



JAN 2 1991

MEMORANDUM NO. 154

TO: ALL CONTRACTING AGENCIES OF THE FEDERAL  
GOVERNMENT AND THE DISTRICT OF COLUMBIA

FROM: *John R. Fraser*  
JOHN R. FRASER  
Acting Administrator

SUBJECT: Revisions of the Davis-Bacon Regulations,  
29 CFR Parts 1 and 5

On December 4, 1990, the Department of Labor (DOL) published in the Federal Register (55 FR 50148) its notice implementing revised final Davis-Bacon regulations, 29 CFR Parts 1 and 5 (attached hereto), governing the use of semi-skilled "helpers" on federal and federally-assisted construction contracts subject to the Davis-Bacon and Related Acts. The final rule, previously published on January 27, 1989 (54 FR 4234), becomes effective on February 4, 1991.

The revised provisions of 29 CFR Part 5, sections 5.2 (Definitions) and 5.5 (Contract Clauses) are applicable only to contracts entered into pursuant to invitations for bids issued or negotiations concluded on or after February 4, 1991. The revisions are not applicable to any contracts entered into before February 4, 1991.

Section 5.2 - Definitions

A new definition is added to 29 CFR Part 5. Section 5.2(n)(4) defines a "helper" as follows:

A "helper" is a semi-skilled worker (rather than a skilled journeyman mechanic) who works under the direction of and assists a journeyman. Under the journeyman's direction and supervision, the helper performs a variety of duties to assist the journeyman such as preparing, carrying and furnishing materials, tools, equipment, and supplies and maintaining them in order; cleaning and preparing work areas; lifting, positioning, and holding materials or tools; and other related, semi-skilled tasks as directed by the journeyman. A helper may use tools of the trade at and under the direction and supervision of the journeyman. The particular duties performed by a helper vary according to area practice.

The new helper definition allows the duties of a helper to overlap, to some extent, the duties of the journeyman the helper assists.

Section 5.5 - Contract provisions and related matters

When a wage determination in a contract does not include a particular classification to be employed on the contract, the contracting officer is required to follow the procedure for adding classifications, i.e. the conformance process, set forth in section 5.5(a)(1)(ii).

One of the criteria for the approval of additional classifications generally precludes the addition of a classification if the duties involved are performed by a classification already listed in the wage determination in the contract. The revised regulations provide an exception to this rule to permit the addition of helper classifications to wage determinations even though some of the duties to be performed by the helpers may also be performed by journeymen in the classification they assist (see section 5.5(a)(1)(ii)(A)(1)). A new section 5.5(a)(1)(ii)(A)[4] requires that as a prerequisite for approval of a helper classification, the helper classification prevail in the area where the work is performed.

Procedures are currently being developed for determining whether helper classifications prevail and can be conformed. Agencies are reminded that all proposed additional classification conformance actions must be submitted to the Wage and Hour Administrator for review and approval.

Section 5.5(a)(4)(iv) specifies the permissible ratio of helpers to journeymen on a project (up to two helpers for every three journeymen) if the helper classification is specified on a contract wage determination or is approved pursuant to the conformance procedure. To ensure that this ratio does not disrupt existing established local practices in areas where wage determinations have previously contained helper classifications without any limitation on the number permitted, DOL will consider requests for variances from the ratio limitation prior to bid opening on a contract. The variance request will be approved if supported by a showing that the Davis-Bacon wage determination in effect for the type of construction in the area before the effective date of the final helper regulations contained a helper classification, and that there was a practice in the area of utilizing such helpers in excess of the two-to-three ratio on projects to which the Davis-Bacon and Related Acts applied.

Please ensure that the revised contract clauses set forth at section 5.3 are incorporated in all contracts for which bids are solicited or negotiations concluded on or after February 4, 1991. Agencies are reminded of the need to make appropriate changes in the procurement regulations (see especially 48 CFR 22.406-3, 52.222-6(b) and 52.222-9) and contract documents to conform to the revised regulations.

Section 1.7 - Scope of Consideration

The revised regulatory provisions of section 1.7(d) (Scope of Consideration) are applicable to DOL wage surveys "completed" on or after February 4, 1991. Surveys will be considered completed as of the cut-off date for submission of wage data.

New section 1.7(d) specifies how it will be determined whether use of a particular helper classification prevails in an area. If the prevailing wage for a particular journeyman classification is a wage that is paid to the majority of journeymen in the classification, then the practice followed by those contractors whose rates are adopted as prevailing for the journeymen shall also be the prevailing practice in determining whether to issue a helper classification.

If the prevailing wage for a particular journeyman classification is the average of the wages paid to the journeymen in the classification (weighted by the number of journeymen at each rate), then a comparison will be made between:

- (a) the total number of workers in the classification (journeymen plus apprentices, trainees and helpers) employed by contractors utilizing helpers, and
- (b) the total number of workers in the classification (journeymen plus trainees and apprentices) employed by contractors not utilizing helpers, and,

the practice which covers the larger number of such workers will determine the prevailing practice.

It is, of course, very important that you ensure that the actions specified herein are taken in a timely and consistent manner.

If we can be of any assistance in answering questions please contact Mr. Alan Moss or his staff, who can be reached at (202) 523-7431.

Attachment