

**FACILITIES DIVISION
FACILITIES CONTRACTS BRANCH
Standard Operating Procedures**

DATE: December 20, 2004
SUBJECT: Compliance Verification of DOL Labor Standards Requirements
NUMBER: CSOP-05-002
EFFECTIVE DATE: Immediately Until Replaces or Superseded

1. Purpose

This document provides procedures for verifying U.S. Department of Labor (DOL) Labor Standards requirements, in particular Davis-Bacon Act wage rate compliance, and conducting compliance checks and investigations regarding construction contracts awarded and administered by the Facilities Contracts Branch (FCB).

2. References

Davis-Bacon Act, 40 USC 276a-276a-7
Copeland (Anti-Kick Back) Act, 18 USC 874 and 40 USC 276c
Contract Work Hours and Safety Standards Act, 40 USC 327-333
FAR 3.9, Whistleblower Protections for Contractor Employees
FAR 22.4, Labor Standards for Contracts Involving Construction
FAR 36.2, Special Aspects of Contracting for Construction
Code of Federal Regulations, Title 29 - Labor
Immigration Reform and Control Act of 1986, 8 USC 1101

3. Background

In carrying out its mission, DOL administers a variety of Federal labor laws including those that guarantee workers' rights to safe and healthful working conditions, a minimum hourly wage and overtime pay, freedom from employment discrimination, enhance the welfare and protect the rights of American workers, etc.

Under Title 29 of the Code of Federal Regulations (CFR), the Secretary of Labor is responsible for securing compliance by all Government contractors and subcontractors with labor standards as implemented by various laws, rules or regulations. All contracting agencies must comply with the terms of such laws and all implementing rules and regulations and fully cooperate with

DOL by furnishing information and assistance as requested and required.

The following is a summary of several primary labor laws, albeit not the only ones which outline the requirements that contractors must follow while working on Federally-funded construction contracts.

- The Davis-Bacon Act requires weekly payment of prevailing wage rates and fringe benefits, as determined by the DOL, to all laborers and mechanics on Federal construction projects in excess of \$2,000.
- The Copeland (Anti-Kickback) Act prohibits contractors from requiring employees to give up or give back any part of their compensation they are entitled to. It further requires contractors and subcontractors to provide weekly a statement of compliance regarding wages paid to employees.
- The Contract Work Hours and Safety Standards Act requires contractors and subcontractors to pay employees one and one-half times their basic rate of pay for all hours worked on the contract over 40 hours in a workweek. It also prohibits unsanitary, hazardous, or dangerous working conditions in the construction industry on Federal projects.
- The Immigration Reform and Control Act of 1986 requires that employers only hire persons who may legally work in the United States. Persons legally and automatically eligible to work on Federal/Federally-funded contracts are citizens, nationals of the United States, and aliens authorized to work in the United States. The employer must verify the identity and employment eligibility of anyone to be hired and maintain eligibility verification records for three years or one year after the employment ended, whichever is later.

4. Policy

Contracting agencies, specifically Contracting Officers (CO), are responsible for ensuring the full and impartial enforcement of labor standards in the administration of construction contracts and must maintain an effective program of review. This program must ensure that:

- Contractors and their subcontractors are informed of their obligations under the labor standards clauses in the contract;
- Adequate payroll reviews and employee interviews are conducted and corrective action is taken when necessary;
- Investigations are conducted promptly upon receipt of complaints;
- Required reports are submitted promptly.

5. Procedures

In concert with the required checks and investigations, the CO must advise, inform, and discuss the responsibilities of the contractor and all subcontractors under the labor standards clauses and wage determination requirements. This activity should be accomplished as part of the Pre-Construction Conference.

FAR 22.406-7 requires that CO's make checks and investigations on all covered contracts as necessary to ensure compliance with the labor standards requirements. The CO should take the actions listed below to ensure compliance with the Davis-Bacon Act and related labor statutes.

A. Compliance Checks

The CO or his/her designee (e.g., the Engineering Project Manager (EPM), the Architect-Engineering (A-E) firm or Resident Inspector (RI) performing construction management, or the Location Monitor (LM)) must conduct regular compliance checks and investigations on all contracts covered by the Davis-Bacon Act. Manpower reports, logs, and sign-in sheets should be utilized to verify information. Regular compliance checks consist of the following:

1. Conducting employee interviews to determine the correctness of classifications, rates of pay, fringe benefits payments, and number of hours worked. Employee interviews should be conducted by the CO, EPM, RI, or LM and should utilize Standard Form (SF)-1445, Labor Standards Interview, to document the interview. The results of these interviews should be compared to the contractor's and subcontractor's payroll records for the week that the interviews were held to indicate the correctness of job

classification, hours, rates, benefits being paid to the employees interviewed, etc.

Interviews are essential to detect employee misclassification. They should be held at such times and places as to cause the least possible interference with the performance of the employees' job. Upon conclusion of the interview, the SF-1445 is to be signed by the employee. If the employee refuses to sign, the form should be annotated with the employee's reason.

Approximately ten percent of the workforce should be interviewed using a cross section of the workforce, including minorities, non-minorities, skilled, unskilled, trainees, foremen, men and women in various trades. The frequency of interviews should be at least once or twice a month. On a project where the work force is small and stable, and no labor violations have been found, interviews should be conducted as occasional spot-checks.

If deficiencies are found, the prime contractor must be notified in writing of the deficiencies by the CO and directed to take corrective actions. The contractor is required to respond in writing to explain the deficiencies and provide details on the corrective action taken. Follow-up reviews should be made to determine whether all deficiencies were resolved, to ensure continued compliance, and to determine if other compliance problems exist.

2. Conducting onsite inspections to check the type of work performed, number and classification of workers, and compliance with document/information posting requirements. Inspections should be conducted by the CO, EPM, A-E/RI, and/or LM. All inspections must be documented and maintained in the official contract file folder. If such inspections are to be accomplished by the RI, they are to be in addition to the RI's daily report.

Inspections serve to verify reported work hours, as well as to determine the degree of uniformity of employment of minorities and women on the contract, to evaluate the contractor's efforts to comply with affirmative action requirements, and to investigate any indications of discrimination.

The frequency and number of onsite inspections should be determined by the type of work being performed, the number

of employees working, and length of the contract. However, the frequency of inspections should be twice a month at a minimum.

If discrepancies occur and are noted early in the performance of the contract and immediately corrected, subsequent errors should be fewer in number, thus reducing the need for more frequent close inspections.

The CO, EPM, A-E/RI, and LM should ensure that all posters and wage determinations are properly displayed during regular visits. The following items are required to be displayed in a conspicuous location:

- "Equal Employment Opportunity is the Law" poster
- "Notice to Employees Working on Federal or Federally Financed Construction Projects" poster
- General Wage Decision for the project

3. Conduct regular reviews of certified payrolls to ensure that payrolls of prime contractors and subcontractors have been submitted on time are complete, and in compliance with contract requirements. The prime contractor is responsible for the submission of original certified payrolls by his/her company and all subcontractors at any tier.

All employee deductions must be shown on each payroll, or submitted on a supplemental data sheet attached to the payroll, specifying the purpose and amount of each deduction.

In order to establish that correct information and procedures are being utilized, the payroll for each company working on the project should be reviewed for errors/omissions, misclassifications, unauthorized deductions, inadequate pay, and appropriate certifications. This review should be initially accomplished by the RI since they are onsite, are able to make daily observations of work performed, and have ready access to contractors' logs and sign-in sheets. If an RI is not on the site daily, the A-E performing construction administration will be responsible for these initial reviews. The CO must follow up this review upon receipt of the payroll records. Upon conclusion of each review, each contractor's payroll records should be initialed and dated by the reviewer.

Attachment 1, "Contractor Payroll Record Review Sheet," can be used to record all payroll record reviews for a contract.

At a minimum, all payroll records must provide the following information for each employee working on the contract:

- name
- address
- social security number
- labor classification
- hourly rate of wages (for that week)
- hours worked (daily and weekly)
- gross wages
- all deductions (detailed)
- actual net pay
- proper overtime hours and rates
- proof of registration of apprentices and trainees (with first payroll if apprentices and trainees are employed) along with apprentice rate and proportion of apprentice to journeymen allowable under the registered program

The CO or his/her designee should also compare the payroll records with daily logs to determine the number of people on the project and whether there is a disproportionate use of laborers, trainees, and apprentices to journeymen. If there is a disproportionate use of non-journeymen-level employees, the CO must require proof of proper registration of apprentices and trainees.

Payrolls are not to be returned to the contractor for corrections of any kind. Non-compliant situations can be corrected by providing additional information (foreman's log book), evidence of actions taken to rectify the problem (adjustment checks), or by providing supplemental payroll information.

B. Special Compliance Checks

Certain situations will necessitate special compliance checks. Inconsistencies, errors or omissions discovered during the course of regular checks, and receipt of complaint(s) alleging

violation(s), require more frequent and closer inspections to assure timely correction by the contractor and/or in-depth investigation by the CO, DOL, or USDA's Office of Inspector General (OIG).

Special compliance checks may also include verifying the legal status of employees working on contracts. Contractors are required to hire only those who are legally entitled to work in the U.S. It is the responsibility of the company to verify the legal status of all employees. Verification is normally accomplished by the employee completing a Form I-9, "Employment Eligibility Verification," which the contractor must maintain for at least three years or one year after the employment has ended, whichever is later.

Employers who violate immigration laws are also inclined to violate other laws, especially those concerning wages and safety. As a result, illegal workers frequently do not enjoy the same employment protections that citizens, nationals and authorized aliens do; thus, violations of wage, work hours, and safety requirements often go unreported.

Depending on the situation and location of the project, the CO should verify the legal status of employees. The CO should ask the contractor to make available those records, to include the Form I-9, received from each employee to prove legal status. (A 3-day advance notice is required by law.) Refusal or failure to provide these records should be reported to the DOL, the Department of Homeland Security (DHS)/Immigration and Customs Enforcement, the Location/Lab Director, and Area Office. Coordination with USDA's OIG, as well as the Office of General Counsel (OGC), is highly recommended.

As part of the standard labor interview to verify other labor standards, the CO should also inquire of the employee(s) as to their legal status - whether they are citizens, nationals, or authorized aliens - and to provide proof of their status (which must include a photo), such as a passport, resident alien cards, work visa, etc. Failure to provide such documentation should be immediately reported to the contractor for immediate corrective action, as well as the Government's security office (if available), and if necessary, the local authorities.

C. Investigations

1. Complaints. If a complaint is received or there appears to be substantial and willful violations or deficiencies that go uncorrected, the CO must investigate the circumstances and all aspects of the contractor's compliance efforts. Investigations are not to be limited to only those specific areas that were raised by a complaint or revealed by regular compliance checks.

During the investigation, no disclosure of employees' written or verbal statements are to be made, nor may the identify of the complaining employee(s) be revealed to anyone other than an authorized Government representative without the employees' signed consent.

Whether the contract is ongoing or already completed, a written request for investigation should be sent to the DOL, Administrator, Wage and Hour Division for assistance and/or instruction, as well as notifying the USDA OIG.

Upon conclusion of the investigation and submission of the findings, the CO must notify the contractor in writing of the preliminary findings and corrective action required. The contractor must also be advised that they have the right to request the basis of the findings be made available and the right to submit written rebuttal statements. The CO must provide the rationale for the findings, but may not allow the contractor to view the investigation report. The CO shall not reveal the identity of the employee who filed a complaint or was interviewed without the employees' written consent.

The contractor has 60 days to submit a rebuttal in writing after receipt of a copy of the preliminary findings. The CO should then evaluate any rebuttal statements and provide a written decision on the final findings.

The CO must then submit a written report to the DOL, Administrator, Wage and Hour Division, in accordance with FAR 22.406-8(d) for underpayments that exceed \$1,000 and/or willful disregard of labor standards. For underpayment of \$1,000 or less, the CO does not need to submit the report to DOL but must maintain the findings and report in the contract file.

2. Remedies. There are several remedies available to the CO to redress Labor Standards violations or deficiencies.

a. The CO must notify the contractor in writing to make restitution for underpaid wages and may assess the contractor liquidated damages. The contractor has 60 days to request relief from the liquidated damages assessment.

b. The CO may withhold payments in an amount equal to the estimated wage underpayment and estimated liquidated damages from the contractor's invoices, if the CO believes a violation exists or at the request of DOL.

c. Suspend further payments to the contractor if they fail or refuse to comply with the labor standards clauses.

When the contractor has made restitution and submitted valid evidence of restitution or the amount of funds withheld exceeds the amount required to satisfy the underpayment and/or liquidated damages assessment, those funds may be returned to the contractor. The DOL must approve the reimbursement if they requested the withholding.

If no restitution has been made by the completion date of the contract or the findings are still in dispute, the funds must be forwarded to the U.S. Department of Treasury in accordance with Agency procedures using the SF-1093, Schedule of Withholdings Under the Davis-Bacon Act and/or Contract Work Hours and Safety Standards Act. The DOL must also approve this action if they requested the withholding.

Persistent and deliberate violations may result in recommendation to DOL (through USDA) for debarment, termination for default, or both.

D. Disputes

There are occasions where the contractor disagrees with the CO's interpretation of labor standards. These areas include the classification of workers, hours of work, overtime, etc. In most instances, these disagreements can be resolved administratively. However, in those cases where agreement cannot be reached, the CO should request assistance from DOL.

If the contractor still disagrees, the CO must take the appropriate action outlined previously and inform the contractor of his rights under the clause at FAR 52.222-14, Disputes Concerning Labor Standards. The Disputes clause at FAR 52.233-1 is not applicable to issues arising under labor standards.

E. Rights of Contractor Employees

FAR 3.903 states, "Government Contractors shall not discharge, demote or otherwise discriminate against an employee as a reprisal for disclosing to a Member of Congress, or an authorized official of an agency or of the Department of Justice, relating to a substantial violation of law related to a contract (including the competition for or negotiation of a contract)."

Any employee of a contractor or subcontractor who believes that he or she has been discharged, demoted, or otherwise discriminated, may file a complaint with the Inspector General of the agency that awarded the contract.

Procedures for contractor employees to file complaints may be found at FAR 3.904.

6. Additional Sources of Information

Sources of additional information on various Labor regulations may be found at the following DOL website:

<http://www.dol.gov/esa/regs/compliance>.

The U.S. Department of Interior, Bureau of Reclamation publication, "Labor Standards for Construction," also provides a straightforward explanation of these basic labor standards requirements at:

<http://www.usbr.gov/pmts/acquisitions/laborguide.html>.

7. Point of Contact

For further information, please contact the Facilities Contracts Branch on 301-504-1171.

/s/ Brenda A. Wood

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Chief
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CONTRACTOR PAYROLL RECORD REVIEW SHEET

SHEET No. OF

CONTRACT NO.						CONTRACT DESCRIPTION						
APPLICABLE WAGE DECISION & MODIFICATIONS						CONTRACT PERFORMANCE LOCATION						
PRIME CONTRACTOR NAME						SUBCONTRACTOR NAME						COMMENTS
PAY-ROLL NO.	WEEK ENDING DATE	REVIEWER INITIALS	DATE REVIEWED	APPROVE	DIS-APPROVE	PAY-ROLL NO.	WEEK ENDING DATE	REVIEWER INITIALS	DATE REVIEWED	APPROVE	DIS-APPROVE	

