS together with the facts and circumstances in each case. The HQ Labor Advisor should be contacted as deemed appropriate.

4-9. Contract Work Hours and Safety Standards Act is the Federal law applicable to Government construction contracts requiring the payment of overtime compensation to laborers and mechanics for all hours worked in excess of forty per workweek. The contract clause (52.222-4) applies to all laborers and mechanics, which under CWHSSA includes apprentices, trainees, helpers, watchmen and guards, employed by any contractor or subcontractor in the performance of any part of the work contemplated by the contract. Also, for purposes of CWHSSA, the term "laborers and mechanics" includes workers performing services in connection with dredging or rock excavation in any river or harbor of the United States but does not include any employee employed as a seaman. See FAR 22.300. Watchmen and guards must be paid overtime compensation under CWHSSA, but as previously noted, they are not considered as laborers and mechanics within the meaning of the DBA itself. Consequently, no such classifications are contained in DOL wage determinations. For purposes of overtime compensation, watchmen and guards must be paid one and one-half times their basic or "regular" rate of pay as noted below.

a. Hours of Work - A calendar day is from midnight to midnight; a standard work week is seven consecutive calendar days.

b. Methods of Computing Overtime Compensation.

(1) For all overtime hours worked, covered employees must receive compensation at a rate not less than one and one-half times their basic rate of pay.

(2) There are two methods used by contractors to compute compensation for overtime work. The one most commonly used is to multiply the total regular or straight time hours by the basic or straight time hourly rate, and then multiply the total overtime hours by a rate that is one and one-half times the basic rate, the sum of which is the worker's total gross earnings. The other method is to multiply the total of all hours worked (regular and overtime hours) by the basic hourly rate, and then multiply the total overtime hours by one half the basic rate, the sum of which is the worker's total gross earnings. Either method results in the same gross earnings and satisfies the contract requirements with respect to overtime compensation.

(3) DOL has ruled that the DBA requires the payment of fringe benefits for all hours, including overtime hours. See G&C Enterprises, Inc., WAB Case No. 83-07 (1984).

(4) To illustrate, a wage decision may specify that a particular classification requires the payment of a basic hourly rate of $12.00 and fringe benefits of $4.00 for a total hourly rate of $16.00. To compute the total wages due an employee who has worked 41 hours in a week, the contractor would first multiply the total rate (basic plus fringes) by the hours worked, i.e., $16.00 X 41 = $656.00. Note that fringe benefits have been included. To compute the overtime premium due under the CWHSSA, multiply the $12.00 basic hourly rate by one-half, for example, $12.00 x 0.5 = $6.00, for a total due of $662.00.

c. Employment Under One or More Contracts.

(1) When an employee works for more than one employer under the same contract (for example, the employee works both for the prime and for a subcontractor) all hours worked by the employee must be counted for purpose of computing overtime compensation, even though the employers are not affiliated and separate.

(2) When the employee works for the same contractor under two or more separately awarded contracts, the weekly hours worked under each contract must be combined in computing overtime compensation.

(3) Where two contracts are awarded separately to two different and completely separate and non-affiliated contractors, and when an employee works not more than 40 hours per week under each contract, but in excess of such weekly hours under both if combined, overtime compensation need not be paid under either contract.

(4) As distinguished from subparagraph (3) above, if there is an arrangement between the two employers with respect to the employment, or if the contractors are under common control or direction, the combined weekly employment must be counted for the purpose of computing

the required overtime compensation.

d. Detection and Reporting Violations.

(1) ACOs shall, immediately upon the detection of any violation, notify the CIRS who will make such additional investigation necessary to determine the appropriate course of action to be taken by the CO.

(2) All correspondence with contractors regarding CWHSSA violations, withholding of liquidated damages, and restitution payments resulting from violations will be initiated by the CIRS for the signature of the CO.

e. Contractor's Right of Appeal.

(1) Section 104 of the Act provides that any contractor or subcontractor aggrieved by the withholding of a sum as liquidated damages shall have the right, within 60 days thereafter, to appeal to the head of the agency for which the contract work is done.

(2) Such section also provides that the Agency Head shall have authority to review the administrative determination of liquidated damages and to issue a final order affirming such determination, or if it is found that the sum determined is incorrect or that the contractor or subcontractor violated the provisions of the Act inadvertently, notwithstanding the exercise of due care on his part or that of his agents, recommendations may be made to the Secretary of Labor that an appropriate adjustment in liquidated damages be made, or that the contractor or subcontractor be relieved of liability for such liquidated damages.

f. Notification to Contractors Regarding Violations, and Assessment of Liquidated Damages.

(1) The instructions contained in FAR 22.406-8 are applicable here. As noted above, where the CO's notification to the contractor includes an assessment of liquidated damages, the contractor shall be advised that it may request relief from such assessment. If the contractor does not appeal the proposed assessment within 60 days of such notification, the liquidated damages are assessed automatically.

(2) In those cases, requiring the preparation of a CO's Report with recommendations as to the disposition of liquidated damages, the report should include the CO's notification as well as the contractor's request for relief from the proposed assessment. Figure 4-1, which follows Chapter 4, demonstrates the general process of CWHSSA liquidated damages notification and assessment.

(3) All amounts of liquidated damages will be retained as open accounts payable in the

project account until the final agency determination is received by the impacted contractor. If the determination is in favor of the contractor, the liquidated damages will be released to the contractor. If the determination is to assess the liquidated damages, the funds withheld will be deposited into the General Funds of Treasury.

4-10. Overtime Under Collective Bargaining Agreements. Many collective bargaining agreements provide for premium pay on certain days of the week such as Saturday and Sunday and specific holidays. In some cases, the premium rate is double-time after eight hours and on certain particular days. Under no circumstances will a Government representative require a contractor to pay more than the overtime rate required by the contract, but at the same time will not interfere with an employer paying in excess of the rate required by the contract.

4-11. Overtime Under Fair Labor Standards Act. The FLSA requires payment of time and one-half for work in excess of 40 hours in any one week. It is a part of the general labor law of the United States, and it may apply to some contractors even though it is not expressly included in the contract (see clause 52.236-7, Permits and Responsibilities, which requires contractors to comply with "any Federal, State, and municipal laws, codes, and regulations applicable to the performance of the work"). Whether or not it applies depends upon the facts of each case. Since the Corps' function is limited to enforcement of the labor requirements expressly in the contract, it does not include any administrative duties directly related to enforcement of the FLSA. Similarly, the Corps has no authority to issue advice as to the application of this Act to a contract. DOL is the designated agency for administering the FLSA, for making administrative rulings as to coverage, and for receiving employee complaints under the Act.[10]

a. Similar to CWHSSA, the FLSA also deals with wages, hours and other conditions and practices of employment with respect to employees other than construction workers.

b. Inquiries concerning the applicability of the FLSA to a contract or protests concerning matters pertaining to the Act should be referred to DOL's Wage and Hour Division.

c. Written notations should be made of any inquiries received on these matters. These should be kept in the project files where they will be available for inspection if needed. The notation should contain date, name of inquirer, whether contractor, employee, or labor representative, contract number, subject of inquiry and information furnished to the inquirer. If the inquirer is an employee, his permanent address should be shown; if a labor representative, the

[10] On 15 July 2015, DOL Wage and Hour Division issued Administrator's Interpretative Bulletin: The Application of the Fair Labor Standards Act's "Suffer or Permit" Standard in the Identification of Employees Who Are Misclassified as Independent Contractors. See Appendix N, 17.

name, number, and address of the union he represents should be listed.

4-12. Copeland (Anti-Kickback) Act. The Anti-Kickback Act, as the name implies, covers the kickback of the employee's wages in any manner to his employer.

a. The law states that whoever by force, intimidation, or threat of procuring dismissal from employment, or by any other manner whatsoever, induces any person employed on the contract to give up, or "kickback" any part of the compensation to which he or she is entitled under their contract of employment may be civilly fined a penalty equal to twice the amount of each kickback involved in the violation, and not more than $10,000 for each occurrence of prohibited conduct.

b. A person that knowingly and willfully engages in prohibited conduct may also be subject to criminal penalties under Title 18 of the U.S. code (the criminal code): fines, imprisoned not more than ten years, or both. The applicable contract clause (52.222-10) requires the contractor to comply with the Copeland Regulations of the Secretary of Labor (29 CFR Part 3) which are made a part of the contract by reference. The Secretary's regulations made pursuant to the Copeland Act are for the purpose of aiding in the enforcement of the Anti-Kickback Act which is a criminal statute. Thus, it can be seen that any restricted payment to any employee is a violation, and in certain instances an offense for which there is a criminal penalty.

c. All contractors and subcontractors are bound by the laws and regulations, and ignorance of the law is no excuse. No contract of employment between the employer and employee can legally diminish the rights provided the employee by law. Except for fringe benefits paid to funds, the employee must have full and actual freedom of disposition of his wage payment, whether made in cash or by check, and any restricted payment made to an employee is considered to be a deduction.

4-13. Payroll Deductions.

a. Regulations. See the Secretary of Labor's regulations in 29 CFR Sections 3.5 through 3.10 for detailed guidance at Appendix N, 26.

b. Permissible Deductions. Only those deductions described in Section 3.5 of the Secretary's Regulations may be made without application to and approval of the Secretary.

c. Deductions Which Require Approval. Deductions not permitted under Section 3.5 of the regulations require the written approval of the Secretary. A copy of the Secretary of Labor's written approval to make payroll deductions should be submitted by the contractor and/or subcontractor along with the first payroll on which the deductions are made. Refer to Sections 3.6 through 3.8 of the regulations. Deductions for the following purposes are not permissible unless approved by the Secretary:

(1) Apprentice training funds.

(2) Industry promotion funds.

d. The amount and type of each deduction from each employee's wages must be shown on weekly payrolls. Also, all payroll deductions must be described in the appropriate space on DD Form 879 (Appendix A).

e. Discussion with contractors. During preconstruction conferences, contractors and subcontractors should be reminded that the Copeland Regulations are a part of the contract and that all payroll deductions must be made in accordance therewith. They should be questioned as to the type of deductions they propose to make and if any proposed deductions are not permissible under Section 3.5 of the regulations, they should make applications to the Secretary.

4-14. Apprentices and Trainees.

a. "Apprentice" means (i) a person employed and individually registered in a bona fide apprenticeship program registered with the U.S. DOL, Employment and Training Administration, Office of Apprenticeship and Training, Employer and Labor Services OATELS, or with a State Apprenticeship Agency recognized by OATELS; or (ii) a person who is in the 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 the OATELS or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. See FAR 22.402 and 29 CFR 5.2(n)(1).

b. "Trainee" means a person registered and receiving on-the-job training in a construction occupation under a program which has been approved in advance by OATELS, as meeting its standards for on-the-job training programs and which has been so certified by that Administration. See FAR 22.402 and 29 CFR 5.2(n)(2).

c. The contract clauses noted at Section 2-10 of this ER spell out the strict conditions pertaining to the employment of apprentices and trainees. If the contractor or any subcontractors intend to use either on the job, they should be reminded of the requirements during the preconstruction conference.

d. Evidence of Registration for Apprentices and Trainees.

(1) The written evidence required for apprentices and trainees is described in paragraphs a and b, respectively, of the contract clause 52.222-9, Apprentices and Trainees.

(2) OATELS, or a State apprenticeship agency recognized by OATELS. Concerns regarding whether an apprentice or trainee program is bona fide should be forwarded to the CIRS

for appropriate liaison with the OATELS. See Appendix N, 20.

e. Administration and Enforcement Procedures Related to Apprentices and Trainees.

(1) Upon receipt of the required evidence, the ACO shall accept and use such ratios and rates for the purpose of checking the contractor's and/or subcontractor's compliance with the contract labor standards requirements. The evidence will be made a part of the official contract payroll files. To the extent necessary, copies of the evidence should be furnished to ACO personnel for use in checking payrolls and other on-site enforcement activities. There is no requirement to furnish DOL or other offices copies of the evidence.

(2) Due to turnover or training experience needs of particular apprentices, there may be instances where additional apprentices will be employed on the job after the initial submission of the evidence concerning the contractor's program. In such cases, the contractor will be required to submit the required evidence for the additional apprentices along with the payroll on which the apprentice's name first appears.

(3) The required wage rate for apprentices is the appropriate percentage of the journeyman wage rate which is listed in the prevailing wage determination, and not a percentage of some other journeyman's rate set by various apprenticeship committees. See Johnson Electric Co., WAB Case No. 30-3, (1983).

(4) Whenever a payroll shows employees classified as apprentices or trainees and the contractor has not submitted the required evidence, he will be advised by the responsible ACO that such classification of work will not be accepted until and unless he promptly submits the evidence. If the contractor does not submit such evidence, he shall be directed to pay such employees at the contract (journeyman) wage rate applicable to the classification of work they actually performed.

(5) Similarly, if the contractor exceeds the allowable apprentice to journeyman ratio, those apprentices employed in excess of the ratio would be entitled to restitution at the applicable journeyman's wage rate for the craft work performed. For example, if an employer is permitted to employ three apprentices under his apprentice to journeyman ratio and it is disclosed that he is employing five apprentices on the project, the first three apprentices employed shall be considered within the ratio. The last two employed shall be considered improperly employed and restitution would therefore be due these two. As a practical matter, if it is impossible to determine which apprentices were first employed on the project for purposes of restitution computations, any equitable formula will be acceptable. Thus, in the preceding situation, it would be permissible to rotate three of the five apprentices each week as a solution to the problem of which of these employees were "first" employed on the project, and compute restitution for the remaining employees accordingly.

(6) In the event of controversy between project personnel and the contractor concerning this matter, the facts and circumstances shall be reported to the CIRS for further action.

(7) If an apprenticeship or trainee program is silent with regard to payment of fringe benefits, such employees must be paid the full amount of fringe benefits for the corresponding journeyman classifications as listed on the wage determination, unless DOL determines that a different practice prevails. This section has also been revised to allow contractors to follow the ratios and wage rates (percentages) for approved apprentice and trainee programs in their "home" area rather than requiring contractors to observe the ratios and wage rates in the area where the construction project is performed. See Wage and Hour Field Operation Handbook, Chapter 15, 15e01(g) – Wage computations for apprentices at Appendix N, 4.

(8) The following example illustrates the application of the ratio principle: Assume that a contractor has 100 journeymen and is allowed 10 apprentices. The ratio is thus one apprentice to 10 journeymen. Thus, for example, if he employs 11 journeymen, he will be allowed to employ two apprentices. No apprentice will be allowed unless there is at least one journeyman on the job.

4-15. Helpers.

a. Although the DOL published proposed regulations in connection with the use of semiskilled helpers in 1982, in 1987, in 1989, in 1990, and again in 1996, these regulations have been the subject of both judicial challenges and legislative prohibitions (See, e.g., Building and Constr. Trades Dept., AFL-CIO v. Martin, 961 F.2d 269; Associated Builders & Contractors, Inc. v. Herman, 976 F. Supp. 1 (D.D.C. 1997) as well as Public Laws 102-27 and 103-112).

b. On 20 November 2000, the DOL published (65 FR 69674) a final rule that restored the DOL's policy governing the use of helpers to its pre-1982 position. As provided by the DOL's regulations at 29 CFR 5.2(n)(4), helpers will be permitted where:

(1) The duties of the helper are clearly defined and distinct from those of any other classification on the wage determination;

(2) The use of such helpers is an established prevailing practice in the area; and

(3) The helper is not employed as a trainee in an informal training program. A ''helper'' classification will be added to WDs pursuant to 29 CFR 5.5(a)(1)(ii)(A) only where, in addition, the work to be performed by the helper is not performed by a classification in the wage determination

4-16. Use of Electronic Software for Processing Davis-Bacon Act Certified Payrolls on USACE Construction Contracts

a. The Davis-Bacon Act requires contractors performing on federally funded and assisted construction contracts to submit weekly payroll statements to the contracting officer. All payrolls are required to be reviewed to ensure labor compliance and to be maintained for a period of three (3) years after contract closing.

b. Based on the GAO recommendations found in GAO #GAO-21-203R, the vast number of statements required to be maintained under the requirements of the Davis-Bacon Act, and the USACE expanding construction missions, Districts are strongly encouraged to require contractor use of electronic record systems.

c. Supporting the use of electronic software, in 2004, the U.S. Department of Labor, Wage and Hour Division, issued a letter to USACE advising that the submission of electronic signatures satisfied the requirements of the Copeland Act and its regulations. See Appendix N, 23.

d. To implement the use of electronic payroll processing, and in general, USACE contracting components should insert the Unified Facilities Guide Specifications (UFGS) 01.30.00 Administrative Requirements in all procurements. This language may be included as a specification, but not as a clause, in accordance with direction from the Office of the Deputy Assistant Secretary of the Army staff. See Attachment 9 to the UDG, paragraph 3. See also Appendix L; and paragraphs 4-17 – 4-19 of this ER.

e. The vendor is the system of record. All payrolls should remain with the vendor after contracting closing. The vendor is required to maintain payroll records for a period of at least three (3) years after contracting closing. However, upon the USACE Representative's request the electronic records vendor shall securely provide any requested certified payrolls to the USACE Representative via a Compact Disc, Digital Versatile Disc, or another reliable secondary storage method. The storage vendor or method used must be noted to the specific contract file in Procurement Contract File (PCF). The note to the PCF must identify the secondary storage method (for example, CD #0000) and the vendor name and vendor POC. This is required to effectively locate payrolls should the payroll files be needed to address a Wage and Hour Division investigation, or for other reasons, such as a FOIA action.

f. Electronic Software Processing is a tool that assist the Federal agency with timely, paperless collection, and real-time review of certified payrolls. Therefore, the systems are and should be used as a measure for ensuring compliance. However, these systems are not designed to replace the human review. Consequently, along with the ePayroll system compliance reviews, each District must ensure that no less often than bi-weekly a review of the payrolls submitted by a vendor are checked to ensure that quality assurance reviews align with the vendor system reviews and vice versa. The quality assurance review also requires the Government employee to review and address any vendor system generated red flags. All generated red flags must be discussed with the contractor during the weekly contract status meeting. Any unresolved issues

will be documented to the contractor in a formal letter. The formal letter must become a part of the final record in the PCF.

g. To ensure that quality assurance actions are effective, the ePayroll system of review will identify when the Government official conducts quality assurance actions. The ePayroll system must also generate a cumulative ENG 3180 summary report, at the end of the contract, for a particular contract. This form will be signed by the Contracting Officer Representative or a designated representative and placed in the PCF.

h. References supporting ePayroll use are as follows:

(1) FAR Contract Clause 52.222-8, Payrolls and Basic Records

(2) FAR Contract Clause 52.222-13, Compliance with Construction Wage Rate Requirements and Related Regulations

(3) Unified Facilities Guide Specifications (UFGS), See Appendix L

(4) Potential ePayroll Vendors, See Appendix M

4-17. Non-Use of Electronic Software for Processing Davis-Bacon Act Certified Payrolls on USACE Construction Contracts

a. The Davis-Bacon Act requires contractors performing on federally funded and assisted construction contracts to submit weekly payroll statements to the contracting officer. All payrolls are required to be reviewed to ensure labor compliance and to be maintained for a period of three (3) years after contract closing.

b. Where a particular procurement is not subject to the ePayroll vendor guidance specified in 4-16 above, the responsible District must take the following actions to ensure labor guidance:

(1) Ensure review of all certified payrolls received

(2) Ensure payroll reviews properly identify all violations found and the action(s) taken to remedy the identified violations

(3) Ensure that quality assurance reviews are reflective of the certified payroll reviews and any findings of violations

(4) Maintain A Contractor Payroll Record, ENG Form 3180-R (Appendix G), for each contract. When all work on the individual contract is complete, this record will be signed by the ACO and placed in the PCF, see paragraph 7-7 below.

(5) A Memorandum for Record must specify the contract payroll files storage location (such as, CD #0000). This is required to effectively locate payrolls should the payroll files be needed to address a Wage and Hour Division investigation, or for other reasons, such as a FOIA action.

4-18. Content of Payrolls and Basic Records.

a. Content and Format.

(1) The WH-347 Form, Payroll, is an optional tool. A printable and fillable format of Form WH-347 can be found at Appendix N, 21. Automatic calculations are available under the fillable format. Although use of the WH-347 Form is optional, certain information is required to be shown on each payroll for all laborers and mechanics, including apprentices, trainees, watchmen, and guards[11] working at the site of the work. The payrolls must be numbered consecutively and contain the following information: Name and an individually identifying number (such as, the last four numbers of the employee's social security number)[12] of each employee; the employee's correct classification; hourly rate of pay; daily and weekly number of hours worked; gross earnings; deductions; and actual wages paid.

(2) The payroll heading should show the name and location of the project, contract number, the name of the contractor or subcontractor and the payroll period. The last payroll should be clearly marked "Final Payroll".

b. Fringe Benefits Information to be Shown on Payrolls. (See paragraph 4 of this chapter for discussion of fringe benefits as they appear in wage rate decisions.)

(1) The Statement of Compliance, DD Form 879, (Appendix A), contains blocks wherein contractors are required to indicate the method they are using to pay required fringe benefits, i.e., whether they are paying to funds or to the employees, or a combination of both. See the

[11] Watchmen and guards are reflected on payroll records for Contract Work Hours and Safety Standards Act only.

[12] On 19 Dec 2008, DOL revised its regulations at 29 CFR 5.5(a)(3) regarding the inclusion of full social security numbers and home addresses for covered employees. While this information is no longer required to be furnished on the weekly payroll submittal, the contractor must nonetheless maintain these records and make them available to the CO upon request for specific compliance review purposes.

instructions on the reverse of that form.

(2) Where the contractor indicates that all fringes are paid to funds (block (4)(a)), the fund must be identified, and the amount contributed to ensure that the total (basic + fringe benefit) hourly wage obligation has been satisfied. If fringes are paid in cash, such payments must be shown on the payroll.

(3) Overtime premium compensation is not required to be paid on fringe benefits. For this reason, and to clear on the payroll what basic hourly rate is being paid, the rate(s) of fringe benefits paid in cash should be shown separately. If the contractor uses a lump sum rate (as per the example on reverse of DD Form 879) to compute cash in lieu of all fringes, such rate must be not less than the total of all required fringe benefits.

4-19. Statement of Compliance, DD Form 879.

a. DD Form 879 is to be executed in accordance with 29 CFR Part 3, Section 3.3(b) and submitted with each weekly payroll.

b. Some contractors use a combined payroll statement form. The statements on such payroll forms are acceptable in lieu of DD Form 879, provided the statements contain the exact language of DD Form 879, and are properly executed.

c. DD Form 879 is available online.

4-20. Submission of Payrolls.

a. Time of Submission. The Payrolls and Basic Records contract clause (52.222-8) requires that payrolls be submitted weekly and makes the prime contractor responsible for the submission of payrolls of all subcontractors. In this regard, prime contractors are to be reminded that they are more than mere conduits for the transmission of payrolls. They are obliged to ensure that all required information is furnished on such payrolls prior to their submission to the Government. Submission to the ACO within seven calendar days after the regular payment date of the payroll week covered, is considered compliance with the contract clause. A sample payroll is attached as Appendix B.

b. Delinquent Payrolls.

(1) FAR 22.406-6(b), Withholding for Non-Submission, states that if the contractor fails to submit his or his subcontractors' payrolls promptly, the CO shall withhold approval of such amount of the progress payment estimate as he or she considers necessary to protect the interests of the Government, or of the employees of the contractor or any subcontractor.

(2) Any action pursuant to (1), above, will be taken by the CO in accordance with contractual general requirements. If the contractor becomes delinquent and does not promptly respond to requests by the ACO to comply, the latter shall report the problem to the CO and CIRS for further action.

4-21. Request for Authorization of Additional Classification and Rate - Standard Form (SF) 1444 (Conformances). SF1444 (Appendix C) is to be used to accomplish the "conformance" action required by paragraph (c) of clause 52.222-6. The additional classification process is outlined in Figure 4-2, which follows Chapter 4. This process is explained in the sections that follow. The SF1444 can be found at Appendix N, 5.

4-22. Instructions to Contractors - Conformances.

a. A conformance action, i.e., a request for authorization of additional classification(s) and rate(s), is the process which establishes wage rates for classes of employees which are not included in the applicable wage determination(s) already issued (for example, the work to be performed is not performed by any classification listed in the wage determination). The DOL's regulations outlining conformance procedures are set forth at 29 CFR 5.5(1)(ii); see also FAR 22.406-3 and FAR Clause 52.222-6(c). Information about the conformance process may also be found at the end of individual WDs. The conformance process results in expanding the WD to cover classes of construction employees needed for the contract's performance (either prime or subcontractors) that are not included in the applicable WD(s). Conformed wage rates must be paid to all employees in the affected class retroactive to the date such employees commenced any contract work. Such rates are treated as if the rates and classes had been included on the original wage determination issued for the contract and are not generally considered a change to the contract, thus an equitable adjustment to the contract price is not required.

b. The contractor should be instructed regarding the processing of the form as soon as it is determined that additional classifications are required. This matter should be discussed at the preconstruction conference to determine which, if any, additional classifications will be required by the contractor or subcontractors.

c. The conformance action is initiated by the prime contractor following contract award through the submission of SF1444 to the CO no later than 30 days after the unlisted class of employees performs any contract work (see FAR 22.406-3); FAR 52.222-6(c). The contractor completes blocks 2 through 15 on the form. Where a subcontractor is to use the requested classifications, the name and address of the subcontractor will be shown in block 10 and signed by the subcontractor in block 14. Where no subcontractor is involved, block 10 should show "Not Applicable."

d. It is important to emphasize that the contractor's proposal be supplemented by information relating to how the proposed wage rate was developed. For example, the contractor

may identify similar construction projects in the vicinity of the USACE contract where such a classification and rate was used. Further, there has to be a "reasonable relationship" (i.e., an appropriate level of skill comparison) between such unlisted classifications and the classifications listed in the wage determination.

e. It is essential that the contractor proposal address item 16 of the SF1444 which reflects the concurrence or non-concurrence of the affected employees or their representative. If there is no duly elected (union) representative, each employee who will be working under the proposed conformed rates should sign this form. If no employees have been hired, this may be indicated on the form.

f. In reviewing the contractor's request, the CO should be aware that a conformed class may be added to the wage determination provided the work to be performed by the class is not performed by any other class listed in the wage determination issued. The following principles apply to the CO's review of the conformance request:

(1) Conformances may not be used to artificially subdivide classes already listed in the WD. For example: A glazier classification is the same job (in terms of knowledge, skills, and duties) as a window installer. If a glazier was listed in the wage determination, a conformance cannot be based on splitting the job into two jobs – glazier and window installer.

(2) Conformances cannot take two or more classes listed in the WD and combine the into a new class to be conformed. For example, a contractor cannot take some of the duties of a mechanical insulator and combine them with the duties of a heat and frost insulator thereby establishing a new position with a different conformed wage rate.

(3) Laborers and mechanics are required to be paid the prevailing wage for the laborer classification of work actually performed. A bona fide conformance request must not be based on the lowest wage rate listed on the applicable wage decision but bear a reasonable relationship to the other crafts of work listed on the wage decision. For example, if an electrician is the classification needed, the proposed wage rate should be compared to other comparable skilled crafts listed on the wage decision (i.e., Sheetmetal worker) and not that of a laborer classification, which typically requires a lower wage rate. See AAM 213, found at Appendix N, 3.

(4) Apprentice and Trainee classes cannot be conformed.

(5) Helper classes, including those in skilled maintenance trades (e.g., electricians, machinists, and auto mechanics) cannot be conformed. However, helpers in skilled maintenance trades whose duties constitute separate and distinct jobs may be used if listed in the WD (see 29 CFR 5.2 (n)(4)).

g. The CO must exercise good business judgement as to the proper rate for conformed

classes. The primary considerations should be the welfare of the workers and the need to have a stable, qualified workforce to perform the Government's work. The CO should be alerted to the possibility that the contractor may be attempting to use a conformance to lower labor costs and thereby increase profits or competitive advantage.

4-23. Disposition of the Conformance Request.

a. The CO reviews the request for completeness and signs the SF1444 designating the contracting agency's concurrence or disagreement with regard to the contractor's proposal. If the CO disagrees with the contractor's proposal, a statement must be attached supporting a recommendation for different rates. The CO then submits the proposal with all attachments to the Wage and Hour Division at DOL for review.

b. To submit completed SF1444 Requests to the Department of Labor via email, scan the completed form and all supporting documents into a PDF file and attach to the email. Include the CO's name, address, telephone, and email address, and submit the email to: WHD-CBACONFORMANCE_INCOMING@dol.gov.
Contracting Officers may also submit completed SF1444 Requests to DOL via regular mail, addressed to:

U.S. Department of Labor, Wage and Hour Division
Government Contract Wage Determinations
200 Constitution Avenue NW
Washington, D.C. 20210

c. The Wage and Hour Division will approve, modify, or disapprove the action, or render a final determination in the event of disagreement within 30 days of receipt, or will notify the CO within 30 days of receipt that additional time is necessary. The final determination of the conformance action by the Wage and Hour Division shall be transmitted to the CO who shall promptly notify the contractor of the action taken (the contractor has 30 days to appeal the decision, so it is imperative we do not affect their appeal timeline by failing to forward the DOL decision timely). Each affected employee shall be furnished by the contractor with a written copy of such determination, or it shall be posted as a part of the wage determination.

d. Pending a response from DOL, the contractor is obligated to pay the proposed wage and benefit rates. The wage rate and fringe benefits finally determined by DOL pursuant to the conformance process shall be paid to all employees performing in the classification from the first day on which contract work is performed by them in the classification. Failure to pay such unlisted employees the compensation agreed upon by the parties and/or finally determined by the Wage and Hour Division retroactive to the date such class of employees commenced contract work shall be a violation of the DBA and the contract. See FAR clause 52.222-6(c)(4); 29 CFR §5.5(a)(1)(ii)(D).

e. Posting - Upon receipt of the DOL's determination, the CO shall furnish the contractor with DOL's determination. Further, the contractor will be required to post all approved classifications and rates along with the contract WD in a place accessible to all employees at the project site.

f. The contractor assumes the risk of misjudging unlisted rates when formulating the bid or proposal (see, e.g., Sunstate International Management Services, Inc., B-227036, Jul. 31, 1987, 87-2 CPD ¶ 124). If the contractor bids unreasonably low labor rates, the conformance action cannot be used as a method to enhance the contractor's financial position to the detriment of the employees. Further, absent unusual circumstances, the conformance process is not considered a "change" to the contract and the contractor is not entitled to an equitable adjustment because the burden of inaccurate or missing wage rate classifications is placed on the contractor, not the Government, by the contract, the Davis-Bacon Act, and case law. See, for example, Merit Construction Co., GSBCA 12426, 94-3 BCA P 26969.

4-24. Conformance Appeals.

a. After the contractor receives the conformance decision from DOL (forwarded by the CO), if they disagree with the decision, they may request to appeal it. The timeframe for the contractor to request an appeal is within 30 days of the date of the DOL conformance decision (again, why it is critical that the CO promptly forwards the decision). This is an appeal to DOL in accordance with DOL procedures and is not done under the Disputes clause of the contract. The contractor may request the Branch of Construction and Wage Determination to review its conformance decision; this is referred to as a branch review. To appeal, the contractor submits a letter listing the concerns with the decision. A full statement of the contractor's position and any relevant information (wage payment data, project description, area practice material, etc.) should accompany the request. Normally, a decision of this type is made within 30 days. The Wage and Hour Administrator conducts this review. The request is sent to:

U.S. Department of Labor Wage & Hour Administrator
200 Constitution Avenue
N.W. Washington, D.C. 20210

See 29 CFR 1.8. The conformance decision letter itself typically has information on contacting DOL about any questions or concerns regarding the conformance request. If the decision of the Administrator is not favorable, the contractor may appeal directly to the DOL ARB (see 29 CFR Part 7).

b. The CO is also an "interested party" in a conformance, and as such, also may disagree with the DOL's determination with respect to a conformance action. Like the contractor, the CO may therefore request re-consideration of the DOL's decision by forwarding objective

information/data to the Administrator who will respond within 30 days of the request, as discussed above. If the Administrator denies the request for re-consideration, the CO may pursue the matter through a petition to the ARB, as discussed above. Any appeals to the ARB should be closely coordinated with the District Labor Advisor. See Appendix N, 5 – Wage and Hour Division Conformance Guide.

4-25. Subcontracts (Labor Standards). The contract clause set forth at FAR 52.222-11 imposes the certain requirements upon the contractor as noted below.

a. Notice of Award of Subcontracts. This contractual clause requires that within 14 days after the award of any subcontract, either by the contractor or a lower tier subcontractor, the contractor shall deliver to the CO a statement setting forth the name and address of the subcontractor and a summary description of the work subcontracted. At the same time, the prime contractor is required to furnish a statement signed by the subcontractor acknowledging the inclusion in his subcontract of applicable labor clauses.

b. SF1413, Statement and Acknowledgement. This form (Appendix D) is prescribed for use in complying with the required 52.222-11 notification by the prime contractor and the acknowledgment required of the subcontractor. The executed form should be forwarded to the ACO.

4-26. Physical Inclusion of Labor Clause in Subcontracts.

a. Clause 52.222-1129 CFR 5.5(a)(6) also requires that such clauses be "inserted" in subcontracts, i.e., physically included.

b. For purpose of advising contractors, the following information should be included in preconstruction labor relations letters and discussed during preconstruction conferences. Physical inclusion of labor clauses is required for compliance with the contract clause entitled "Subcontracts (Labor Standards)." However, contractors who subcontract by means of purchase orders or other informal type contract forms will be considered in compliance provided they attach copies of the appropriate labor standards clauses to the subcontract form and provided also that the subcontractor acknowledges receipt in writing.

c. The prime contractor is not required to furnish the CO or ACO copies of their subcontract agreements. The only evidence required is the SF1413 properly executed by both the prime and subcontractors.

4-27. E-Verify and Undocumented Workers.

a. E-Verify. Based on Administration directives arising from EO 12989 and EO 13465, the Department of Homeland Security developed the Employment Eligibility Verification

System (E-Verify). While there are very specific E-Verify program registration and participation requirements set out in the Department of Homeland Security regulations, in general, see FAR 22.18, Employment Eligibility Verification:

(1) requires the insertion of the E-Verify clause (52.222-54) for prime contracts that exceed $150,000;

(2) requires inclusion of the clause in subcontracts of over $3,500 for services or for construction;

(3) allows the Head of the Contracting Activity to waive E-Verify requirements after contract award, either temporarily or for the period of performance, "in exceptional cases," on a non-delegable basis, and;

(4) requires contractors and subcontractors to use E-Verify to confirm the employment eligibility of all existing employees who are directly performing work under the covered contract.

b. During routine labor standards compliance activities, USACE CIRS or field administration personnel have occasionally identified the possible presence of undocumented workers performing on USACE construction contracts. The DOL has advised contracting agencies that regardless of immigration status, such workers are entitled to the minimum wage protections set forth in the DBA. USACE, to the maximum extent possible should ensure that undocumented employees receive proper wages and benefits under the law. In the event that the presence of undocumented workers is suspected on USACE contracts, contact your Office of Counsel. See Appendix N, 18. In addition, where the CO deems appropriate, a bona fide undocumented worker violation should be included in the contractors CPARS.

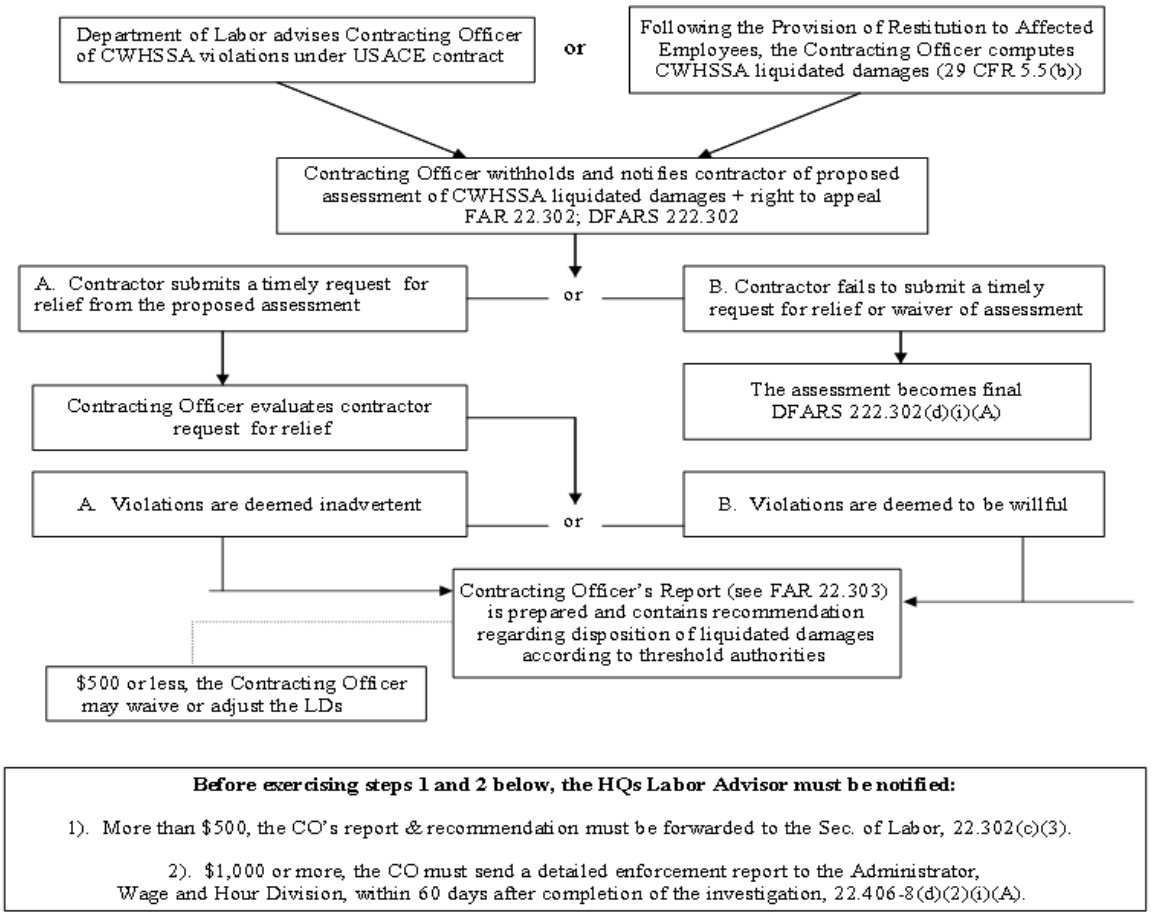


Figure 4-1. Processing of Contracting Officer Reports Relating to Contractor Violations of the Contract work Hours and Safety Standards Act (CWHSSA) and the Assessment of Liquidated Damages

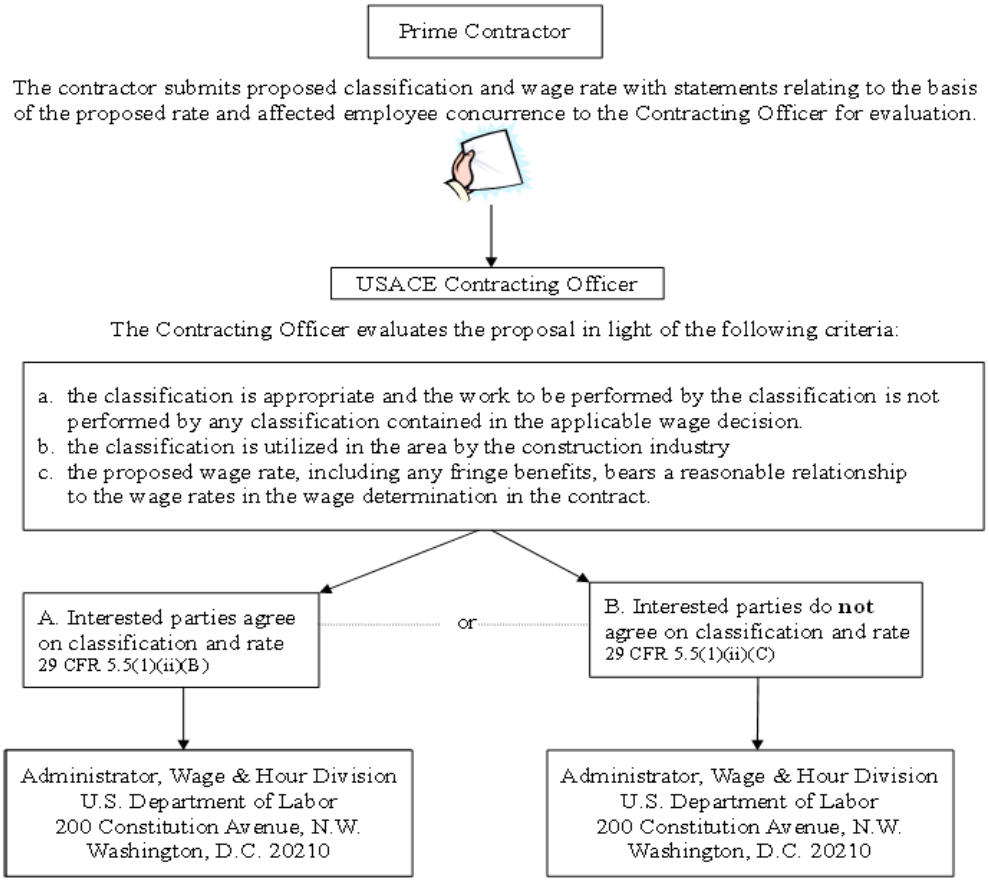


Figure 4-2. Processing of SF1444, Request for Authorization of Additional Classification and Rate

Chapter 5
Applicability of Contract Labor Requirements to Various Situations, Conditions, and Work Activities

5-1. General. This section deals with questions about coverage of the DBA and related Acts. During the past few years, the enforcement activities of Federal agencies have resulted in many decisions by DOL. This part only covers situations that are most common to USACE construction activities. Consult the CIRS or Counsel with questions about a particular situation.

5-2. Survey Crews. The previous guidance issued by DOL in AAM 212, Applicability of Davis-Bacon labor standards to members of survey crews, was rescinded by AAM 235 on Dec. 14. 2020. See Appendix N,3. Section 15e20 of the DOL FOH was not revised as provided for in AAM 212. Questions on this subject should be directed to the HQs Labor Advisor.

5-3. Owner-Operators of Construction Equipment. As a matter of administrative policy, the provisions of DBA/CWHSSA are not applied to bona-fide owner-operators of trucks who are independent contractors. For purposes of these acts, the certified payrolls including the names of such owner-operators need not show hours worked nor rates paid, but only the notation owner-operator.

a. Owner-operators of equipment such as bulldozers, backhoes, cranes, drilling rigs, welding machines, and the like are subject to the provisions of DBA/CWHSSA.

b. In some cases, the "owner-operator" might own trucks in addition to the one driven by the owner-operator. Employees of the owner-operator such as the drivers of those trucks are not exempt and must be paid in accordance with the contract clauses.

5-4. Operators of Rented Construction Equipment. Excepting the owner-operators discussed in 5-3, all operators of equipment rented by the prime contractor or any subcontractor for use in performing the contract work are covered by the contract clauses.

a. Method of Computing Earnings.

(1) The method of computing earnings, i.e., per yard, does not have any effect on the status of the operator of the equipment with respect to coverage. Neither does the fact that the equipment is rented on a fixed fee per hour fully operated basis.

(2) To satisfy the DBA, covered operators must be compensated for each hour worked at a rate which is not less than the proper minimum hourly rate specified in the contract.

(3) To satisfy contract overtime compensation requirements, covered operators must be compensated at not less than one and one-half times their basic hourly rate for all hours of

over-time work.

b. Payrolls.

(1) It is clear from the language of the DBA that equipment operators performing the work of laborers and mechanics must be paid not less than the aggregate of the basic hourly rates and fringe benefits regardless of any contractual relationship which may be alleged to exist between the contractor or subcontractor and such laborers and mechanics (e.g., "independent contactors"). Also, they must be paid overtime compensation as required by the CWHSSA. Therefore, payrolls must be submitted for such operators.

(2) Equipment owners furnishing operators with the equipment to perform covered work are considered to be subcontractors and must comply with all the contract labor standards requirements; however, the contract with the equipment owner for the manned equipment may provide for payment of the operators by the prime contractor or subcontractor, in which event the operators will be reported on their payrolls.

(3) The required content of payrolls and basic records is the same as for any other covered workers. Also, since payrolls and Statement(s) of Compliance pertain only to compensation for wages, no amounts for equipment rental should be included. Making deductions (withholdings) from wages which may be required by Federal or other tax laws and labor agreements is the responsibility of the employing contractor. An employer's compliance with such withholding requirements is not within the enforcement jurisdiction of contracting officers; however, to the extent deductions are made they are subject to the contracting officer's enforcement of relevant contract labor standards requirements.

5-5. Equipment Repair Activities.

a. Repairs at Job Site by Employees of Construction Contractors and Subcontractors. Laborers and mechanics employed by such contractors and working at the site of construction repairing equipment used on the covered contract must be paid in accordance with the contract labor standards requirements.

b. Subcontractor Status of Equipment Dealers Pursuant to Lease Arrangement with Construction Contractors.

(1) This applies to situations where the equipment used by construction contractors is leased or rented from equipment dealers and the lease provides that laborers and mechanics employed by the equipment rental dealer are required to go to the site of construction to repair the equipment. This does not apply to purchased equipment and repair work done pursuant to manufacturer's or dealer's written warranties and/or guarantees.

(2) The Solicitor of Labor has ruled that equipment rental dealers are considered subcontractors under the DBA where substantial and recurring repair work on the construction site is involved, "substantial" being defined as work exceeding 20 percent of a person's time in any work week. Accordingly, where laborers and mechanics employed by such an equipment rental dealer subcontractor perform work meeting the test, they are covered workers entitled to the benefits of the DBA as well as all other contract labor standards requirements. See Griffith Co., WAB Case No. 64-3 (1965).

c. Repairs at Home Shop. Where the contractor has an established home shop (i.e., not on the construction site) to work on equipment, including equipment used on covered and noncovered contracts, the laborers and mechanics employed therein need not be paid in accordance with the contract.

5-6. Truck Drivers.

a. Truck drivers are *covered* by the DBA in the following circumstances:

(1) Drivers of a contractor or subcontractor for time spent working on the site of the work.

(2) Drivers of a contractor or subcontractor for time spent loading and/or unloading materials and supplies on the site of the work, if such time is not *de minimis* (such as, only a few minutes at a time merely to pick up or drop off materials or supplies).

(3) Truck drivers transporting materials or supplies between a facility that is deemed part of the site of the work and the actual construction site.

(4) Truck drivers transporting portions(s) of the building or work between a site established specifically for the performance of the contract or project where a significant portion of such building or work is constructed and the physical place(s) where the building or work called for in the contract(s) will remain.

b. Truck drivers are *not covered* in the following instances:

(1) Material delivery truck drivers while off the site of the work.

(2) Drivers of a contractor or subcontractor traveling between a DBA job and a commercial supply facility while they are off the site of the work.

(3) Truck drivers whose time spent on the site of the work is *de minimis*, such as only a few minutes at a time merely to pick up or drop off materials or supplies.

c. DOL's wage determinations contain various truck driver classifications. In some

decisions, the minimum hourly wage rates vary according to the capacity of the trucks. Some trucks are listed by cubic yard capacity and others are listed according to ton capacity. As a result, questions may arise with respect to the proper wage rate to be applied. The controlling factor is the load carrying capacity of the vehicle and not the rating for registration or other purposes (Solicitor of Labor Opinion letter, 21 Feb 1962).

5-7. Furnishing Materials and Hauling Operations.

a. General. Whether the party is a DBA-covered subcontractor or supplier, or a bona fide non-covered materialman (material supplier) in relation to the prime contractor or subcontractor is dependent upon the application of the term "subcontractor," as distinguished from the term "materialman" to the activities involved. Neither the DBA nor the FAR or DOL's regulations at 29 CFR Part 5, specifically define the terms "subcontractor" and "materialman" as such.

b. FAR and CFR Definitions.

(1) FAR 22.401 and 29 CFR 5.2(j), say that the terms "construction," "prosecution," "completion," and "repair" mean all types of work done by laborers and mechanics on a particular building or work at the site thereof, including the transporting of materials and supplies to or from the building or work by the employees of the construction contractor or construction subcontractor. It also includes the manufacturing or furnishing of materials, articles, supplies, or equipment on the site of the building or work. Thus, employees performing such work are engaged in covered activities.

(2) However, 29 CFR 5.2(i) states that the terms "building" or "work" generally include construction activity, as distinguished from manufacturing, furnishing of materials, or servicing and maintenance work. The manufacture or furnishing of materials, articles, supplies, or equipment is not a "building" or "work" within the meaning of the regulations unless conducted in connection with and at the site of such a building or work. Therefore, DOL has traditionally considered the manufacture and delivery to the worksite of supply items such as sand, gravel, and ready-mixed concrete, when accomplished by bona fide material suppliers operating facilities serving the public in general, as activities not covered by DBA.

5-8. Drilling Services. The Solicitor of Labor has issued specific guidance relating to the applicability of the DBA to the various types of drilling services. See DOL Field Operations Handbook Chapter 15, paragraph 15d05.

a. The Act is not applicable to exploratory drilling performed to obtain core borings for use in engineering studies and planning for a dam, where the holes themselves will presumably be abandoned or filled in.

b. Boring for soil samples is covered by the Act where the work is directly related and

incidental to the actual construction process (such as, obtaining soil samples for purposes of setting foundations). Such boring is not covered where it constitutes preliminary work (for example, obtaining soil samples to formulate plans and specifications, or as part of site investigation).

c. Drilling holes to be used for water wells, ventilating shafts, etc., is covered.

d. DBA covers digging of test holes which are to be converted to water wells if the tests at a hole indicate adequate yield and a production well is desired at that location. The fact that some of the holes may not be used for wells is not significant - the expectation that some of them may be so used is sufficient.

e. Plugging of oil or gas wells and removal of above-ground equipment, in connection with construction of a reservoir, is covered whether the work is regarded as demolition or drilling.

5-9. Carpet Laying and Installation of Draperies. The DBA applies to carpet laying and the installation of draperies when it is performed as an integral part of, or in conjunction with, new construction. The Service Contract Act (SCA) applies to carpet laying when it is performed as part of routine maintenance, e.g., replacement of worn-out carpeting in a public building or a public work where no other construction is contemplated. This would apply to similar work like tile or flooring installation as well.

5-10. Clean-up Work. Cleaning work is covered by the DBA in situations where the cleaning is performed as a condition precedent to the acceptance of a building as satisfactorily completed. For example, this would include activities such as window scraping and washing, removal of excess paint, and sweeping. Where cleaning is carried out after the construction contractor and subcontractors have finished their work, left the site, and the contracting agency has accepted the work as completed, such work would not be covered under the DBA.

5-11. Demolition Work in Relation to Construction.

a. Demolition, standing alone, is not subject to the DBA. For example, the demolition of a building because such structure is no longer needed would not in itself be a covered construction activity. However, where an existing building is being demolished and further DBA-covered construction activity at the site is contemplated, the Act would apply. See 29 CFR 4.116(b) and FAR 37.301. AAM 190 provides detailed guidance on this subject. See Appendix N, 3.

b. Asbestos or paint removal performed as a prelude to or in conjunction with a contract for the demolition of a public building or a public work would be subject to the SCA, if subsequent construction on the site is not contemplated. However, asbestos or paint removal being done as part of a general cleanup of a public building or work, that is not a prelude to demolition, is considered “alteration” by DOL and is therefore subject to the Davis-Bacon Act.

This view is consistent with previous determinations that contracts for sandblasting or hydrostatic cleaning of public works are subject to the DBA. See DOL All Agency Memorandum No. 153, Application of the Davis-Bacon Act to Contracts for Asbestos and/or Paint Removal at Appendix N, 3.

c. See also AAM 155 and 187 at Appendix N, 3 and EP 1180-1-1 for additional information on DBA and/or SCA application to demolition and HAZMAT work, or direct questions to the CIRS or the USACE HQ Labor Advisor.

5-12. Landscape Contracting. Landscaping performed in conjunction with new construction or renovation work subject to the DBA is covered. In addition, stand-alone landscaping activities such as substantial earth moving and rearrangement of the terrain may constitute construction within the meaning of the Act, without requiring that it be related to other construction work. Landscaping which is not covered by the Act is work for which the SCA may be applicable. Substantial earth moving and reclamation related to hazardous waste cleanup is also subject to DBA; see AAM 155 and 187.

5-13. Painting and Decorating. The DBA provides coverage for the "construction, alteration, and/or repair, including painting and decorating, of public buildings or public works." The coverage also includes painting or re-painting of mail collection boxes, street and traffic lines, the refinishing of floors and bowling lanes, and the installation of wall covering or hanging wallpaper. Federal contracts for painting of Government-owned, privately-occupied houses, apartments, commercial properties, etc., are also covered by the Act. See DFARS 222.402-70, Installation Support Contracts for brightline thresholds for distinguishing DBA painting from SCA maintenance.,

5-14. Public Utility Installation.

a. Whether or not the employees of a public utility, who perform construction type work in connection with Federal or federally assisted projects, are covered by Davis-Bacon will depend upon the nature of the contracts involved and the work performed.

b. Where a public utility is furnishing its own materials and is in effect extending its own utility system, work is not covered by the DBA. The same conclusion would apply where the utility company may contract out such work for extending its utility system. However, where the utility company agrees to undertake a portion of the construction of a covered project (e.g., relocation of utility lines or installation of utility lines which are to become the property of the project sponsor), work would be subject to the DBA. See DOL FOH Chapter 15, 15d09 at N, 4.

5-15. Sewer Repair Services. The internal inspection of sewer lines for leakage and damage through the use of closed-circuit TV inspection and the simultaneous sealing of leaks or other damage in the lines as the machine inspects the sewer line is covered by the DBA. On the other

hand, if the contract is only for inspection, the DBA would not apply. Note that the SCA would apply in the latter situation if the Government was a direct party to the contract.

5-16. Steam and Sand Blast Cleaning. Steam and sand blast cleaning, as well as bird-proofing, are covered by the Act. Such cleaning operations performed on public buildings are authorized for the purpose of renewing the original appearance of these buildings and are performed for the same purpose as painting and decorating which are covered by the Act.

5-17. Supply and Installation Contracts.

a. Installation work performed in conjunction with supply or service (such as, base support) contracts is covered by the DBA where it involves more than an incidental amount of construction activity (for example, the contract contains specific requirements for substantial amounts of construction, reconstruction, alteration, or repair work, and such work is physically or functionally separate from, and can be performed on a segregated basis from the other non-construction work called for by the contract). For example, DBA coverage has been extended to installing a security system or an intrusion detection system, installing permanent shelving which is attached to a structure, installing air-conditioning ducts, excavating outside cable trenches and laying cable, installing heavy generators, mounting radar antenna, and installing instrumentation grounding systems, where a substantial amount of construction work is involved.

b. Whether installation involves more than an incidental amount of construction activity depends upon the specific circumstances and no fixed rules can be established. Factors include the nature of the prime contract work, the type of work performed by the employees installing the equipment on the project site (for example, the techniques, materials, and equipment used and the skills called for in its performance), the extent to which structural modifications to buildings are needed to accommodate the equipment (such as widening entrances, relocating walls, or installing wiring), and the cost of the installation work - either in terms of absolute amount or in relation to the cost of the equipment and the total project cost.

c. The DBA does not apply to construction work which is incidental to the furnishing of supplies or equipment if the construction work is merged with non-construction work or so fragmented in terms of the locations or time spans of its performance that the construction work is not capable of being segregated.

d. Coverage questions which cannot be resolved in accordance with the above principles should be directed to DOL through appropriate channels.

5-18. Flaggers. Flaggers who direct traffic on federally funded projects but perform no manual construction work are still “laborers and mechanics” within the meaning of the Act (see AAM No. 141, 19 Aug 85).

5-19. Logging Operations. The cutting and removal of marketable timber by a logger or subcontractor is a part of the contract construction work and employees engaged in cutting and removal come within the purview of the DBA requirements of the construction contract. The test of coverage is whether the work required to satisfy the contract specifications as to clearing and disposal. The fact that the contractor gives the timber to the logger in consideration of the logger's cutting and removal is not relevant. When the contractor has made final disposition of the timber or debris in accordance with the contract requirements, the taking of possession and the hauling away by others is not a part of the contract work. In this connection, there may be situations where the contractor, subcontractor, or logger performs all of the felling, trimming, and sawing into log lengths or other suitable form, ready to be moved into commercial channels. All such work on the contract site is a covered activity and all workers engaged in such must be paid in accordance with the contract labor standards requirements.

5-20. Crews on Towboats and Pushboats Engaged in Transportation and Tending Services.

a. General. Some background discussion is necessary for a clear understanding of this subject. The courts have held that seamen are not laborers or mechanics; therefore, seamen are not subject to the DBA or other construction contract labor standards requirements.

b. Seamen. Pursuant to legislative history and court decisions, DOL's regulations under the FLSA (see DOL Field Operations Handbook §15j00) state that an employee will ordinarily be regarded as "employed as a seaman" if he performs, as master or subject to the authority, direction, and control of the master aboard a vessel, service which is rendered primarily as an aid in the operation of such vessel as a means of transportation, provided he performs no substantial amount of work of a different character. This is true with respect to vessels navigating inland waters as well as ocean-going and coastal vessels.

c. Not Seamen. (1) The question of whether or not an employee is a seaman depends on the nature of his duties rather than on the title of his occupation. (2) Employees on "floating equipment" who are engaged in the construction of docks, levees, revetments, or other structures, and employees engaged in dredging operations or in the digging or in the processing of sand, gravel or other materials are not employed as seamen within the meaning of the Act but are engaged in performing essentially industrial or excavation work. (3) The "floating equipment" is that used directly in the prosecution of the construction, including pile drivers, equipment and material barges, dredges, and attendant plant. Such employees, although employed on floating plant, are employed in the performance of construction work and not employed aboard a vessel used as a means of transportation. Therefore, they are laborers and mechanics.

5-21. Removal of Asbestos-Containing Materials. Asbestos abatement projects give rise to problems with respect to the appropriate trade classification and the appropriate labor standards requirements (DBA v. SCA).

a. DBA v. SCA. DOL has advised that either statute may apply depending upon the nature and purpose of the asbestos removal. The SCA applies to asbestos removal performed in conjunction with demolition services (see paragraph 5-11) where no future construction is contemplated. However, where removal is performed in conjunction with the rehabilitation of a public building or work, the DBA would apply.

b. DBA Trade Classification. In addressing this issue, two considerations are critical:

(1) the location of the asbestos-containing material, i.e., mechanical systems (pipes, boilers, and ducts) and;

(2) the disposition of the insulated system (for example, will it remain in place or be scrapped?). In contracts containing negotiated wage rates, the Fry Brothers, WAB Case No. 76-6 (1977), policy allows the CO to follow negotiated (union) classification practices. In these situations, we may refer to the International Agreement (Appendix G) between the Laborers International Union of North America and the International Association of Heat and Frost Insulators and Asbestos Workers. This agreement describes specific situations for asbestos removal and identifies the proper classification for workers involved in removal work. Experience has shown that although the Agreement specifically determines the classification of workers responsible for the removal of asbestos-containing material, local trade unions may not necessarily adhere to the Agreement. In these cases, as well as in contracts containing open-shop (non-union) wage rates, the CIR Representative must perform an area practice survey to determine the proper classification. Further information relating to area practice surveys may be found in Chapter 8. DoL's AAM 153 provides guidance on this topic. See Appendix N, 3.

5-22. Ship-Building, Alteration, Repair and Maintenance.

a. FAR 2.101, Definitions, provides that the term "construction" does not include the manufacture, production, furnishing, construction, alteration, repair, processing, or assembling of "vessels." This is likely based on old legislative enactments that contracts for the construction, alteration, furnishing or equipping of a naval vessel are subject to the Walsh-Healey Act. However, the Secretary of Labor, who is tasked with the administration of both the Walsh-Healey and Davis-Bacon Acts, has interpreted the Walsh-Healey Act as applying only to the construction of naval (U.S. Navy and U.S. Coast Guard) vessels. Thus, contracts calling for the construction, alteration or repair of USACE vessels are subject to the Davis-Bacon Act, except as noted in the next paragraph.

b. Wage determinations for construction, alteration, or repair of vessels under the DBA are issued only if the location of contract performance is known or "reasonably can be foreseen to be," (see 22.402(a)(1)(i)) when bids are solicited. The labor standards provisions required for construction contracts must be included in the specifications. However, where the contract is advertised and the site of work is not known or cannot be reasonably foreseen to be known, as

may be the case with drydock contracts, the contract will be exempt from the requirements of the Davis-Bacon Act. See FAR 22.402 (a)(1)(i); see also 17 Comp. Gen. 585, A-90983, January 21, 1938. Thus, for example, the Davis-Bacon Act would apply to the construction of USACE vessels under the following conditions: (1) the construction services can only be procured from only one responsible source performing at a specific site, or (2) the services must be performed at a Government specified site. These examples are not intended to be all-inclusive.

c. A contract which calls for the inspection, maintenance, and/or cleaning, rather than construction, alteration, or repair, of a ship or vessel, including USACE vessels, is a service contract within the meaning of the SCA. See EP 1180-1-1 for additional information.

5-23. "Air-Balance" Engineers. The primary function of such employees is to take measurements and to accumulate data upon which recommendations are based to advise mechanical contractors how to rectify imperfections or imbalances in heating or air conditioning systems which may become apparent after the contractor(s) have installed such systems. Generally, however, such employees do not physically make the required corrections, and, in general, are not considered laborers or mechanics within the meaning of the DBA. If, however, such employees spend a substantial amount of their time in any workweek (such as, more than 20 percent) on the site performing manual, physical, and mechanical functions which are those of the traditional craftsmen, they would be considered laborers or mechanics for the time so spent.

5-24. Leases Involving Construction Activity. The applicability of the DBA to leases involving construction has been the subject of various Wage Appeals Board proceedings (Military Housing, Ft. Drum, WAB Case No. 85-16 (1985); Crown Point, Indiana Outpatient Clinic, WAB Case No. 86-33 (1987) and related litigation (Building and Constr. Trades Dept. v. Turnage, 705 F. Supp. 5 (D.D.C. 1988)). The applicability of the Act to a lease can be determined only by considering the facts of the particular contract. Consider the length of the lease, the extent of Government involvement in the construction project, the extent to which the construction will be used for private rather than public purposes, and the extent to which the costs of construction will be fully paid for by the lease payments. Questions with respect to the applicability of the Act should be referred to the CIRS or Counsel for consideration of these factors.[13]

5-25. "Working Subcontractors". The DBA requires that all laborers and mechanics employed directly upon the site of the work be paid the predetermined wage rates "…regardless of any contractual relationship which may be alleged to exist between the contractor or subcontractor and laborers and mechanics…". A 1960 legal opinion states in relevant part "the gist of the Secretary of Labor's position is that the word 'employed' in the phrase "mechanics and laborers' does not necessarily import 'employee.'" (See 41 U.S. Op. Atty. Gen 488 (1960)). Owners of

[13] See CityCenterDC Project – District of Columbia v. Dept. of Labor, 34 F. Supp. 3d 172 (D.D.C. 2014); CIR Letter 14-7; and ARB Decision on Davis-Bacon application to SpaceX – Space Exploration Technologies Corp., ARB No. 14-001, 2016 WL 4238458 (ARB Jun 16, 2016).

subcontractor firms who are performing the work of laborers and mechanics are entitled to the applicable prevailing wage rate for the work performed (see Ray Wilson Co., ARB No. 02-086, ALJ No. 2000-DBA-14 (ARB Feb. 24, 2004). If the subcontract price covers the applicable wage rate for the number of hours worked as a laborer or mechanic on the DBA job, DOL considers the owner/subcontractor to have been paid in compliance.

5-26. Non-Federal Work-in-Kind Performed Pursuant to Project Cooperation Agreements. DOL has advised that certain Civil Works projects authorized by annual Energy and Water Resources Development Acts are subject to the DBA. In particular, DOL asserted DBA coverage of non-Federal work-in-kind that is undertaken by non-Federal interests for credit or reimbursement. DOL concluded that all Project Cooperation Agreements (PCAs) and similar type agreements that provide for prospective non-Federal work-in-kind, for which the work is "construction" within the meaning of the DBA, are covered by the Act and must include references to DBA.

Chapter 6
Labor Disputes, Work Stoppages, Activities and Complaints of Labor Representatives

6-1. General. The contractor is responsible for handling labor difficulties and work stoppages. As provided in FAR 52.222-1, "Notice to the Government of Labor Disputes," whenever the contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of the contract, the contractor is required to give immediate notice, including all relevant information, to the CO (or their designated representative).

6-2. Action at District/Center Level.

a. CO and CIRS Duties. The scope of action at the District/Center level is limited and must not involve the Corps in the merits of labor disputes which do not involve allegations of violations of the Government contract labor standards requirements. In such cases, the CO or the CIRS may assist in settlement of disputes only by advising contractors to make use of any facilities for conciliation and arbitration available, such as the Federal Mediation and Conciliation Service, the National Labor Relations Board, State and local labor services, or arbitration procedures established by collective bargaining agreements or by labor and contractor organizations.

b. Handling Jurisdictional Disputes. Neither the CO nor the CIRS (nor any other USACE personnel) will take part in the actual adjudication of jurisdictional disputes between unions or similar disputes between labor representatives and contractors. They may, however, attempt to get the parties together to settle their differences. In a dispute over work jurisdiction between unions within the Building and Construction Trades Department, AFL-CIO, the contractor should be advised to refer the question to the National Joint Board for the Settlement of Jurisdictional Disputes if attempts to settle the dispute locally fail. Attempts should be made to settle disputes over work jurisdiction or union representation between other organized labor groups by agreement of the local, regional, or national union leaders concerned or by the facilities offered by the Federal Mediation and Conciliation Service and the National Labor Relations Board if the parties to the dispute cannot settle.

c. Reporting Disputes. Reports on labor disputes required by FAR 22.101-3 will be elevated by the CIRS as expeditiously as the importance and impact of the situation dictates. Reporting procedures to be followed by ACO personnel are outlined in Figure 6-1, which follows Chapter 6. These procedures are set forth below.

6-3. Action by Contractor. In some cases, work stoppages cause delays in the timely performance of contracts. The CO should advise the contractor that it will be held accountable for delays that are reasonably avoidable. It should be emphasized that the standard contract clauses dealing with default, excusable delays, etc., do not relieve the contractor of delays that are not beyond his or his subcontractors' control. A delay caused by a strike, which arose from unforeseeable causes beyond the control and without the fault or negligence of contractor (or the subcontractors), can be excused only to the extent that it does not go beyond the point at which a

reasonably diligent contractor could resume the delayed performance by taking such actions as:

a. Filing a charge with the National Labor Relations Board so as to permit the NLRB to seek injunctive relief in court;

b. Using the National Joint Board for the Settlement of Jurisdictional Disputes, or other private Boards or organizations for the settlement of disputes.

6-4. Reporting Labor Disputes and Work Stoppages.

a. Contract Administration Personnel. All field personnel should be on the alert for labor difficulties, and when they become aware of any actual or potential labor difficulties, such information will be given to the ACO to contact immediately the contractor to obtain all relevant information. Field personnel should make such inquiry of the contractor as is necessary to obtain all information available for reporting purposes. If labor representatives are on the jobsite, contacts with them by field personnel should be limited to obtaining information which is pertinent to a complete preliminary report. Higher headquarters should be kept informed regularly.

b. Reporting by the ACO. When a labor dispute, work stoppage, or threatened work stoppage occurs, the ACO will comply with the following procedure:

(1) Initial Report. The initial report should be forwarded by email to the CIRS and the CO. The report will contain the information available as set forth at DFARS PGI 222.101-3, Reporting Labor Disputes.

(2) Follow-up Reports. Such reports will be made in accordance with paragraph (1) above, to report significant changes in the situation as previously reported. At a minimum, follow-up reports will be made weekly for the duration of the dispute.

(3) Final Reports. Final reports, signed by the responsible official of the reporting office, will be forwarded to HQUSACE Labor Advisor within five days after the conclusion of the work stoppage.

6-5. Labor Activities.

a. Union and Open-Shop Contractors. Evaluation of proposals and contract award are irrespective of the contractor's labor policies in regard to employment of "union" or "non-union" workers.

b. Activities of Representatives of Labor Organizations.

(1) Accredited representatives of labor unions or other organizations may carry on legitimate and normal business dealings with the contractor and will not, because of their

position, be denied access to a project. The following applies to labor activities on military reservations, civil works reservations and all other contract work sites.

(2) Whenever labor representatives request permission to enter USACE project sites where private contractor employees are engaged in contract work, to conduct union business during working hours in connection with the Government contract on which union members are employed, the ACO may admit such representatives, provided:

(a) the presence and activities of the labor representatives will not interfere with the progress of the contract work involved, and

(b) the entry of such representatives to the project site will not violate pertinent safety or security regulations. Labor representatives are not authorized to engage in organizing activities, collective bargaining discussions, or other matters not directly connected with the Government contract, on such project sites. However, the ACO may authorize labor representatives to enter the site for the purpose of distributing organizational literature and authorization cards to private contractors' employees, provided such distribution does not:

(1) occur in working areas or during working times of employees concerned;

(2) interfere with contract performance;

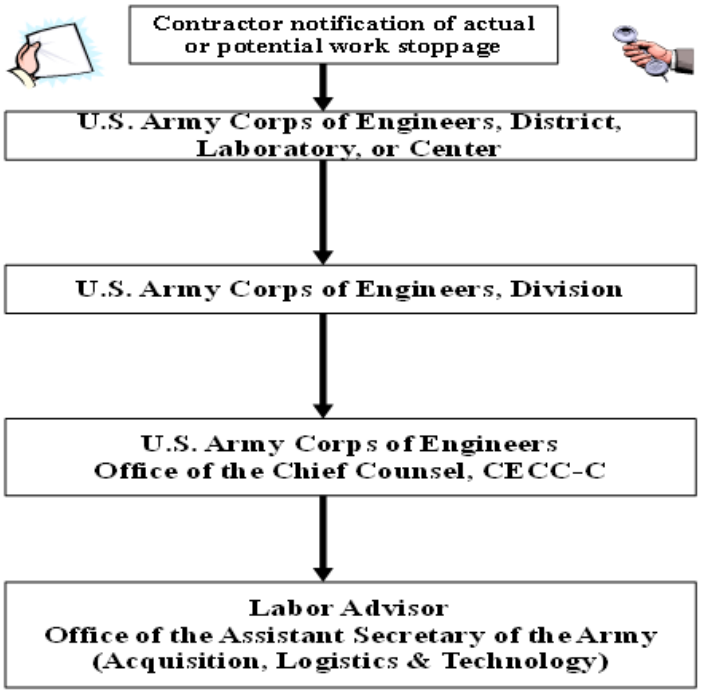
(3) interfere with the efficient operation of the site, or;

(4) violate pertinent safety or security regulations

(c) The determination as to who is an appropriate labor representative should be made by the ACO on recommendation of the CIRS after consultation with local union officials. Business offices or desk space for labor organizations for solicitation of membership, collection of dues, or other business of the labor organization, not directly connected with the contract work shall not be permitted on the site, except for the routine functions of the working steward whose union duties are incidental to his or her assigned job. In the event the ACO denies entry to a labor representative for any reason, he or she shall include the reasons for denial, including (1) names and addresses of representatives denied entry, and (2) union affiliation of such representatives if known.

(d) Complaints from Representatives of Unions, Trust Funds and Apprenticeship Programs. Complaints from such representatives, other interested parties, or contractor employees, alleging that a contractor is not complying with the fringe benefit payment requirements, or other labor requirements of the Government contract requirements, are not to be regarded as "disputes" under the regular "Disputes" clause. Complaints regarding nonpayment of fringe benefits involve a question of compliance with the contract minimum wage requirements which the contracting agency is responsible for enforcing. Accordingly, an investigation by the CIRS, including an interview with the complainant(s), shall be promptly

conducted to determine the facts, and extent of corrective action, if any, required of the contractor.



Reference: FAR 22.101-3
DFARS 222.101-3

Figure 6-1. Processing of Contractor's Notification of Actual or Potential Labor Dispute

Chapter 7
Enforcement Procedure and Reporting

7-1. General. A sound enforcement program to assure that contractors are aware of their responsibilities and that laborers and mechanics are properly paid includes: a preconstruction labor relations letter; a preconstruction conference; and an adequate review of all contractor payroll records (including subcontractors) and field inspection of the operations. The preconstruction labor relations letter will provide information regarding the labor standards clauses and wage determination requirements of the contract. This letter may also include guidance as to the submission of required forms.

7-2. Preconstruction Conferences.

a. Such conferences are required to discuss what the CO expects of the contractor with respect to construction features, safety, labor relations, and contractor inspection system, and to ascertain how the contractor proposes to comply with the contract requirements. The discussion of labor standards requirements will depend upon the contractor's previous experience and compliance record on Government contracts as well as the complexity of the construction at hand. Discussion of the contractor's proposed method of construction may disclose conditions which were not anticipated. This is one of the primary purposes of such conferences, i.e., to identify matters which need to be clarified to the extent possible. Chapter 5 contains guidance on specific subjects to discuss at these conferences. Appendix E, Preconstruction Conference Check List, is suggested as a guide.

b. The CIRS should participate in such conferences whenever possible. Contractors should be represented by a principal of the firm, or the project superintendent, together with the principal assistants who will be engaged in hiring and supervision, preparation of payrolls and payment of wages, and similar representatives of subcontractors. The material in the preconstruction letter should be emphasized during the conference, including references to FAR and DOL regulations, and instructions contained in this ER.

c. The record (minutes) of the conference shall include appropriate coverage of items discussed with regard to labor standards requirements.

7-3. Routine Enforcement Activities. The ACO is responsible for ensuring that prime contractors submit payrolls in a timely manner. The ACO shall review the contractor's field operations, including payrolls, and report irregularities that require further investigation or action at higher level.

7-4. On-the-Site Activities.

a. General. The QA Representative or Project Engineer will observe that all posters and wage scales are properly displayed and will be familiar with the overall working conditions on the job. This function includes documenting individuals on the site and the individual's

classification and duty(s) while on site.

b. Employee Interviews. Labor standards interviews are essential to the detection of employee misclassification or other common violations. The QA Representative or Project Engineer shall, at the start of the work, inform the contractor's representative that the Government is required to and will conduct interviews during working hours, as stated in the contract. Interviews should be scheduled as to cause the least possible interference with the performance of the contractor employee's job and other duties of the QA Representative. Interviews shall not be held in the presence of the employer, a supervisor, another contractor employee, or any other person. The employee should be advised that pursuant to the Privacy Act (5 USC 552a), the information is confidential and that his or her identity will not be disclosed to the employer without the employee's consent.

c. Frequency and Number of Interviews.

(1) In order to obtain a representative sample of the work force, interviews of employees working in the various trades (power equipment operators, laborers, carpenters, ironworkers, etc.) should be conducted on a periodic basis.

(2) The number of interviews during any particular week should be determined by the type of work, turnover of employees, the number of employees working, as well as the length of time required to perform the contract work. Interviews should be suspended when it is obvious that continued interviews would be repetitive and involve the same workers week after week. This is not to say no further interviews are required in such a situation. To ensure continued compliance with labor standards requirements, interviews will be resumed and conducted at such intervals as the circumstances on the contract may dictate.

d. Reports of Interviews.

(1) Use SF1445,[14] Labor Standards Interview (Appendix F) when conducting interviews. All interview reports will be attached to the payroll covering the week during which interviews were held. Any irregularities should be noted and called to the attention of the ACO office for appropriate corrective actions.

(2) The SF1445 is to be signed by the employee. One question pertains to cash payments for fringe benefits required by the posted WD. In this regard, some WDs do not contain (require) any fringe benefits, some WDs contain fringe benefits for only some classifications of laborers and mechanics, and some WDs contain fringe benefits for all classifications. In those cases where the applicable WD does not require any fringe benefits with respect to the class of

[14] A separate format showing the Privacy Act statement applicable to SF1445 may be reproduced locally and attached to the SF1445.

worker involved, the answer to the question should be “None required” instead of checking yes or no. If the employee declines to sign the form the interviewer will, as a part of his comments, state the reason given.

e. Handling Complaints. Complaints received from employees or union representatives regarding classification and rates of pay should be brought to the immediate attention of the CO, ACO and the CIRS for further investigation. This includes any third-party complaint(s) that provides supporting documentation that a labor investigation is warranted. The QA Representative or Project Engineer should be prepared to answer questions from employees about the applicable contract rate or overtime requirement. Under no circumstances should USACE personnel opine as to whether any back wages are due any employee.

f. Whistleblower Protections. Be cognizant of the “whistleblower” protections created by 10 USC 4701 (formerly 2409), Contractor employees: protection from reprisal for disclosure of certain information, implemented at DFARS Subpart 203.9, Whistleblower Protections for Contractor Employees. (Note: most of FAR Subpart 3.9 is only applicable to civilian agencies and not to DoD, with the exception of 3.909 – see FAR 3.900). 10 U.S.C. 4701 prohibits contractors and subcontractors from discharging, demoting, or otherwise discriminating against employees as a reprisal for disclosing to certain entities information that the employee reasonably believes is evidence of gross mismanagement of a DoD contract, a gross waste of DoD funds, and abuse of authority relating to a DoD contract, a violation of law, rule, or regulation related to a DoD contract (including the competition for or negotiation of a contract), or a substantial and specific danger to public health or safety. Entities to whom disclosure can be made:

(1) a Member of Congress or a representative of a committee of Congress

(2) an Inspector General that receives funding from or has oversight over contracts awarded for or on behalf of DoD

(3) the U.S. Government Accountability Office

(4) a DoD employee responsible for contract oversight or management

(5) an authorized official of the Department of Justice or other law enforcement agency

(6) a court or grand jury

(7) a management official or other employee of the contractor or subcontractor who has the responsiblity to investigate, discover, or address misconduct.

g. In this regard, upon receipt of a DBA minimum wage complaint that includes any allegation of retaliatory discharge, a contracting officer shall forward it to legal counsel or the appropriate party in accordance with agency procedures.

h. Examination of Payrolls. To ensure the highest level of labor compliance, QA Representatives, Project Engineer or Payroll Clerk as specified in 4-16, f-g above, in conjunction with the ePayroll system compliance reviews, must ensure that no less often than bi-weekly a review of the payrolls submitted by a vendor are checked to ensure that quality assurance reviews align with the vendor system reviews and vice versa. The quality assurance review must address any vendor system generated red flags. All deficiencies must be noted in the system, along with the action taken to address any potential violations. The notes must become a part of the final record in the PCF. A cumulative ENG 3180 ePayroll system generated report must be signed by the Contracting Officer Representative or a designated representative and placed in the PCF. Key payroll items of inspection include:

(1) Confirm that the names and addresses of employees are on the payroll; that they are properly classified and such classifications are descriptive of the type work or equipment involved; that they are paid not less than the contract rate for their classification as well as fringe benefits when required.

(2) Check the hours of work shown as compared to shift-hours or existing work conditions. Also, check for proper overtime hours and rates.

(3) Compare the payroll with the daily logs to see that the payroll reflects the various activities reported on the daily logs for the work week involved.

(4) Check for disproportionate use of laborers, trainees, and apprentices to journeymen and proof of registration of apprentices and trainees.

(5) Examine the contractor's Statement of Compliance to see that it is complete, that the dates and deductions listed are consistent with those on the payroll, that no unauthorized deductions are made, and when fringe benefits are required, check the fringe benefits portion of the statement for completeness and proper execution. Upon completion of examination, the QA Representative, Project Engineer or Payroll Clerk will so indicate by initials and ensure proper coordination with the ACO Office.

7-5. Corrective Action on Nonaggravated or Nonwillful Violations. When instances of noncompliance, discrepancies, errors, or omissions are found, the following action shall be taken:

a. General. Payrolls are not to be returned to the contractor to make corrections. The custody and control of any payroll should not be relinquished by the Government. Minor corrections may be effected only by the contractor or his authorized representative on the payrolls in the ACO office in the presence of the QA Representative or other ACO personnel, or by the contractor's submission of amended payrolls reflecting such corrections. Corrections made directly on the payrolls should be initialed by the same person who signed the Statement of Compliance submitted with the payroll. Examples of permissible corrections are:

(1) Correcting a wrong classification or one omitted as distinguished from a real misclassification involving underpayments; correcting dates, computations, and other figures; and corrections necessary to ensure that the payroll data is correct and complete.

(2) Corrections involving any adjustment of money, which must be handled by supplemental payroll and statement.

b. Overpayments. Experience has shown that contractor's payrolls occasionally reflect what appears to be an overpayment of wages to an employee. Although the net amount of pay shown for the employee appears to satisfy the contract minimum pay requirements, in some cases the payroll is incorrect on its face. The contractor is responsible for submitting a payroll that is both correct and complete, and so long as the payroll is not correct on its face, it is not an acceptable payroll. Such discrepancies should not be a matter for speculation by ACO personnel but should be explained by the contractor. The contractor may make such explanation by a note on the payroll or in a separate writing.

c. Underpayments Involving Overtime Pay. Payrolls reflecting any underpayments involving overtime compensation, regardless of cause, shall be dispatched immediately to the CIRS. The CIRS will compute the overtime underpayments as well as the CWHSSA liquidated damages and prepare, for the CO's signature, written instructions to the contractor concerning proposed corrective action and statutory appeals procedures relating to the assessment of liquidated damages.

d. Other Underpayments. At the ACO office level, the contractor may be instructed to make restitution of underpayments and submit supplemental payrolls and statements in cases resulting from misclassifications (where there is no disagreement as to the proper classification) or other reasons, all of which are found not to be willful or aggravated. Correction of underpayments may also be handled on the next regular payroll, provided the payroll data clearly identifies the reason for the extra pay as well as the usual computations to support and distinguish the regular pay from such additional pay. In all cases where the contractor is instructed at this level to make restitution payments, the responsible QA Representative will ensure that the corrective action is adequate. In the event the contractor or any subcontractor does not satisfactorily and voluntarily comply with the instructions of ACO personnel, the matter shall be immediately called to the attention of the CIRS and processed in the manner set forth in paragraph 7-6 of this chapter.

e. Disputes. In cases where there is disagreement as to the proper classification, the ACO shall not direct any corrective action but rather forward all relevant information, including the following, to the CIRS: Name and address of employee; payroll classification and wage rate, dates, and hours worked on current payroll; total hours misclassified; total wages paid; brief description of duties and suggested classification; and contractor's position on the matter. The CIRS will then process the matter as prescribed by FAR 22.406-10 and contract clause 52.222-14, "Disputes Concerning Labor Standards." Figure 7-1, which follows Chapter 7, outlines the report process.

f. Proof of Effecting Restitution Payments. Where restitution is found due at the project level, DOL regulations require that evidence of restitution payments be obtained by the contracting agency and incorporated into the contract files. USACE personnel may require the contractor to prepare payroll receipts to be signed by the employee or furnish copies of canceled checks. Either method must be used in all cases where the employee is no longer employed on the jobsite or not available for interview by the QA Representative, Project Engineer or Payroll Clerk. If the employees are still on the job site, USACE personnel may question the employee and sign an appropriate statement, either on the supplemental payroll or separate writing, and attach it to the payroll.

7-6. Action on Aggravated or Willful Violations. In the event enforcement activities indicate the contractor or subcontractor are in aggravated or willful violation of the labor standards requirements, or if the amount of restitution wage payments to one or more employees exceeds $1000, a special investigation shall be made by the CIRS. Under these circumstances, the QA Representative, Project Engineer or Payroll Clerk should not attempt to conduct any interviews with the contractor or his employees. If any employees make inquiries or complaints before a full-scale investigation is started, they shall be advised that an investigation will be made. All such inquiries, complaints, or evidence which an employee may present should be treated as strictly confidential. No attempt shall be made to advise them as to whether any back wages are due or corrective action will be required. Upon completion of the investigation, the CIRS will forward a report of findings to the CO for further disposition of the case as provided by applicable regulations and as outlined in Figure 7-2, which also follows Chapter 7. For detailed guidance, see DFARS PGI 222.406-8.

7-7. Records and Reports.

a. Payroll Record Card. Under a Non-ePayroll procurement action, see 4-17 above, A Contractor Payroll Record, ENG Form 3180-R (Appendix G), will be maintained for each contract. When all work on the individual contract is complete, this record will be signed by the ACO and placed in the PCF.

b. Contract Completion. When a contract is nearing completion, the status of payroll submissions and any required corrections should be reviewed in order that any deficiencies may be discovered, and appropriate action taken prior to the processing of final payment to the contractor.

7-8. Withholding of Funds from Contractor's Payment Estimates - Administrative Procedures.

a. When the CO believes a violation exists, he or she shall withhold from payments due the contractor an amount equal to the estimated underpayments, as well as any estimated liquidated damages due the United States under the CWHSSA. See FAR 22.406-9 and the accompanying contract clauses (52.222-4 and 52.222-7) as well as DFARS 222.406-9, Withholding from or Suspension of Contract Payments.

b. The CO's formal correspondence to the contractor initiates the withholding action by those responsible for preparing payment estimates; therefore, a copy of such correspondence must be furnished to the responsible office, and a copy should also be furnished to the appropriate unit of the District/Center Finance and Accounting Office. Whether payment estimates are prepared on ENG Form 93 or a contractor's invoice and receiving report procedure is used, the amounts withheld (for wages and liquidated damages) must be clearly identified on the payment documents (e.g., ENG Form 93, Item 15G with appropriate explanatory notes on reverse thereof). Also, such amounts withheld must be in addition to any other deductions such as those for retainage percentage and/or liquidated damages for late performance. No part of the amounts withheld for labor violations is to be released to the contractor until written clearance is received from the CO.

c. In accordance with the Streamlining Claims Processing for Federal Contractor Employees Act, P.L. 113-50, funds withheld from the contractor's earnings to satisfy DBA/CWHSSA wage underpayments should be forwarded to the DOL, Wage and Hour Division. Procedures for forwarding such funds can be found in DOL's AAM 215, Procedures for Implementation of the "Streamlining Claims for Federal Contractor Employees Act, issued on March 10, 2014. See Appendix N,3. Wage underpayment actions should be coordinated with District Counsel.

d. Priority of Withheld Funds. A review of DOL Administrative Law proceedings and Wage Appeals Board decisions (Quincy Housing Authority, WAB Case No. 87-32 (1989) reveals a consistent position in which accrued funds withheld for payment of wages may not be used or set aside for other purposes until such time as the prevailing wage issues are resolved. To give the contracting agency re-procurement claims priority, for example, would essentially make the affected employees unfairly pay for the breach of contract between their employer and the Government. DOL has maintained that wages due underpaid employees have priority over any competing claims against a contractor, regardless of when the claims were raised. DOL's position is predicated on the view that to hold otherwise would be inequitable and contrary to public policy since the affected employees have already performed work from which the Government has received the benefit. Thus, employees' wage claims for underpayments have priority over:

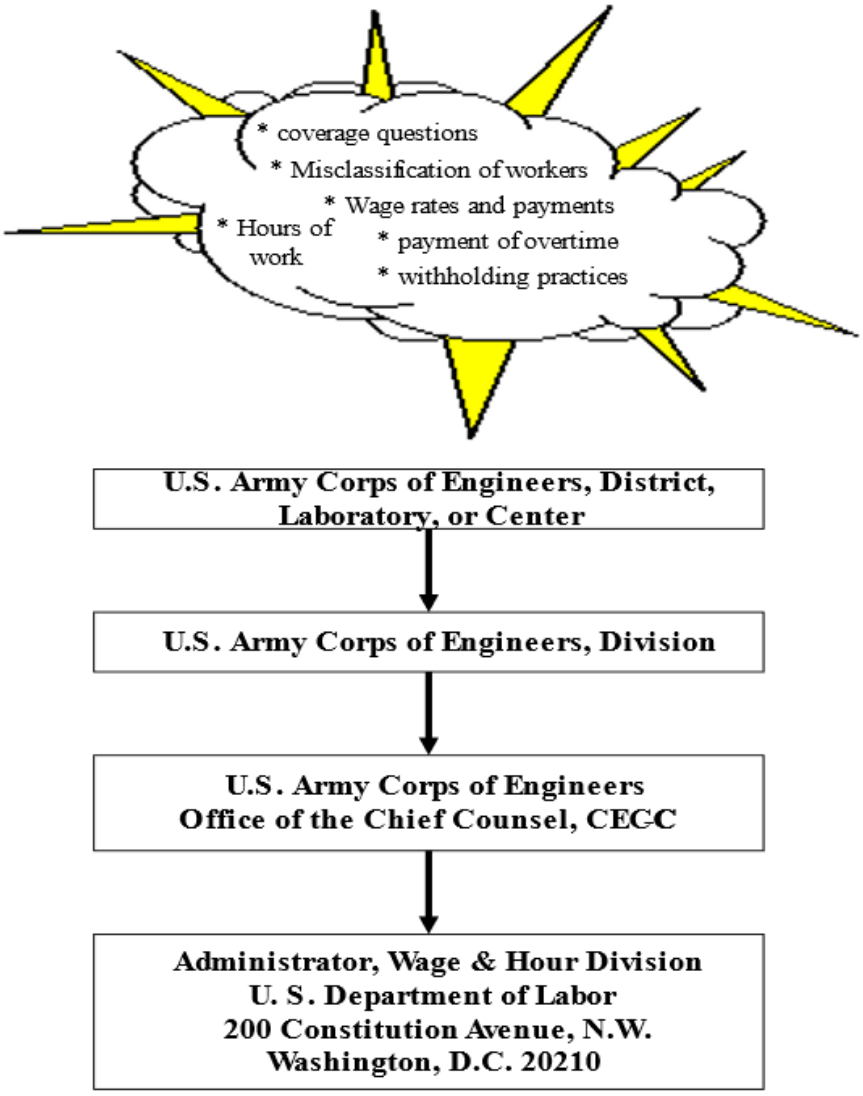
(1) An Internal Revenue Service levy for unpaid taxes (T. D'Ambrosia d.b.a. Ambrosia Constr. Co., B-182355, Feb. 11, 1976);

(3) Re-procurement costs of the contracting agency after a contractor's default or termination for cause (Nat'l Sur. Corp. v. U.S., 132 Ct. Cl. 724, 133 F. Supp. 381 (1955));

(3) Any claim by a trustee in bankruptcy (Pearlman v. Reliance Ins. Co., 371 U.S. 132 (1962)).

e. Consult Counsel to determine the Government's responsibility to protect remaining contract funds that have been withheld for any reason, and do not release withheld funds to the

prime contractor or the surety, or any assignee, if there is a possibility of claims on the withheld funds.



Reference: 29 CFR 5.13
FAR 22.406-10
DFARS 222.406-10

Figure 7-1. Processing of administrative matters relating to disputes between contracting officers and contractor(s) concerning labor standards compliance

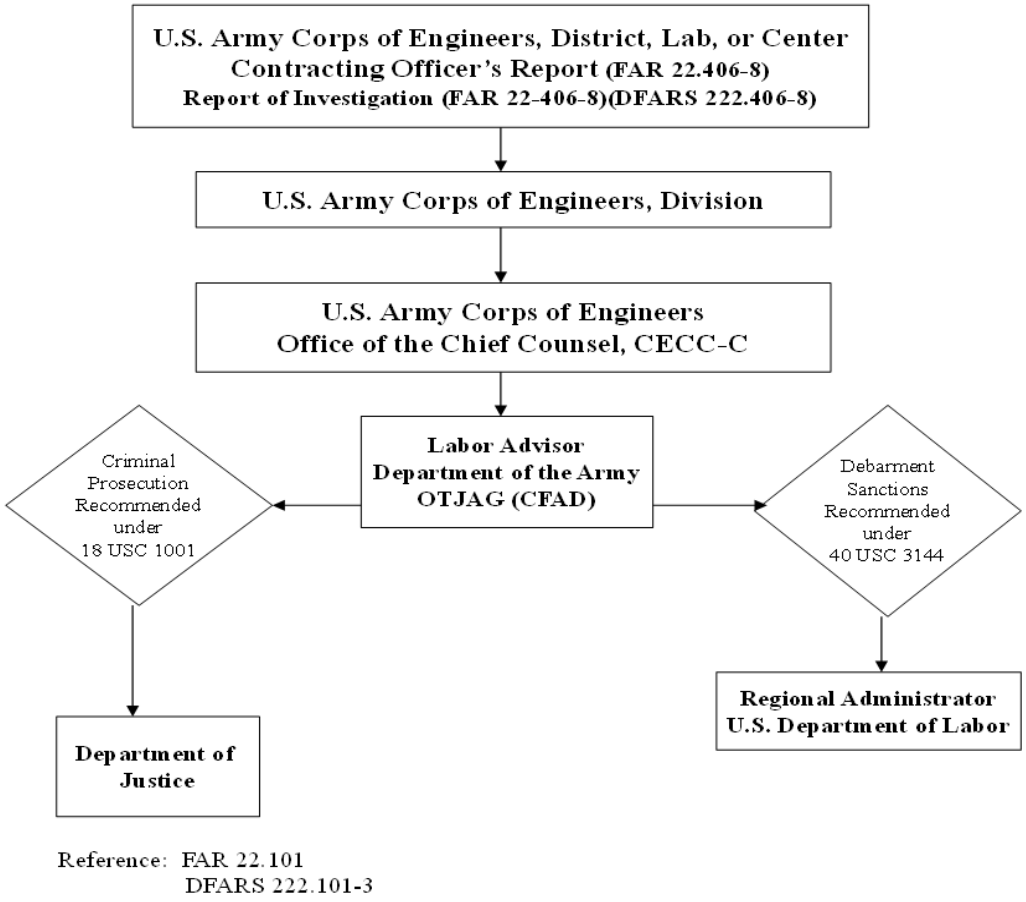


Figure 7-2. Processing of reports relating to Corps of Engineers Investigations of violations of the Davis-Bacon and Related Acts

Chapter 8
Area Practice Surveys

8-1. General. At the core of the effort to ensure contractor compliance is the duty to be cognizant of "area practice." Whether to ensure the proper trade classification of specific workers or to ensure the application of the proper schedule of wage rates, the CIRS is frequently involved in the compilation and assessment of data relating to classification practices in the vicinity of USACE projects.

8-2. Trade Classification Issues. The most common violation of the DBA is the incorrect classification of employees. The misclassification of employees and the detection of resulting wage underpayments will sometimes be readily recognizable. However, there are many occasions when the distinction between trade classifications is a matter of dispute. Further, disputes may arise which involve the CO, contractors, contractor associations, contractor employees, unions and/or the DOL. There has been an increasing trend towards specialty or task-oriented trades (for example, Metal-building Assemblers). This represents a diminished focus upon traditional craft classifications (for example, Ironworker). This tendency may underlie many of the additional classification requests that have been submitted to the DOL in recent years.

a. The basis for the resolution of disputes may be found in the Act, and states in pertinent part that "...prevailing for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the city, town, village or other civil subdivision of the State, in which the work is to be performed...".

b. When a dispute concerning the proper trade classification arises, the CIRS shall contact the appropriate DOL Regional Wage Specialist. The DOL policy in classification matters was established by the Wage Appeals Board in Fry Brothers Corporation (WAB Case No. 76-6 (1977)). It was reasoned that the proper classification of work performed by workers is that classification used by firms whose wage rates were found to be prevailing in the area and incorporated in the applicable wage determination.

c. Thus, the first step in the process of determining proper classification would be to determine the nature of the contract wage determination. In the survey of wage conditions in the applicable area, DOL will have already determined that one of three conditions prevails. The resulting DOL wage determination will be based on 1) union negotiated, 2) open shop (non-union) wage rates, or 3) a mixed schedule (e.g., union electricians and open shop laborers). The content of the area practice survey thus depends upon which of the three conditions apply. Information relating to which of these three conditions apply may be gathered from the "identifiers" provided by DOL in the wage determination.

d. Above each classification (or group of classifications) listed within a particular determination, an alphanumeric "identifier" and date provide information about the source of the classification(s) and wage rate(s) listed for it. Thus, SU indicates that the rates were derived

from survey data which may include union and non-union data. Any identifier beginning with characters other than SU is used where union classification(s) and wage rate(s) have been found prevailing. In each such identifier, the first four letters indicate the international union for the local union that negotiated the wage rates under that identifier. Then there is a four-digit code that indicates the local union number. For example, for the identifier ELEV0101, ELEV represents the Elevator Constructors Union and 0101 represents their local union number. For purposes of determining appropriate classifications therefore, one of the following conditions may apply:

(1) If the applicable wage determination reflects union rates for the classifications involved, the unions whose jurisdiction the work may be within should be contacted by the CIRS to determine whether the respective union performed the work in question on similar projects in the county in the period one year prior to the beginning of construction of the project at issue. If so, each union should be asked how the individuals who performed that work were classified. The information provided by the unions should be confirmed with collective bargaining representatives of management (e.g., contractors' associations such as local chapters of the Associated General Contractors of America, the Associated Builders and Contractors, the National Electrical Contractors Association, etc.). In Tesco Builders, Inc., ARB No. 05-102 (ARB Oct. 31, 2007) the DOL developed the following additional key points for personnel in evaluating DBA trade classification and pay practices. With the satisfaction of the below criteria, the proper classification for the work in question, the area practice is established.

(a) Fry Brothers policy applies to job classifications, but not to wage rates within the classification.

(b) The Administrator of the Wage and Hour Division cannot merely ask the local union how a definition should apply but must consider other "concrete data." While the ARB explained that the "concrete project data" should include photographs as well as architectural, engineering and structural elements of the project, that information must be related to similar projects in the vicinity.

(c) Union(s) should thereafter be asked to furnish contact information for 4-5 of their larger signatory contractors. These contractors should be queried as to their classification and pay practices on similar projects.

(2) If the applicable wage determination reflects open shop rates for the classifications involved, open shop contractors should be contacted and asked whether they performed the work in question on similar projects in the county in the period one year prior to the beginning of construction of the project at issue. If so, these contractors should be asked how the employees who performed this work were classified. If all contractors agree, or if a clear majority of the contractors agree, the area practice is established. If no open shop contractor performed the work at issue in the county in the time period one year prior to the beginning of construction, the CIRS should contact the DOL's Regional Wage Specialist for further guidance.

(3) If the applicable wage determination reflects a mixed schedule of rates, it is necessary to contact the unions as well as union and open shop contractors (and/or their associations) to determine who performed the work at issue on similar projects in the area in the period one year prior to the beginning of construction of the project. If all parties agree, or if a clear majority of the parties agree on the classification, the area practice is established.

8-3. Full Scale Area Practice Surveys. Whether the survey is conducted in order to evaluate a contractor's request for authorization of additional classification and rate or to identify a possible misclassification, it is essential that the CIRS document the steps undertaken in the survey.

a. For each of the above conditions, there are many reasons why the parties may not agree (i.e., union jurisdictional disputes, management disputes with the union, or disagreement among open shop contractors).

b. In the absence of agreement or a clear majority of parties in agreement, it becomes necessary to conduct a full scale area practice survey. In recent years, DOL has directed contracting agencies to conduct such full scale surveys. However, there is neither regulatory guidance (i.e., CFR, FAR) nor policy directives (i.e., All-Agency Memoranda) available for such efforts. Accordingly, agencies have naturally been reluctant to assume responsibility for such surveys, maintaining that this work should only be performed by DOL personnel since they are responsible for the predetermination of prevailing rates. Because the contracting agency has the responsibility of day to day enforcement of DBA labor standards, DOL has argued that a prerequisite to the exercise of such responsibility is a familiarity with classification practices within the project area.

c. Without attempting to here resolve the issue of primary responsibility for full scale surveys, it can nonetheless be stated that for those districts with the resources to conduct such surveys, classification disputes will be more expeditiously resolved when they are forwarded to DOL with as much area practice information as can be developed by the contracting agency. Experience has also demonstrated that contractor requests for authorization of additional classifications and rates are processed more expeditiously when they are submitted with area practice information. The following section details the method of conducting a full scale area practice survey for purposes of determining the appropriate trade classification.

8-4. Documenting the Area Practice Survey. As with the survey procedures noted above, the CIRS should attempt to identify similar projects in the same geographical area as the project under investigation which were in progress during the period one year prior to the start of construction for the subject project. If no similar projects were built in the area during that time frame, it may be necessary to expand the survey in time (two or three years) and/or to contiguous counties. After establishing the framework for the survey, the following steps are to be taken:

a. Determine what firms performed the work in question on these projects and contact those which are either open shop or union depending on the basis for the wage rates issued in the applicable wage determination. It is important to note that the existence of a classification within

a collective bargaining agreement alone is not sufficient to determine the appropriate classification. It must be demonstrated that an existing classification actually performs the work in question (More Drywall, Inc., WAB Case No. 90-20 (1991); Miller Insulation Co., WAB Case No. 94-01 (1994); and Volkman Railroad Builders, WAB Case No. 94-10 (1994).

b. From each firm contacted, determine the week in which the greatest number of employees performed such work on these projects (i.e., "peak week") and determine how such employees were classified.

c. Compile all information received and total the number of employees in each classification which performed the work in question. The classification which has the clear majority of employees performing the work is the proper classification. However, if it is found that only 51% to 60% of the employees in a classification performed the work in question, contact the DOL's Regional Wage Specialist for further guidance. If no common, single classification practice is found to be predominant in the area or if no project involving work of a similar nature is found, DOL generally will not take exception to the contractor's particular classification practices.

8-5. Determining the Appropriate Schedule of Wage Rates.

a. AAM Nos. 130 and 131 (Appendix H) give general outlines of the proper categories of construction (building, heavy, highway and residential). When it is clear from the nature of the project itself in a construction sense that it is to be categorized as either building, heavy, or highway construction, it is not necessary to resort to an area practice survey to determine the appropriate categorization of the project. However, in some circumstances the category of a project may appear to be unclear, or a literal application of the guidelines may be inappropriate. Therefore, if the contracting agency has any questions regarding application of the guidelines in a specific case, or if a question is raised with the agency by interested parties, the issue of application of the wage rate schedules should be referred to the DOL Wage and Hour Division. This referral should include a complete description of the project, any evidence available of area practice regarding wages paid on similar projects, comments by interested parties which may have been submitted to the agency, and the agency's recommendation. Where the nature of the project in a construction sense is not clear, area practice regarding wages paid will be taken into consideration together with other factors such as construction techniques and classifications of workers required on the project.

b. The survey is conducted in essentially the same manner as described in paragraph 8-4 above, except that the pivotal issue becomes the determination of which rates were paid on similar projects for the type of work in dispute rather than which particular classification of laborer or mechanic performed a specific task. In conducting such a survey, all projects of a character similar are generally considered. However, in the case of either building or residential construction wage schedules, whether other DBA covered projects may be included in the area practice survey must first be determined from the DOL's Regional Wage Specialist. This will depend upon whether such covered projects were included in the wage survey that served as the

basis for issuing the wage rates in the applicable WD.

Chapter 9
Labor Standards Resources, Information Systems and Reports

9-1. General. This chapter provides CIRS with an overview of labor standards resources. It highlights resources that enhance labor standards compliance and maintains current announcements as issued by the Wage and Hour Division. These resources are revised frequently to meet labor standards compliance assurance requirements and objectives.

9-2. SAM.gov. The Library contains links relating to the following:

a. Significant All Agency Memos Issued by DOL

b. DBA and SCA Resources:

(1) DBA Conformances

(2) DBA WD's to be revised

(3) DOL DBA Analyst List

(4) DBA Rollover Crosswalk

(5) SCA Conformances

(6) SCA Conformance Guide

(7) SCA Directory of Occupations

9-3. Labor Compliance Information Portal. The Labor Compliance Information Portal replaces the Engineering Online Portal. This newly created site will serve as a repository for all labor current news, polices and requirements. This portal is completely new. If you have labor information or compliance tools (for example, District Labor Compliance Guides or District News Letters) that you believe rise to the level of incorporation at the labor portal, please forward such information to the HQs Labor Advisor.

a. The Labor Compliance Information Portal can be found at:

https://usace.dps.mil/sites/KMP-EC/SitePages/Labor-Compliance.aspx

b. Current content tabs include:

c. Labor Compliance Updates

(1) Labor Advisor Roster 2022
(2) DoL Wage and Hour Division Policy

(3) Labor Compliance Policy Guides

9-4. Resident Management System. RMS is a Windows-based system designed to support contract construction management at USACE field offices and district headquarters offices. Of particular relevance to the USACE labor standards mission is the QCS module that provides for a systematic approach to various labor standards compliance activities. Among the activities that are addressed in the QA/QC planning phase is the ability to plan/track labor standards interviews and contractor payroll submissions. The QA/QC module enables USACE CIR representatives to acquire a detailed picture of the firms performing on a particular date as well as the types of equipment used and the number of employees performing on site.

9-5. Semi-Annual Labor Standards Enforcement Report.

a. DOL Regulations 29 CFR 5.7(b) require Federal agencies administering programs subject to DBA and CWHSSA labor standards to furnish a Semi-Annual Labor Standards Enforcement Report to the Administrator of the Wage and Hour Division. These reports are due to DOL on April 30 and October 31. The information required for this report highlights two related activities: contract awards and labor standards enforcement activities. The contract award information comprises the first two data elements of the report while the labor standards enforcement data comprises the balance. Information concerning the number of construction contracts subject to the DBA awarded during the reporting period and the dollar amount of those contracts can be retrieved from the Standard Procurement System (SPS). The District CIRS should initiate a request for assistance to the SPS Administrator for the reporting element identifying the information sought. This data call should cite the regulatory basis (29 CFR 5.7) for the information requested.

b. USACE CIRS preparing Semi-Annual Labor Standards Enforcement Reports shall follow the guidelines set forth below.

(1) Period covered. The subject period covers only contracts awarded during the reporting period. Not included in this element are contracts awarded prior to this period even though the contract may still be underway.

(2) Number of prime contracts awarded. Enter total number of prime contracts subject to DBRA/CWHSSA that were awarded during this period.

(3) Total dollar amount of prime contracts awarded. Enter the dollar amount of the contracts reported in (2) above.

(4) Number of contractors/subcontractors against whom complaints were received.

(a) Prime Contractors
(b) Subcontractors

(5) Number of investigations.

(a) Undertaken
(b) Completed

(6) Number of contractors/subcontractors found in violation.

(a) Prime Contractors
(b) Subcontractors

(7) Amount of wage restitution found due under –

(a) DBA
(b) CWHSSA

(8) Number of employees due wage restitution under –

(a) Davis Bacon Act
(b) CWHSSA

(9) Amount of liquidated damages assessed under the CWHSSA –

(a) Total amount
(b) Number of contracts involved

(10) Number of complaints received from

(a) labor unions
(b) Individual employees
(c) DOL
(d) Others

(11) Number of employees and the total amount paid/withheld under

(a) DBA

- employees
- amount

(b) CWHSSA

- employees
- amount

(c) Copeland Act

- employees
- amount

(12) Preconstruction activities -

(a) Number of conferences held
(b) Preconstruction letters sent

(13) Number of Compliance Checks performed. Include the total number of onsite inspections (in which the QA Representative notes the work performed, the classifications, job site posting requirements), the number of payrolls checked, and labor standards interviews conducted.

(14) Number of Employees Interviewed. Include in item (13) above and report separately in (14).

Appendix A
DD Form 879, Statement of Compliance

STATEMENT OF COMPLIANCE

Form Approved
OMB No. 1215-0149
Expires June 30, 2000

The public reporting burden for this collection of information is estimated to average 16 minutes 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. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Department of Defense, Executive Services and Communications Directorate (1215-0149). Respondents should be aware that notwithstanding any other provision of law, no person shall be subject to any penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE ABOVE ORGANIZATION. RETURN THE COMPLETED FORM TO THE CONTRACTING OFFICER.

1. PAYROLL NUMBER	2. PAYROLL PAYMENT DATE *(YYYYMMDD)*	3. CONTRACT NUMBER	4. DATE *(YYYYMMDD)*

I, _____ (*Name of signatory party*) , _____ (*Title*) do hereby state

(1) That I pay or supervise the payment of the persons employed by _____ (*Contractor or subcontractor*)

on the _____ (*Building or work*) ; that during the payroll period commencing on the _____ day of _____ , _____ , and ending the _____ day of _____ , _____ , all persons employed on said project have been paid the full weekly wages earned, that no rebates have been or will be made either directly or indirectly to or on behalf of said _____ (*Contractor or subcontractor*) from the full weekly wages earned by any person and that no deductions have been made either directly or indirectly from the full wages earned by any person, other than permissible deductions as defined in Regulations, Part 3 (29 CFR Subtitle A), issued by the Secretary of Labor under the Copeland Act, as amended *(48 Stat. 948, 63 Stat. 108, 72 Stat. 967; 76 Stat. 357; 40 U.S.C. 276c)*, and described below:

(2) That any payrolls otherwise under this contract required to be submitted for the above period are correct and complete; that the wage rates for laborers or mechanics contained therein are not less than the applicable wage rates contained in any wage determination incorporated into the contract; that the classifications set forth therein for each laborer or mechanic conform with the work performed.

(3) That any apprentices employed in the above period are duly registered in a bona fide apprenticeship program registered with a State apprenticeship agency recognized by the Bureau of Apprenticeship and Training, United States Department of Labor, or if no such recognized agency exists in a State, are registered with the Bureau of Apprenticeship and Training, United States Department of Labor.

(4) That:

(a) **WHERE FRINGE BENEFITS ARE PAID TO APPROVED PLANS, FUNDS, OR PROGRAMS**

☐ - In addition to the basic hourly wage rates paid to each laborer or mechanic listed in the above referenced payroll, payments of fringe benefits as listed in the contract have been or will be made to appropriate programs for the benefit of such employees, except as noted in Section 4(c) below.

(b) **WHERE FRINGE BENEFITS ARE PAID IN CASH**

☐ - Each laborer or mechanic listed in the above referenced payroll has been paid as indicated on the payroll, an amount not less than the sum of the applicable basic hourly wage rate plus the amount of the required fringe benefits as listed in the contract, except as noted in Section 4(c) below.

(c) **EXCEPTIONS**

EXCEPTION *(Craft)*	EXPLANATION

5. REMARKS

6. NAME *(Last, First, Middle Initial)*	7. TITLE	8. SIGNATURE

The willful falsification of any of the above statements may subject the contractor or subcontractor to civil or criminal prosecution. See Section 1001 of Title 18 and Section 3729 of Title 31 of the United States Code.

DD FORM 879, APR 1998 PREVIOUS EDITION MAY BE USED. Reset

Appendix B
WH-347 Form, Payroll

U.S. Department of Labor
Wage and Hour Division

PAYROLL

(For Contractor's Optional Use; See Instructions at www.dol.gov/whd/forms/wh347instr.htm)

U.S. Wage and Hour Division

Persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Rev. Dec. 2008

OMB No.:1235-0008
Expires: 04/30/2021

NAME OF CONTRACTOR ☐ OR SUBCONTRACTOR ☐ | ADDRESS

PAYROLL NO. | FOR WEEK ENDING | PROJECT AND LOCATION | PROJECT OR CONTRACT NO.

(1) NAME AND INDIVIDUAL IDENTIFYING NUMBER (e.g., LAST FOUR DIGITS OF SOCIAL SECURITY NUMBER) OF WORKER	(2) NO. OF WORKING EXEMPTIONS	(3) WORK CLASSIFICATION	OT OR ST	(4) DAY AND DATE HOURS WORKED EACH DAY	(5) TOTAL HOURS	(6) RATE OF PAY	(7) GROSS AMOUNT EARNED	(8) DEDUCTIONS FICA	WITH-HOLDING TAX			OTHER	TOTAL DEDUCTIONS	(9) NET WAGES PAID FOR WEEK
			O											
			S											
			O											
			S											
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While completion of Form WH-347 is optional, it is mandatory for covered contractors and subcontractors performing work on Federally financed or assisted construction contracts to respond to the information collection contained in 29 C.F.R. §§ 3.3, 5.5(a). The Copeland Act (40 U.S.C. § 3145) contractors and subcontractors performing work on Federally financed or assisted construction contracts to "furnish weekly a statement with respect to the wages paid each employee during the preceding week." U.S. Department of Labor (DOL) regulations at 29 C.F.R. § 5.5(a)(3)(ii) require contractors to submit weekly a copy of all payrolls to the Federal agency contracting for or financing the construction project, accompanied by a signed "Statement of Compliance" indicating that the payrolls are correct and complete and that each laborer or mechanic has been paid not less than the proper Davis-Bacon prevailing wage rate for the work performed. DOL and federal contracting agencies receiving this information review the information to determine that employees have received legally required wages and fringe benefits.

Public Burden Statement

We estimate that is will take an average of 55 minutes to complete this collection, including 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 these estimates or any other aspect of this collection, including suggestions for reducing this burden, send them to the Administrator, Wage and Hour Division, U.S. Department of Labor, Room S3502, 200 Constitution Avenue, N.W. Washington, D.C. 20210

(over)

Appendix C
Standard Form 1444, Request for Authorization of Additional Classification and Rate

REQUEST FOR AUTHORIZATION OF ADDITIONAL CLASSIFICATION AND RATE	CHECK APPROPRIATE BOX ☐ SERVICE CONTRACT ☐ CONSTRUCTION CONTRACT	OMB Control Number: 9000-0066 Expiration Date: 5/31/2025

Paperwork Reduction Act Statement - This information collection meets the requirements of 44 U.S.C. § 3507, as amended by section 2 of the Paperwork Reduction Act of 1995. You do not need to answer these questions unless we display a valid Office of Management and Budget (OMB) control number. The OMB control number for this collection is 9000-0066. We estimate that it will take .5 hours to read the instructions, gather the facts, and answer the questions. Send only comments relating to our time estimate, including suggestions for reducing this burden, or any other aspects of this collection of information to: U.S. General Services Administration, Regulatory Secretariat Division (M1V1CB), 1800 F Street, NW, Washington, DC 20405.

INSTRUCTIONS: THE CONTRACTOR SHALL COMPLETE ITEMS 3 THROUGH 16, KEEP A PENDING COPY, AND SUBMIT THE REQUEST, IN QUADRUPLICATE, TO THE CONTRACTING OFFICER.

1. **TO:** ADMINISTRATOR, WAGE AND HOUR DIVISION U.S. DEPARTMENT OF LABOR WASHINGTON, DC 20210	2. **FROM:** *(REPORTING OFFICE)*

3. CONTRACTOR	4. DATE OF REQUEST

5. CONTRACT NUMBER	6. DATE BID OPENED *(SEALED BIDDING)*	7. DATE OF AWARD	8. DATE CONTRACT WORK STARTED	9. DATE OPTION EXERCISED (If *APPLICABLE) (SERVICE CONTRACT ONLY)*

10. SUBCONTRACTOR *(IF ANY)*

11. PROJECT AND DESCRIPTION OF WORK *(ATTACH ADDITIONAL SHEET IF NEEDED)*

12. LOCATION *(CITY, COUNTY, AND STATE)*

13. IN ORDER TO COMPLETE THE WORK PROVIDED FOR UNDER THE ABOVE CONTRACT, IT IS NECESSARY TO ESTABLISH THE FOLLOWING RATE(S) FOR THE INDICATED CLASSIFICATION(S) NOT INCLUDED IN THE DEPARTMENT OF LABOR DETERMINATION

NUMBER: _____ DATED: _____

a. LIST IN ORDER: PROPOSED CLASSIFICATION TITLE(S); JOB DESCRIPTION(S); DUTIES; AND RATIONALE FOR PROPOSED CLASSIFICATIONS *(Service contracts only)* *(Use reverse or attach additional sheets, if necessary)*	b. WAGE RATE(S)	c. FRINGE BENEFITS PAYMENTS

14. SIGNATURE AND TITLE OF SUBCONTRACTOR REPRESENTATIVE *(IF ANY)*	15. SIGNATURE AND TITLE OF PRIME CONTRACTOR REPRESENTATIVE	
16. SIGNATURE OF EMPLOYEE OR REPRESENTATIVE	TITLE	CHECK APPROPRIATE BOX-REFERENCING BLOCK 13. ☐ AGREE ☐ DISAGREE

TO BE COMPLETED BY CONTRACTING OFFICER *(CHECK AS APPROPRIATE - SEE FAR 22.1019 (SERVICE CONTRACT LABOR STANDARDS) OR FAR 22.406-3 (CONSTRUCTION WAGE RATE REQUIREMENTS))*

☐ THE INTERESTED PARTIES AGREE AND THE CONTRACTING OFFICER RECOMMENDS APPROVAL BY THE WAGE AND HOUR DIVISION. AVAILABLE INFORMATION AND RECOMMENDATIONS ARE ATTACHED.

☐ THE INTERESTED PARTIES CANNOT AGREE ON THE PROPOSED CLASSIFICATION AND WAGE RATE. A DETERMINATION OF THE QUESTION BY THE WAGE AND HOUR DIVISION IS THEREFORE REQUESTED. AVAILABLE INFORMATION AND RECOMMENDATIONS ARE ATTACHED.
(Send 3 copies to the Department of Labor)

SIGNATURE OF CONTRACTING OFFICER OR REPRESENTATIVE	TITLE AND COMMERCIAL TELEPHONE NUMBER	DATE SUBMITTED

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PREVIOUS EDITION IS USABLE

STANDARD FORM 1444 (REV. 4/2013)
Prescribed by GSA-FAR (48 CFR) 53.222(f)

Appendix D
Standard Form 1413, Statement and Acknowledgment

STATEMENT AND ACKNOWLEDGMENT

OMB No.: 9000-0014
Expires: 5/31/2011

Public reporting burden for this collection of information is estimated to average 30 minutes 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. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat, (VIR), Regulatory and Federal Assistance Division, GSA, Washington, DC 20405; and to the Office of Management and Budget, Paperwork Reduction Project (9000-0014), Washington, DC 20503.

PART I - STATEMENT OF PRIME CONTRACTOR

1. PRIME CONTRACT NO.	2. DATE SUBCONTRACT AWARDED	3. SUBCONTRACT NUMBER

4. PRIME CONTRACTOR			5. SUBCONTRACTOR		
a. NAME			a. NAME		
b. STREET ADDRESS			b. STREET ADDRESS		
c. CITY	d. STATE	e. ZIP CODE	c. CITY	d. STATE	e. ZIP CODE

6. The prime contract ☐ does, ☐ does not contain the clause entitled "Contract Work Hours and Safety Standards Act -- Overtime Compensation."

7. The prime contractor states that under the contract shown in Item 1, a subcontract was awarded on the date shown in Item 2 to the subcontractor identified in item 5 by the following firm:

a. NAME OF AWARDING FIRM

b. DESCRIPTION OF WORK BY SUBCONTRACTOR

8. PROJECT	9. LOCATION

10a. NAME OF PERSON SIGNING	11. BY (Signature)	12. DATE SIGNED
10b. TITLE OF PERSON SIGNING		

PART II - ACKNOWLEDGMENT OF SUBCONTRACTOR

13. The subcontractor acknowledges that the following clauses of the contract shown in Item 1 are included in this subcontract:

- Contract Work Hours and Safety Standards Act - Overtime Compensation - (If included in prime contract see Block 6)
- Payrolls and Basic Records
- Withholding of Funds
- Disputes Concerning Labor Standards
- Compliance with Davis-Bacon and Related Act Regulations
- Davis-Bacon Act
- Apprentices and Trainees
- Compliance with Copeland Act Requirements
- Subcontracts (Labor Standards)
- Contract Termination - Debarment
- Certification of Eligibility

14. NAME(S) OF ANY INTERMEDIATE SUBCONTRACTORS, IF ANY

A		C	
B		D	

15a. NAME OF PERSON SIGNING	16. BY (Signature)	17. DATE SIGNED
15b. TITLE OF PERSON SIGNING		

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STANDARD FORM 1413 (REV. 7/2005)
Prescribed by GSA/FAR (48 CFR) 53.222(e)

Appendix E
Preconstruction Conference Checklist

PRECONSTRUCTION CONFERENCE CHECKLIST

This list is not intended to address details of all matters that may need to be discussed for a particular project. Please refer to ER 1180-1-8 for additional guidance when preparing for a conference.

Davis-Bacon Act
- Minimum wage and posting requirements
- Additional classifications, explain procedure, furnish SF 1444
- Fringe benefit requirements
- Required payroll data, record-keeping requirements
- CO and DOL authority to review payrolls and basic records
- CO and DOL authority to withhold contract earnings for non-compliance

Apprentices and Trainees
- Registration requirements

Compliance Assurance Measures
- Payroll checking
- Labor standards interviews

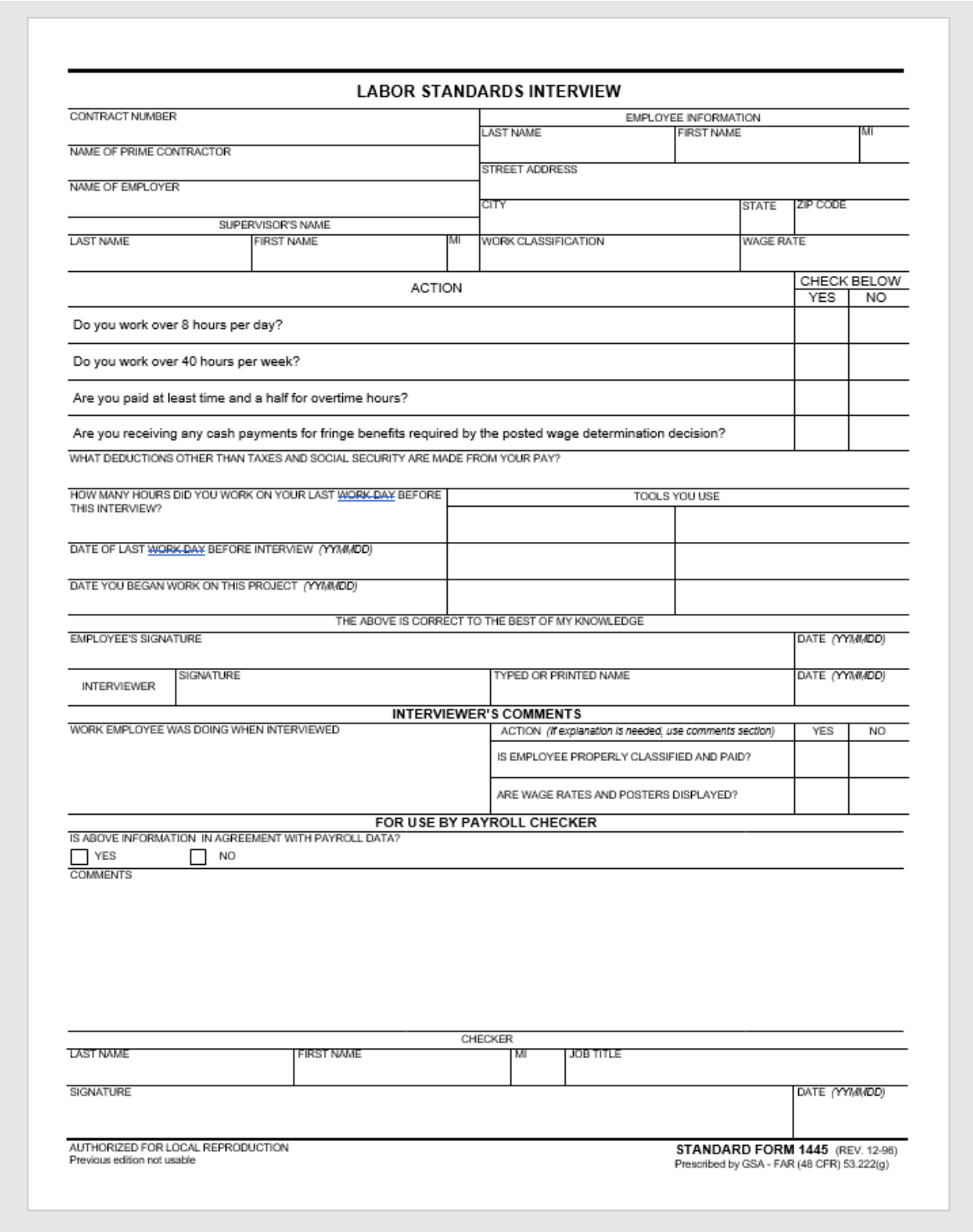
Potential Sanctions for Violations
- Debarment
- Criminal prosecution under False Claims Act for willful violations

Particular Areas of Concern
- Undocumented Workers (E-verify obligations)
- Piece rate workers
- Misclassification of workers as independent contractors
- "Site of Work"
- Subcontracts
  - Report award of all subcontracts
  - Inclusion of labor standard clauses in all subcontracts
  - Furnish SF 1413, Statement and Acknowledgement

Contract Work Hours and Safety Standards Act
- Payment of Overtime compensation
- Liquidated Damages for each CWHSSA violation

USACE team members are strongly encouraged to familiarize themselves with all contract labor standards provisions of the contract as these items are only a partial representation of those that are generally applicable to construction contracts.

Appendix F
Standard Form 1445, Labor Standards Interview



LABOR STANDARDS INTERVIEW

CONTRACT NUMBER	EMPLOYEE INFORMATION		
	LAST NAME	FIRST NAME	MI
NAME OF PRIME CONTRACTOR			
	STREET ADDRESS		
NAME OF EMPLOYER			
	CITY	STATE	ZIP CODE
SUPERVISOR'S NAME			
LAST NAME / FIRST NAME / MI	WORK CLASSIFICATION	WAGE RATE	

ACTION	CHECK BELOW YES	NO
Do you work over 8 hours per day?		
Do you work over 40 hours per week?		
Are you paid at least time and a half for overtime hours?		
Are you receiving any cash payments for fringe benefits required by the posted wage determination decision?		

WHAT DEDUCTIONS OTHER THAN TAXES AND SOCIAL SECURITY ARE MADE FROM YOUR PAY?

	TOOLS YOU USE	
HOW MANY HOURS DID YOU WORK ON YOUR LAST ~~WORK DAY~~ BEFORE THIS INTERVIEW?		
DATE OF LAST ~~WORK DAY~~ BEFORE INTERVIEW *(YY|M|MDD)*		
DATE YOU BEGAN WORK ON THIS PROJECT *(YY|M|MDD)*		

THE ABOVE IS CORRECT TO THE BEST OF MY KNOWLEDGE

EMPLOYEE'S SIGNATURE	DATE *(YY|M|MDD)*

INTERVIEWER	SIGNATURE	TYPED OR PRINTED NAME	DATE *(YY|M|MDD)*

INTERVIEWER'S COMMENTS

WORK EMPLOYEE WAS DOING WHEN INTERVIEWED	ACTION *(If explanation is needed, use comments section)*	YES	NO
	IS EMPLOYEE PROPERLY CLASSIFIED AND PAID?		
	ARE WAGE RATES AND POSTERS DISPLAYED?		

FOR USE BY PAYROLL CHECKER

IS ABOVE INFORMATION IN AGREEMENT WITH PAYROLL DATA?

☐ YES ☐ NO

COMMENTS

CHECKER

LAST NAME	FIRST NAME	MI	JOB TITLE

SIGNATURE	DATE *(YY|M|MDD)*

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Previous edition not usable

STANDARD FORM 1445 (REV. 12-96)
Prescribed by GSA - FAR (48 CFR) 53.222(g)

Appendix G
ENG Form 3180-R, Contractor Payroll Record

Print Form E-mail

CONTRACTOR PAYROLL RECORD
For use of this form, see ER 1180-1-8; the proponent agency is CECC-C

CONTRACT NUMBER | CONTRACT DATE *(YYYYMMDD)*
DOLLAR VALUE | DATE WORK
STARTED DATE *(YYYYMMDD)*
COMPLETED DATE *(YYYYMMDD)*

PROJECT, LOCATION AND DESCRIPTION OF WORK

WAGE DETERMINATION NO. & DATE *(YYYYMMDD)* | BID OPEN DATE *(YYYYMMDD)*
SUBCONTRACTOR *(Name and Address)* | SF 1413 SUBMITTED DATE *(YYYYMMDD)*
PRIME CONTRACTOR *(Name and ADDRESS)* | STARTED DATE *(YYYYMMDD)*
FOR

P-R NO.	W-E DATE *(YYYYMMDD)*	CHECKED BY AND DATE *(YYYYMMDD)*	DATE SUBMITTED TO DIST OFF *(YYYYMMDD)*	NUMBER EMPLOYED	NUMBER INTERVIEWED	DATE INTERVIEW INFO *(YYYYMMDD)* & P-R ENTRY COMPARED	MANHOURS WORKED *(Total)*		

ALL WORK PERFORMED UNDER THIS CONTRACT HAS BEEN COVERED BY PAYROLLS FROM THE PRIME OR SUBCONTRACTORS. THESE HAVE BEEN CHECKED AND FOUND TO BE CORRECT

DATE *(YYYYMMDD)* | NAME AND TITLE | SIGNATURE

ENG FORM 3180, APR 1994 PREVIOUS EDITIONS ARE OBSOLETE. Page ____ of ____ Pages

Appendix H
USDOL All Agency Memorandum 130 and 131

U.S. DEPARTMENT OF LABOR EMPLOYMENT
STANDARDS ADMINISTRATION Wage and
Hour Division
WASHINGTON, D.C. 20210

MAR 171978

ALL AGENCY MEMORANDUM NO. 130

TO: ALL GOVERNMENT CONTRACTING AGENCIES AND THE DISTRICT OF COLUMBIA

FROM: XAVIER M. VELA
ADMINISTRATOR

SUBJECT: Application Of The Standard Of Comparison "Projects Of A Character Similarrr Under The Davis-Bacon And Related Acts

The purpose of this memorandum is to set forth present policies of the Wage and Hour Division with regard to the determination of "projects of a character similar to the contract work" for wage determination purposes. The guidelines contained in the memorandum are to be used by the contracting agencies in selecting the proper schedule(s) of wage rates from the Federal Register and in instructing contractors regarding the application of multiple schedules. This memorandum supersedes All Agency Memorandum No. 68 (July 19, 1966).

The Davis-Bacon and related Acts require the Secretary of Labor to determine the prevailing wage rates for corresponding classes of laborers and mechanics on projects in the area which are of a "character similar" to the proposed contract work to which the determination will be applied. The Department's Wage Appeals Board in a decision specifically relating to high-rise apartment buildings (WAB Case No. stated:76-11, dated January 27, 1977) stated:

> The test of whether a project is of a character similar to another project refers to the nature of the project itself in a construction senser not to whether union or nonunion wages are paid or whether union or nonunion workers are employed. Since the 1935 amendments to the Davis-Bacon Actr the statutory focus has always been on the character of the project itself rather than on who was employed on the project or how much he or she was being paid.

Again, in a decision relating to a water treatment plant project (WAB Case No. 77-20, dated September 30, 1977), the Board stated: "When it is clear from the nature of the project itself in a construction sense that it is to be categorized as either building, heavy, or highway construction it is not necessary to resort to an area practice survey to determine the appropriate categorization of the project."

Generally construction projects are classified as either Building, Heavy, Highway or Residential. 1/ Below are descriptions of these classifications with an illustrative listing of the kinds of projects that are generally included within the classification. Contracting agencies should utilize these descriptions and illustrations in carrying out their responsibilities, to insure a uniform and consistent administration of the Davis-Bacon and related prevailing wage statutes. The advertised and contract specifications should identify as specifically as possible the segments of work to which the schedules will apply.Note, however, that the descriptions and illustrations are guides. Contracting agencies should seek a determination from the Department of Labor on close questions or when the appropriate classification is in dispute. In making this determination where a project does not readily fall within any category, the Department of Labor may consider wages being paid on analogous projects as an indication of the proper category. As stated by the Wage Appeals Board in WAB Case No. 77-23, dated December 30, 1977: "Wages, however, are only one indication. It is also necessary to look at other characteristics of the project, including the construction techniques, the material and equipment being used on the project, the type of skills called for on the project work and other similar factors which would indicate the proper category of construction."

BUILDING CONSTRUCTION

Building construction generally is the construction of sheltered enclosures with walk-in access for the purpose of housing persons, machinery, equipment, or supplies. It includes all construction of such structures, the installation of utilities and the installation of equipment, both above and below grade

I/ Generally, for wage determination purposes, a project consists of all construction necessary to complete a facility regardless of the number of contracts involved so long as all contracts awarded are closely related in purpose, time and place. For example, demolition or site work preparatory to building construction is considered a part of the building project for wage determination purposes. Where a project, such as a water and sewage treatment plant, includes construction items that in themselves would be otherwise classified, a multiple classification may be justified if such construction items are a substantial part of the project. Further, however, a separate classification would not apply if such construction items are merely incidental to the total project to which they are closely related in function. For example, water or sewer line work which is a part of a building project would not generally be separately classified. Where construction is "incidental" in function, 20 percent of project cost is used as a rough guide for determining when construction is also "incidental" in amount to the overall project.

level, as well as incidental grading, utilities and paving. Additionally, such structures need not be "habitable" to be building construction. The installation of heavy machinery and/or equipment does not generally change the project's character as a building.

Examples

Alterations and additions to buildings
Apartment buildings (5 stories and above)
Arenas (enclosed)
Auditoriums
Automobile parking garages
Banks and financial buildings
Barracks
Churches
City halls
Civic centers
Commercial buildings
Court houses
Detention facilities
Dormitories
Farm buildings
Fire stations
Hospitals
Hotels
Industrial buildings
Institutional buildings
Libraries
Mausoleums
Motels
Museums
Nursing and convalescent facilities
Office buildings
Out-patient clinics
Passenger and freight terminal buildings
Police stations
Post offices Power plants
Prefabricated buildings
Remodeling buildings
Renovating buildings
Repairing buildings
Restaurants
Schools
Service stations
Shopping centers
Stores
Subway stations
Theaters
Warehouses Water and sewage treatment plants (buildings only)

RESIDENTIAL CONSTRUCTION

Residential projects for Davis-Bacon purposes are those involving the construction, alteration, or repair of single family houses or apartment buildings of no more than four(4) stories in height. This includes all incidental items such as site work, parking areas, utilities, streets and sidewalks.

Examples

Town or row houses
Apartment buildings (4 stories or less)
Single family houses
Mobile home developments
Multi-family houses
Married student housing

HEAVY CONSTRUCTION

Heavy projects are those projects that are not properly classified as either "building", "highway", or "residential". Unlike these classifications, heavy construction is not a homogeneous classification. Because of this catch-all nature, projects within the heavy classification may sometimes be distinguished on the basis of their particular project characteristics, and separate schedules issued. For example, separate schedules may be issued for dredging projects, water and sewer line projects, dams, major bridges, and flood control projects.

Examples

Antenna towers
Bridges (major bridges designed for commercial navigation) 2/
Breakwaters
Caissons (other than building or highway)
Canals
Channels
Channel cut-offs
Chemical complexes or facilities (other than buildings)
Cofferdams
Coke ovens
Dams
Demolition (not incidental to construction)
Dikes
Docks
Drainage projects

2/ Major bridges contain elements of both heavy and highway construction.See WAB Case No. 772 (October 21, 1977)

Dredging projects
Electrification projects (outdoor)
Flood control projects
Industrial incinerators (other than building)
Irrigation projects
Jetties
Kilns
Land drainage (not incidental to other construction)
Land leveling (not incidental to other construction)
Land reclamation
Levees
Locks, waterways
Oil refineries (other than buildings)
Pipe lines
Ponds
Pumping stations (prefabricated drop-in units - not buildings)
Railroad construction
Reservoirs
Revetments
Sewage collection and disposal lines
Sewers (sanitary, storm, etc)
Shoreline maintenance
Ski tows
Storage tanks
Swimming pools (outdoor)
Subways (other than buildings)
Tipples
Tunnels
Unsheltered piers and wharves
Viaducts (other than highway)
Water mains
Water-way construction
Water supply lines (not incidental to building)
Water and sewage treatment plants (other than buildings)
Wells

HIGHWAY CONSTRUCTION

Highway projects include the construction, alteration or repair of roads, streets, highways, runways, taxiways, alleys, trails, paths, parking areas, and other similar projects not incidental to building or heavy construction.

Examples

Alleys
Base courses
Bituminous treatments
Bridle paths
Concrete pavement
Curbs
Excavation and embankment (for road construction)

Fencing (highway)
Grade crossing elimination (overpasses or underpasses)
Guard rails on highway
Highway signs
Highway bridges (overpasses; underpasses; grade separation)
Medians
Parking lots
Parkways
Resurfacing streets and highways
Roadbeds
Roadways
Runways
Shoulders
Stabilizing courses
Storm sewers incidental to road construction
Street Paving
Surface courses
Taxiways
Trails

In applying these guidelines contracting agencies are reminded that they have the authority only in the first instance to designate the appropriate wage schedule(s) from the Federal Resister, and to determine the application of multiple schedules issued by the Wage and Hour Division in project wage determinations. Any questions regarding the application of the guidelines set forth in this memorandum to a particular project or any disputes regarding the application of the wage schedules are to be referred to the Wage and Hour Division for resolution, and the instructions of the Wage and Hour Division are to be observed in all instances. Furthermore, where multiple schedules are issued by the Wage and Hour Division, they must be utilized in the contract specifications unless the agency requests and receives a change in the wage determination from the Wage and Hour Division. To ensure that appropriate schedules are issued, contracting agencies are advised to provide the Wage and Hour Division in their requests for wage determinations with a sufficiently specific description of the project to be able to determine its character.

U.S. DEPARTMENT OF LABOR
EMPLOYMENT STANDARDS ADMINISTRATION
Wage and Hour Division
WASHINGTON, D.C. 20210

JUL 14 1978

ALL AGENCY MEMORANDUM NO. 131

TO: ALL GOVERNMENT CONTRACTING AGENCIES AND THE DISTRICT OF COLUMBIA

FROM: XAVIER M. VELA
ADMINISTRATOR

SUBJECT: Clarification of All Agency Memorandum No. 130

The purpose of this memorandum is to clarify Memorandum No. 130, dated March 17, 1978. Although the Wage and Hour Division has received a positive reaction from most contracting agencies who work regularly with the issues raised, some questions have arisen over specific aspects of the memorandum.

Memorandum No. 130 is intended to be a guide to categories of projects in a construction sense and is to be applied uniformly by the contracting agencies in the absence of specific direction on the wage determination or advice by the Wage and Hour Division. However, the Wage and Hour Division is aware that in some circumstances the category of a project may appear to be unclear or a literal application of the guidelines may be inappropriate. For example, questions frequently arise over pumping stations, which may vary greatly in sophistication and construction techniques. Therefore, if the contracting agency has any questions regarding application of the guidelines in a specific case, or if a question is raised with the agency by interested parties, the issue of application of the wage rate schedules should be referred to the Wage and Hour Division. This referral should include a complete description of the project, any evidence available of area practice regarding wages paid on similar projects, comments by interested parties which may have been submitted to the agency, and- the agency's recommendation. Where the nature of the project in a construction sense is not clear, area practice regarding wages paid will be taken into consideration together with other factors such as construction techniques and classifications of workers required on the project. See WAB Case No. 77-23 (December 30, 1977).

Questions have also arisen regarding the circumstances in which multiple schedules of wage rates are issued for a project which includes construction items that in themselves would be

different categories of construction. Because of the complexities in application of multiple schedules, the contracting agency should consult with the Wage and Hour Division whenever it appears that more than one schedule of rates is appropriate for a project, unless the wage decision(s) as issued indicates that multiple schedules are applicable.

Generally, multiple schedules are issued if the construction items are substantial in relation to project cost -- more than approximately 20 percent. Only one schedule is issued if construction items are "incidental" in function to the over-all character of a project (e.g. paving of parking lots or an access road on a building project), and if there is not a substantial amount of construction in the second category. Note, however, that 20 percent is a rough guide. For example, when a project is very large, items of work of a different character may be sufficiently substantial to warrant a separate schedule even though these items of work do not specifically amount to 20 percent of the total project cost.

Although the example given is that of incidental paving and utilities, the same principles are applied to other categories, such as building construction on a heavy or highway project. Thus, in a recent case, the Wage and Hour Division deleted the building schedule when it learned that a small building under a contract primarily for runway construction was approximately 4 percent of project cost. Another example of general interest is the applicability of the building schedule to a building in a rest area of a highway. In this situation, applying the principles of MARTA, WAB Case No. 75-5, for extensive projects, the project for comparison purposes is the rest area itself, rather than the entire highway.

These principles regarding incidental construction are not in conflict with the Wage and Hour Division's recognition in certain circumstances (WAB Case No. 77-19) of a clearly established practice of paying different wage rates on specific portions of building projects. For example, different rates may be paid for incidental paving and utilities than are paid in the construction of buildings on building projects. These projects are building projects, and the wage rates issued by the Wage and Hour Division for incidental paving and utilities reflect wages paid on such work on building projects.

Contracting agencies are reminded of their responsibility to advise contractors on the application of multiple wage schedules issued by the Wage and Hour Division or obtained by the agency from the Federal Register. If any questions arise regarding application of the schedules to the project in accordance with these guidelines, or if it appears that a

wage schedule may have been issued in error, a ruling should be requested from the Wage and Hour Division. On these issues, as in all other matters in the administration of the Davis-Bacon and related acts, we will continue to work cooperatively with the contracting agencies. For convenience, Memorandum No. 130 is attached.

Attachment

Appendix I
Positive Law Codification of Title 41

FAR 1.110, Positive Law Codification

Historical Title of Act	**Division/Chapter/Subchapter**	**Title**
Anti-Kickback Act	41 U.S.C. Chapter 87	Kickbacks
Brooks Architect-Engineer Act	40 U.S.C. Chapter 11	Selection of Architects and Engineers
Buy American Act	41 U.S.C. Chapter 83	Buy American
Contract Disputes Act of 1978	41 U.S.C. Chapter 71	Contract Disputes
Contract Work Hours and Safety Standards Act	40 U.S.C. Chapter 37	Contract Work Hours and Safety Standards
Davis-Bacon Act	40 U.S.C. Chapter 31, Subchapter IV	Wage Rate Requirements (Construction)
Drug-Free Workplace Act	41 U.S.C. Chapter 81	Drug-Free Workplace
Federal Property and Administrative Services Act of 1949, Title III	41 U.S.C. Div. C of Subtitle I*	Procurement
Javits-Wagner-O'Day Act	41 U.S.C. Chapter 85	Committee for Purchase from People Who Are Blind or Severely Disabled
Miller Act	40 U.S.C. Chapter 31, Subchapter III	Bonds
Office of Federal Procurement Policy Act	41 U.S.C. Div. B of Subtitle I**	Office of Federal Procurement Policy
Procurement Integrity Act	41 U.S.C. Chapter 21	Restrictions on Obtaining and Disclosing Certain Information
Service Contract Act of 1965	41 U.S.C. Chapter 67	Service Contract Labor Standards
Truth in Negotiations Act	41 U.S.C. Chapter 35	Truthful Cost or Pricing Data
Walsh-Healey Public Contracts Act	41 U.S.C. Chapter 65	Contracts for Materials, Supplies, Articles, and Equipment Exceeding $15,000

*Except sections 3302, 3501(b), 3509, 3906, 4710, and 4711.

**Except sections 1704 and 2303.

Appendix J
Labor Compliance roles, Details, and Responsible Official(s)

This tool centralizes essential duties and officials of USACE who are responsible for assuring labor compliance on USACE construction sites. Further information on these duties and responsibilities can be found in the E.R. 1180-1-8, Chapter 7, Enforcement Procedure and Reporting. Supporting information can be found in E.P. 415-1-260, Chapter 10, Labor Relations and Labor Standards Enforcement Responsibility; and E.R. 1180-1-6, Construction Quality Management. See also, USACE Weekly Payroll Review Checklist, Appendix K. General requirements are addressed in Part 22, Federal Acquisition Regulation.

ROLE	DETAILS	USACE RESPONSIBLE OFFICIAL(s)	SOURCE(s)
Enforcement of labor standards provisions	The CO uses the contract and regulations of the Secretary of Labor as the means for assuring compliance.	Contracting Officer	E.R. 1180-1-8, Sec. 1-8(a)
Ensure submission of payrolls in a timely manner	The ACO, and their staff, perform checking of all payrolls and field operations to determine their compliance with the labor standards provisions of the contract.	Administrative Contracting Officer	E.R. 1180-1-8, Sec. 1-8, c (1) and (4); See also EP 415-1-260, Sec. 10-6
Examine submitted payrolls (Eng Form 3180)	The Field Office staff examines all payrolls submitted by the contractor against interviews and on-site observations of the various classes of labor. Upon receipt of the payroll, the staff will record data on ENG for 3180, Contractor Payroll Record. The payroll should reflect the actual condition of the worksite.	Quality Assurance Representative, Project Engineer or Office Payroll Clerk	E.R. 1180-1-8, Sec. 7-4, g
Reports of interviews	All interview reports will be attached to the payroll covering the week during which interviews were held. Any irregularities should be noted and called to the attention of the ACO.	Quality Assurance Representative, Project Engineer or Office Payroll Clerk	E.P. 1180-1-8, Sec. 7-4, d
Address employee or other interested party complaints	Complaints received from employees or union representatives regarding classification and rates of pay should be brought to the immediate attention of the CO, ACO and CIRS for further investigation.	Contracting Officer, ACO, and CIRS	E.R. 1180-1-8, Sec. 7-4, e, 1-9(d)
Notification of Subcontracts (SF 1413)	The Field Office staff shall make certain that the SF 1413 is furnished by the contractor, checked, and forwarded to the District Labor Relations Officer.	Quality Assurance Representative, Project Engineer or Office Payroll Clerk	EP 415-1-260, Sec. 10-5; See also, E.P. 1180-1-8, 4-25, b
Address payroll discrepancies	Permissible corrections, as specified at this section, is addressed by the COR/ACO and the District CIR.	Administrative Contracting Officer/ Contracting Officer Representative	E.R. 1180-1-8, Sec. 7-5; See also, E.P. 1180-1-8, Sec. 4-9, e
Address aggravated or willful violations	The CIR will conduct a special investigation of aggravated or willful	CIR Representative	E.R. 1180-1-8, Sec. 7-6

	violations, or if the restitution amount exceeds $1,000.		
Proof of restitution payments	Where restitution is found due at the project level, DoL Regulations require that evidence of restitution payments be obtained by the ACO and incorporated in the contract files.	USACE Personnel i.e. CIR, CO, Administrative Contracting Officer/ Contracting Officer Representative	E.R. 1180-1-8, Sec. 7-5, f
Withholding of funds	When the CO believes a violation exists, they shall withhold from payments due the contractor an amount equal to the estimated underpayments, as well as any liquidated damages due.	CO, Administrative Contracting Officer	E.R. 118-1-8, Sec. 7-8
Completion of Payroll Record Card (3180-R)	The ENG Form 3180-R will be maintained for each contract. When all work on the contract is complete, the record will be signed by the ACO and attached to the final report.	Administrative Contracting Officer	E.P. 1180-1-8, Sec. 7-7
Process debarment/refusal to pay cases	In accordance with DoL's AAM 182, all investigations should be prepared in the specified format and forwarded to the appropriate Wage and Hour Regional Office.	CIR Representative	DoL AAM 182
Collaboration with the Wage and Hour Division	The CO/CIR shall promptly transmit dispute findings to the Administrator, Wage and Hour Division. Procedures under AAM 182 should be followed.	Contracting Officer/CIR Representative	FAR, Sec. 22.406-10
Contacting the HQs Labor Advisor	The HQs Labor Advisor serves as an adviser to all MSC's, Commands, and Centers on Federal contract labor matters.	Any USACE employee that interacts with and has oversight for Part 22 of FAR	FAR 22.1001

Questions regarding the content of this document should be directed to the USACE HQs Labor Advisor.

Appendix K
USACE Payroll Review Checklist

Engineering Form 3180 will be used to document the review of each payroll that has occurred.

YES/NO	Q#	Question
	Q1	Did the agency obtain all payrolls (first to current/last) for each contractor on the job?
	Q2	All contractors on site are represented on the payrolls received?
	Q3	All trades on the site are represented by the payrolls?
	Q4	Payroll data is consistent with on-site inspections, Quality Assurance Reports and Labor Interviews.
	Q5	Payroll certification statements have been signed by the employer or authorized representative?
	Q6	Are apprentices and trainees listed on the payrolls?
	Q7	Where present, have apprentice and trainee certification forms been obtained?
	Q8	Is the contractor(s) in compliance with apprentice/trainee ratio requirements?
	Q9	Does submitted payrolls report generic job classification (e.g., mechanic, operator, installer, or journeyman)?
	Q10	Do payrolls report job classifications for which an "Additional Classification" request was necessary?
	Q11	Did the agency submit and receive DoL's approval for an additional classification(s) needed?
	Q12	Did the agency review to ensure that correct wages were paid in accordance with the applicable wage decision(s)?
	Q13	If reported, were fringe benefits acceptable in accordance with 29 CFR Part 3.5?
	Q14	Where reported, were payroll deductions permissible per DoL Regulations?
	Q15	Is the Contract Work Hours Safety Standards Act threshold applicable to the procurement? – Contracts over $150,000.
	Q16	Did any laborer or mechanic work over 40 hours per week under this payroll review?
	Q17	Where applicable, were proper overtime payment(s) made to employees?
	Q18	If proper overtime was not provided, were liquidated damages assessed?

Note: In review of certified payrolls and verification of the necessary actions listed on this form, the USACE reviewer is cautioned to communicate with the PCO, ACO, COR and the Labor Advisor to ensure consistency of onsite activity. Details for proper review, and identity of the USACE person responsible for onsite reviews and inspections are listed in E.R. 1180-1-8, Chapter 4, Compliance Procedures – Davis-Bacon and Related Acts and Chapter 7, Enforcement Procedure and Reporting. Additional information can be found in E.P. 415-1-260, Chapter 10, Labor Relations and Labor Standards Enforcement Responsibility.

Questions regarding the content of this document should be directed to the USACE HQs Labor Advisor.

Unified Facilities Guide Specifications (UFGS)

Technical Provisions Language

(Note: All instructions in italics shall be removed before inserting text in solicitation and contract.)

1. CONTRACTOR SUPPLY AND USE OF ELECTRONIC SOFTWARE FOR PROCESSING DAVIS-BACON ACT CERTIFIED PAYROLLS - *The text below may be inserted in UFGS 01.30.00 Administrative requirements, or an equivalent local Division 1 specification that addresses general contract administration issues where mandatory use of an electronic Davis Bacon Payroll system is required.*

a. The contractor will use a commercially available electronic system to process and submit certified payrolls electronically to the Government. The Davis-Bacon Act establishes the requirements for preparing, processing, and providing certified labor payrolls.

b. The contractor shall be responsible for obtaining and providing access for all licenses and other services required to provide for receipt, processing, certifying, electronically transmitting to the Government, and storing weekly payrolls and other data required for the contractor to comply with Davis-Bacon Act and related statutes. When the contractor uses an electronic Davis-Bacon Act payroll service, it shall be used to prepare, process, and maintain the relevant payrolls and basic records for all work under the construction contract. The electronic payroll service shall be capable of preserving the payroll and related basic records for the required three years after contract completion. The contractor shall obtain and provide electronic system access including electronic review to the Government, as required to comply with the Davis-Bacon Act and related statutes through the duration of the construction contract.

c. The contractor's provision and use of an electronic payroll processing system shall meet the following basic functional criteria:

(1) commercially available;

(2) compliant with appropriate Davis-Bacon Act payroll provisions in the FAR;

(3) able to accommodate the required number of employees and subcontractors that will be employed under the contract;

(4) capable of producing an Excel spreadsheet-compatible electronic output of weekly payroll records for export into an Excel spreadsheet to be imported into the contractor's mode of Resident Management System 3.0;

(5) demonstrated security of data and data entry rights;

(6) able to produce contractor-certified electronic versions of weekly payroll data;

(7) able to identify erroneous entries and track the date/time of all versions of the certified Davis-Bacon Act payrolls submitted to the government over the life of the contract; and

(8) capable of generating a durable record copy in a Compact Disc (CD) or Digital Versatile Disc (DVD) and Portable Document Format (PDF) file record of data from the system database at the end of the contract closeout. This durable record copy of data from the electronic payroll processing system shall be provided to the Government during contract closeout.

d. All contractor-incurred costs related to the contractor's provision and use of an electronic payroll processing service shall be included in the contractor's price for the overall work under the contract. The costs for Davis-Bacon Act compliance using electronic payroll processing services shall not be a separately bid or reimbursed item under this contract.

Appendix M
Potential ePayroll Vendors

Potential Electronic Certified Payroll Vendors

-Emars Inc.
Woodrow Chamberlain,
President
32531 N. Scottsdale Rd.
Suite 105-293
Scottsdale, Arizona 85266
Office: 480-595-0466
Cell: 602-568-3883
http://www.emarsinc.com

-Elation Systems, Inc.
Rick Shi
5000 Hopyard Rd.
Suite 405
Pleasanton, CA 94588
(925) 924-0340
(925) 924-0387
https://www.elationsys.com

-LCPtracker, Inc.
Attention: Ryan Ronk
2956 Oak Run PKWY Unit 400
New Braunfels, TX 78132
Telephone: 210-469-9783
http://www.lcptracker.com/

-Hill International, Inc.
Ranjit K Chakravorti, Ph.D., PE
Senior Vice President
Hill International, Inc.
5000 Executive Parkway, #260
San Ramon, CA 94506
925-275-9870 - Main
925-913-7523 - Direct
925-275-9930 - Fax
925-548-4255 - Cell
http://www.hillintl.com/

Appendix N
Labor Relations In Construction Resource Page

Labor Relations In Construction Resource Page

1. SAM.gov
https://sam.gov/content/wage-determinations
2. Wage and Hour Division, Government Contracts
https://www.dol.gov/agencies/whd/government-contracts
3. Department of Labor All Agency Memorandums (AAM)
https://sam.gov/content/wage-determinations/resources/all-agency-memos
4. Department of Labor Field Operations Handbook (FOH)
https://www.dol.gov/agencies/whd/field-operations-handbook
5. Wage and Hour Division Conformance Guide
https://www.dol.gov/sites/dolgov/files/WHD/davis-bacon/conformance.pdf
6. E.P. 415-1-260 – Area/Resident Engineer Management Guide
https://usace.dps.mil/sites/PUBS-HQ/Lists/EP/AllItems.aspx
7. Engineering and Construction, Contract Administration
https://usace.dps.mil/sites/KMP-EC/SitePages/ContractAdmin.aspx
8. E.R. 1180-1-6 – Construction Quality Management
https://usace.dps.mil/sites/PUBS-HQ/Lists/ER/AllItems.aspx
9. E.P. 715-1-8 – Contract Specialist Proficiency Guide
https://usace.dps.mil/sites/PUBS-HQ/Lists/EP/AllItems.aspx
10. HQs Policy Desk Guide
https://cops.usace.army.mil/sites/CT/P/Policy%20Alerts/Forms/AllItems.aspx
11. Federal Acquisition Regulation Part 22
https://www.acquisition.gov/far/part-22
12. DoL's 541 Final Rule
https://www.federalregister.gov/documents/2020/06/08/2020-11979/defining-and-delimiting-the-exemptions-for-executive-administrative-professional-outside-sales-and.
13. EO 11246 Guidance
https://www.dol.gov/agencies/ofccp/executive -order-11246/ca-11246
14. Employer Assistance - Annual VETS-4212 Report
https://www.dol.gov/agencies/vets/programs/vets4212
15. DoL VETS-4212 Verification Database
https://www.dol.gov/agencies/vets/programs/vets4212#verify

16. WH Publication 1321

http://www.dol.gov/whd/regs/compliance/posters/fedprojc.pdf

17. DoL Independent Contractor Interpretative Bulletin

https://www.dol.gov/agencies/whd/opinion-letters/administrator-interpretation

18. Wage and Hour Field Offices

dol.gov/whd/america2.htm

19. U.S. Immigration and Customs Enforcement (ICE) Field Offices

https://www.ice.gov/check-in

20. Bureau of Apprenticeship and Training Offices

https://www.apprenticeship.gov/about-us

21. WH 347 Form

http://www.dol.gov/whd/regs/compliance/posters/davis.htm

22. Deactivated Davis-Bacon Wage Decisions List

Deactivated Davis-Bacon Wage Decisions 2022.pdf

23. DoL Electronic Signature Letter

Electronic Signature Use.pdf

24. Davis-Bacon Guide (Directorate of Contracting)

USACE Desk Guide for the Construction Wage Rate Requirements Statute FINAL SIGNED.pdf (army.mil)

25. IRS Guidance on Independent Contractors

https://www.irs.gov/businesses/small-businesses-self-employed/independent-contractor-self-employed-or-employee

26. Payroll Deductions

https://www.ecfr.gov/current/title-29/subtitle-A/part-3

Appendix O
ePayroll Frequently Asked Questions

ePayroll – Frequently Asked Questions

1). What is an Electronic Certified Payroll System (ePayroll):

ePayroll is a cloud-based, user-friendly, prevailing wage compliance tool. These systems are used by local, state, and Federal entities who have responsibility for ensuring labor compliance on its procurement actions. The systems enable an agency to capture a view of a single procurement, that can involve numerous subcontractors, in a single location. Clients of these systems can, in real time, monitor labor activity on an entire construction site, gain understanding of who is on the site, and provide immediate feedback between the Federal entity and contractor(s) regarding labor compliance and any necessary documents required for compliance.

2). Why ePayroll:

ePayroll serves many benefits to the Federal agency. With the current shift to a more flexible work environment, using ePayroll will greatly assist USACE in maintaining compliance as specified under FAR Part 22. ePayroll systems are cloud-based and can be accessed and reviewed from any location by a bona fide user. In addition to this critical value, ePayroll has a myriad of benefits that several USACE Districts are currently maximizing on.

Other key benefits include:

- Real-Time submission of payrolls
- Real-Time review of payrolls
- Postage Savings
- Storage Savings
- Instant FOIA redaction
- Instant Reporting Ability
- Seamless flow-up of payrolls for review
- Instant feedback between the government entity and its contractor
- Instant Compliance Check

If your District is not using ePayroll to aid in ensuring labor compliance, you are strongly encouraged to contact the listed approved vendors for a demonstration, so that you are at least informed of the value these systems offer.

3). USACE authority for using ePayrolls:

At 22.406-6 (d) - Preservation, it states that, "the contracting agency shall retain payrolls and statements of compliance for 3 years after completion of the contract and make them available when requested by the Department of Labor at any time during that period. Submitted payrolls shall not be returned to a contractor or subcontractor for any reasons but copies thereof may be furnished to the contractor or subcontractor who submitted them, or to a higher tier contractor or subcontractor."

Specifically, "DOL encourages all government agencies to review proposals to allow contractors to submit information electronically or through allowing access to an appropriate agency approved limited-access Web-based portal providing the required information and certification. The Department believes these efforts, if properly reviewed and implemented in accord with this final rule and data privacy requirements, will decrease burden, increase the efficient use of resources, and better ensure timely

submission of certified payrolls to improve compliance. The Department therefore supports agencies in exploring and implementing any additional methods to improve efficient compliance with the certified payroll requirements." See, https://www.federalregister.gov/documents/2008/12/19/E8-29886/protecting-the-privacy-of-workers-labor-standards-provisions-applicable-to-contracts-covering

Other supporting authorities include:

a. FAR Contract Clause 52.222-8, Payrolls and Basic Records
b. FAR Contract Clause 52.222-13, Compliance with Davis-Bacon and Related Acts
c. Specification Clause 5152.222-9000, Contractor Supply and Use of Electronic Software for Processing Davis-Bacon Act Certified Labor Payrolls

4). Is ePayroll compliant for meeting the requirements of the Copeland Anti-kickback Act:

Yes, in 2004 the U.S. Department of Labor, Wage and Hour Division, approved the use of electronic signatures for payroll actions under the Davis-Bacon Act. The Memorandum is addressed to USACE and specifies that such actions are permissible where the agency used such methods as ePayroll to ensure Davis-Bacon labor compliance.

5). What ePayroll vendors have permitted use on USACE procurements:

The following vendors have been vetted by the Wage and Hour Division. A list of Potential Vendors for Electronic Certified Payrolls is:

Emars Inc.
Woodrow Chamberlain,
President
32531 N. Scottsdale Rd.
Suite 105-293
Scottsdale, Arizona 85266
Office: 480-595-0466
Cell: 602-568-3883
http://www.emarsinc.com

Elation Systems, Inc.
Rick Shi
5000 Hopyard Rd.
Suite 405
Pleasanton, CA 94588
(925) 924-0340
(925) 924-0387
https://www.elationsys.com

LCPtracker, Inc.
Attention: Ryan Ronk
2956 Oak Run PKWY Unit 400
New Braunfels, TX 78132
Telephone: 210-469-9783 http://www.lcptracker.com/

Hill International, Inc.
Ranjit K Chakravorti, Ph.D., PE
Senior Vice President Hill

International, Inc.
5000 Executive Parkway, #260 San Ramon,
CA 94506
925-275-9870 - Main
925-913-7523 - Direct
925-275-9930 - Fax
925-548-4255 - Cell
http://www.hillintl.com/

6). How to establish ePayroll on a USACE procurement:

Several Districts are 100% mandating the use of ePayoll vendors. To execute this mandate the Districts ensure that a Specification Clause is included in every contract. Where the Specification Clause has been omitted, the contract is modified to include it, to ensure the end result of systematically collecting and reviewing certified payrolls.

Technical Provisions Language, discussed in the UAI at page 267, states that "the provided text may be inserted in UFGS 01.30.00 Administrative Requirements, or an equivalent local Division 1 specification that addresses general contract administration issues where mandatory use of an electronic Davis Bacon Payroll system is required." See sections 4-16 and 4-17 of the ER.

7). Is there a cost associated with ePayroll:

As specified in the Technical Provision Language all contractor-incurred costs related to the contractor's provision and use of an electronic payroll processing service shall be included in the contractor's price for the overall work under the contract. The costs for Davis-Bacon Act compliance using electronic payroll processing services shall not be a separately bid or reimbursed item under this contract.

8). Where an ePayroll system is used, how will records be maintained:

When the Districts use an ePayroll vendor it has two choices:

a). Leave the payrolls with the vendor after contract closing. The vendor will be the system of record for up to a period of three (3) years. All currently used vendors have concurred that contract payroll files are maintained on their servers up to five (5) years, if not longer. See sections 4-16 and 4-17 of the ER.

b). The District can have the vendor provide all contract files, at the end of the contract, via a Compact Disc, Digital Versatile Disc, or another reliable secondary storage method.

The storage method used must be noted to the specific contract file in PCF, specifying where the files are stored should they need to be located for an investigation by the Wage and Hour Division, or for other reasons, such as a FOIA action.

9). At the conclusion of a project, how will ePayrolls be transferred to the agency:

As stated above, the District can have the vendor provide all contract files at the end of the contract via a Compact Disc or another reliable secondary storage method. Otherwise, the payrolls remain on the vendors server and will be provided upon the agencies request.

10). Can the ePayroll system be used as measure for ensuring compliance:

The ePayroll system can and should be used as measure for ensuring compliance. All systems are designed to perform compliance checks based on the wage decision(s) applicable to the contract. Specific areas checked by the systems are wage rate payments according to the applicable wage decision, apprentices and trainees listed on the wage decision, overtime hours reported, and fringe benefits alleged to have been paid. These are key areas for ensuing compliance under the Davis-Bacon Act.

Along with the ePayroll system compliance reviews, each district must ensure that no less often than bi-weekly a review of the payrolls submitted using an ePayroll vendor system are checked to ensure that quality assurance reviews align with the vendor system reviews and vice versa. The quality assurance review also requires the Government employee to review and address any vendor system generated red flags. All deficiencies must be noted in the system, along with the action taken to address any potential violations. The notes must become a part of the final record in PCF. To ensure that quality assurance actions are effective, the ePayroll system will identify when the Government official conducts quality assurance actions.

11). What is the District's role for ensuring compliance beyond the ePayroll compliance checks conducted by the system:

As noted above, the Government employee is responsible for quality assurance checks of the vendor system and what has been witnessed on the actual worksite. This quality assurance check will also include a review of any vendor system generated issues that may have been identified.

12). Should payrolls be stored in the Residential Management System (RMS):

RMS has been PII approved to store payrolls, thus payrolls can be stored in the system. Where a District chooses to use RMS as a system of payroll storage, it is the Districts responsibility to ensure that the quality assurance measures specified above are met, and that the storage location, violations identified, and remedies taken to address any violations are noted in the PCF.

13). Should payrolls be stored in the Procurement Contract File:

The Procurement Contract File system has not been PII approved. Therefore, no payrolls should be stored in this system.

14). What is the Department of Labor, Wage and Hour Division policy on the use of Social Security Numbers on certified payrolls:

See guidance at, https://www.federalregister.gov/documents/2008/12/19/E8-29886/protecting-the-privacy-of-workers-labor-standards-provisions-applicable-to-contracts-covering

15). In a non-workweek, are certified payrolls required to be submitted:

"No work" payrolls may be submitted whenever there is a temporary break in work on the project, for example, if the firm is not needed on the project right now but you will be returning to the job in a couple of weeks. However, if a firm will not be working on the project for an extended period of time, a short note should be sent to the contract administrator to let them know about the break in work and to give an approximate date when your firm will return to the project. Where payrolls are numbered consecutively or if you send a note, you do not need to send "no work" payrolls.

16). What requirements must be met to properly complete a payroll form?

See, https://www.dol.gov/agencies/whd/forms/wh347

17). Can Independent Contractors be listed on the payroll form?

See 4-4, b-c, of this ER. If an employee(s) is a bona fide independent contractor, the employee(s) does not need to be specified on the payroll as your general laborers and mechanics. However, to ensure that the agency is aware of who is on the worksite and when, the agency can request that bona fide independent contractors be listed on the payroll and classified as independent contractor.

The Internal Revenue Service provides extensive guidance on this topic. For purpose of Davis-Bacon compliance it is rare that employees will meet the requirements of an independent contractor. Therefore, this classification would be rare, if any, to be listed on USACE submitted payrolls.