

Transcript of Webinar on Certified Payrolls

U.S. Department of Energy (DOE) Weatherization Assistance Program
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The following is a transcript of a Webinar held by the U.S. Department of Energy Weatherization Assistance Program on October 7, 2009, that accompanies a video file that is posted on the program Web site.

Tom O'Connor

Welcome to our Webinar on certified payrolls. My name is Tom O'Connor. I'm with the U.S. Department of Energy Office of General Counsel, and with me I have Greg Ramey from the DOE Weatherization Program and also Page Erickson who is an independent consultant and who will be leading this presentation on Davis-Bacon Act certified payrolls. We hope the presentation will be of valuable assistance to you. Certified payroll is one of the most important parts of Davis-Bacon compliance and again we hope it's beneficial to you as you go through your compliance with Davis-Bacon.

A couple of matters up front, this Webinar is being recorded first of all and second this Webinar is intended as general information and is not legal advice. The official regulatory source for Davis-Bacon compliance is contained in the Department of Labor regulations in §29 of the Code of Federal Regulations. Now the one main technical aspect of this Webinar that you'll need to be concerned with is the question and answer box and you'll be seeing slides as we go along but you'll be able to ask questions at a box to the right-hand side of the screen. So you can type in your question and then hit send and we'll be able to see your questions and we'll wait to the end of the presentation and the slide presentation to answer those questions and we'll do that verbally so everyone can hear. We'd like to the extent possible limit the questions to completion and review of the certified payroll forms.

So we do have on various matters on Davis-Bacon on our Weatherization Program Assistance Web site a frequently asked questions page that will answer probably most of your questions on Davis-Bacon and if you can get a pen handy I can give you that Web site which I will also repeat at the end of the Webinar. So give me one second to get a pen and it's a little long but I'll give you the full Web site now:

http://apps1.eere.energy.gov/weatherization/recovery_act.cfm.

I'll repeat that again but the frequently asked questions are up on that Web site where we intend to add to them but also intend to put a recording of this Webinar and the accompanying slides on that Web site. So again, we hope this is a beneficial presentation to you and our presenter today is Page Erickson. Page is an independent consultant in the areas of labor standards and human resource management. He primarily focuses on the Davis-Bacon Act, Service Contract Act, and Fair Labor Standards Act. He's been a field investigator at the Department of Labor and he's been a contractor industrial relations specialist at the Department of Energy. So he's very knowledgeable in this area and I trust you'll find his presentation to be informative. So with that I turn the presentation over to Page.

Page Erickson

Thank you Tom and I appreciate the opportunity to be a part of this training and hope it will be very useful for all who are attending. Certified payrolls are a requirement under Davis-Bacon primarily to protect the workers. The form WH-347 is an optional form provided by the U.S. Department of Labor to assist employers in accurately reporting and certifying the payrolls on Davis-Bacon projects. It is optional. The employer is not required to use it. However, it does contain everything that the regulations specify must be incorporated into the certified payroll. If the employee wishes to use something other than the 347 form they may do so but all of the required items must be incorporated and completed on whatever form they use. The regulatory requirements concerning this are under the Copeland Act (29 CFR §3) and the Davis-Bacon Act (29 CFR §5.5). The contract of responsibilities, the first responsibility is to pay employees on a weekly basis. This is a statutory requirement of the Davis-Bacon Act and where the Davis-Bacon Act requirements have been incorporated into other laws such as the American Recovery and Reinvestment Act they apply there also. This is regardless if the employee has a different payroll normally. On the Davis-Bacon work they will have to pay on a weekly basis. They are required to prepare certified payrolls for each weekly pay period within seven days of the end of the period. As an example, if your pay period ended last Friday which is October 2, it would have to be prepared no later than this Friday, October 9. They are required to submit certified payrolls to the grantee or contracting officer when prepared but no less often than weekly. The terms of the grant will decide where they are to be given, to the grantee, sub-grantee, or contracting officer, whichever is required by the grant itself. When applicable, grantees should submit the DOE payrolls from sub-grantees or subcontractors. Again, back to what the grant requires, and again where applicable sub-grantees or contractors should submit payrolls to the grantees from subcontractors. A contractor is responsible for all of the certified payrolls of subcontractors below them. They are held responsible by the statute and by the terms of the contract. So they have to then collect them and forward them on to the appropriate agency.

Now we will go into what are the requirements, what are the items that will be shown on the certified payroll? The first part is contractor information. To begin with, the full name and address of the contractor and that's the legal name of the contractor. If it is a corporation it will be the corporation's full name. If it's a partnership it will be the same thing. In the case of an individual it would be that individual, DBA, whatever name they use for their business. There must be a payroll number on the form. The first payroll on the project will be number one. Each succeeding payroll will be numbered in sequence above that. They also must show the date of the last day of the work week that the payroll covers. The employer is free to select any work week that they wish as long as it is a regularly occurring seven day period. As an example, when I worked in a refinery the work week started at 11:00 Sunday night because that was the closest time for a shift that ran into Monday. When I investigated a construction company building a dam in Milford, Kansas on the Republican River, their work week ended on Wednesday and that gave them time to prepare the payroll and distribute the checks on Friday of that same week.

The project must be identified and its location. As an example, it could be a post office in Augusta, Georgia. That would be the name of the project and the city and state where it's located. It's possible that a project would not be in a city. It could be in a rural area. In that case it would have to be identified with the county and the state involved and it's possible that particularly in the weatherization there may be a lot of locations under a single contract and in that case, again, probably the best way would be to identify the county and the state. The project contract number, the prime contractor who is performing the work, this would be the number in which they are working under. It could be a sub-grantee, community action group as an example. It could be a construction firm that has been hired by a sub-grantee to perform the work. But that is the contract number that should be shown. Subcontractors should show the same number if they have it available and I have seen some instances where the prime contractor didn't include that in their subcontract but they did have their own subcontract number and the subcontractor then would use that.

Now that will complete the employer identification items on the front of the form. The next thing to go to is the employee information and these items are numbered on the form and we will go through them by the numbers. First, full name and employee identification number, that would be the full name of the employee as it would appear on the employer's payroll. Identification number can be any number peculiar to each individual that the employer selects to use. In the past the form requested the Social Security Number be incorporated on there but that has been deleted for privacy purposes. But the employer must have a record of the employee's Social Security Number and their current home address, which is the Department of Energy or the state, if they're acting on behalf of the Department of Energy are auditing a particular project would have to be provided to them upon request.

Item two is exemptions. This is optional. Since some companies use this as their regular payroll they would probably include exemptions on it. Item number three is work classification. This should be as it is shown on the wage determination incorporated into the contract. If the person is working as a carpenter, that's what's on the wage determination that is also what should be shown on the certified payroll. In some instances an employee may work at more than one classification and this is particularly true on smaller projects. If they work at more than one classification in the project then that has to be identified for each classification on a separate line on the form. Day and date, the day of the week goes in the upper half of that part, the calendar date goes below and it would start with the beginning day of the work week that the employer has selected for his business. Hours worked each day, overtime hours would go into the upper part of this section, straight time hours in the lower part of the section and if they work in more than one classification the hours would be shown for each classification on the line where that was identified. They wouldn't be grouped together at that point.

Item number five is total hours that are worked, all hours worked from items number four as an accumulation. Item six is the rate of pay. This may include the hourly rate of pay or it may also include fringe benefits if they are paid in cash and it should be shown with

the hourly rate followed by the fringe benefits with the possible use of a backslash between the two. As an example, an employee may be paid \$12.50 an hour and their fringe benefits are worth \$1.40 an hour. It would be shown as a rate of pay. The overtime rate of pay is shown in exactly the same manner. The basic rate using the \$12.50 as an example would now be \$18.75 an hour and the fringe benefits would still be \$1.40. Time and one-half is only paid on the basic rate. The fringe benefit is not increased during overtime hours. Item number seven is the gross amount earned. This would be the total earnings for the week involved from all sources. If part of the earnings were not from the Davis-Bacon project then the project earnings should be shown first followed by the total earnings for the work week and again, it could be shown using the backslash between the two of them and that would be earnings from all sources of that work week, not just the Davis-Bacon when you get to the final number.

Item number eight, this is deductions. The first two are identified, FICA and withholding taxes. Withholding taxes would in most cases include both state and federal income tax withholding as most states have an income tax of their own. Additional deductions, there are room for additional ones and a space for other. This is set up so that the additional ones can be identified but if there are too many those in excess would be accumulated in the other column and those described in the other column should be shown on an attachment to the form 347. The total of all deductions, the dollar amount of that total, permissible deductions are found in 29 CFR §3.4 and 3.6. Permissible deductions would include such things as if an employee through his employer purchased healthcare for his family that would be a permissible deduction. Another one that happens sometimes is a deduction for prepayment of wages. Sometimes an employee will ask the employer to advance them wages for the upcoming week. The employer is not required to make such an advance but if they do they can deduct that when the payroll is completed because the employee has already received that part of their money.

Item number nine if the net pay, the take-home pay, what the individual actually receives in their paycheck at the end of the workweek, when those items are completed for each employee then the front part of the form is finished and the employer then needs to look at the backside of the form. This is the certification part. The contractor and project identification will be placed on the back and they are the same as on the front. The full name of the person signing the certification must be put on there in the item number one. Also show the beginning and ending dates of the pay period. This goes back to the workweek again. It would be the first day as an example, Saturday October 3, 2009. The last day would be Friday, October 9, 2009. But it must be completely identified and accurately identified. There is room above items two and three to explain deductions if such an explanation is needed. Item number four talks about fringe benefits; it has two places that can be checked: block A if fringe benefits are paid into approved plans, block B if they are paid into cash. In some cases and employer may have some employees that fit into both and therefore they would check block A or B, which either one represented the majority of the employees involved. If seven of their employees had their benefits paid into the plans and three were paid by cash they would check block A.

Then we go to the right-hand side of the form concerning the benefits. In the exception column, the crafts that do not match what was checked in A or B are individually identified. The amount paid to each of those crafts goes into the explanation column and that would be the amount per hour that is paid for these particular employees. As an example let us say all of the employees on a certain wage determination have collective bargaining agreements that have determined the wages and the employer pays the fringe benefit into their funds. But the laborer, their wage on the wage determination is not under collective bargaining and has just a smaller dollar amount of wages. The employer very well may pay that one in cash to the individual. That would be the kind that they would identify in this section.

The last part is the certification itself. Print the name and title of the individual who is going to sign the form. That is followed by the signature and the date. This is the actual attesting to the fact that the information provided is correct and accurate. That would complete the form for that particular contractor for the given workweek.

There are certain requirements for the grantee or contracting officer, their responsibilities. They would be first to receive the certified payrolls from the contractor that prepared them and the organization that would receive those would depend on the terms of the particular grant program they were working under. In some cases it could be a sub-grantee. It could be a community action group, a local branch of government. In others, it may be the grantee which would be the state. In some others it could be the Department of Energy directly that would receive that. Whichever party first receives them should then review them for accuracy. Retention of the payrolls is for a period of three years and here again the terms of the grant will determine who retains the payroll, sub-grantee, grantee, or the Department of Energy, however it may be.

Reviewing the certified payrolls, at the beginning of a project usually all of the payrolls are reviewed the first week or two so that the contracting officer or the grantee can see how various contractors are performing this function. Farther down the project it may go to a spot checking situation particularly if it looks like the contractors are doing a good job of preparing the certified payrolls and submitting them. But items to be checked, classification: does this match the work performed?

I did an investigation at the Livermore Laboratory of an electrical subcontractor on a building project. On his certified payroll there was one electrician. All the other employees were laborers. That's not who does the work on an electrical subcontract. That would tell you very quickly that there is a disconnect between what is being done and the classification that's shown to do it.

Another one, hours worked, do they match the activity on a project? As an example, a sub-grantee awards a contract for weatherization work. They know their project. Let's say we're getting close to winter. They want work done to have it finished before bad weather hits. They're going to be expecting that contractor to be working full time there to get it done. If the certified payrolls of the contractor would come in showing shorter

days, four hours, five, maybe six hours a day instead of an eight or maybe even a ten hour day that would be highly suspicious of what is being done.

Again, on another investigation that I had at Livermore that's exactly what we had on one subcontractor. His payrolls would normally show between four and six hours a day for employees, once in a while eight. But when I looked at the daily inspection reports I saw that this subcontractor was on the job all day, didn't leave early, didn't come in late. Again, that's an indication of substantial problems.

The wage and fringe benefits, do these equal the amount required for the employee classification? They should. Now the wage rate, the basic wage rate does not have to be the same as what is contained on the wage determination. The employer can pay a lower basic rate if they pay additional fringe benefits. But the total must equal what is required for that classification and the last thing, the employee data and certification, are these complete on the form? If they are it's in pretty good condition.

Activities following payroll review, first payrolls are accurate and complete. There should be no further action required at that time based on your review. Second, are there minor errors on the payroll such as the employer failed to pay one or two employees properly that week out of a substantial number of people on the payroll, payroll error. Those can be resolved with the employer and usually can be resolved quickly and quite easily. Show the employer where the error was, the fact that wages were not paid correctly and tell them to make up the different for whatever was not paid and to indicate this payment on the next pay period where they submit the payroll. That is a way that minor problems are normally resolved and this is no different than a problem on the quality of the work. If the contractor makes a mistake they have to fix it, same thing on the certified payroll.

Minor problems should not create a major issue on resolving them unless for some reason the contractor is very stubborn about it. Then they may. If you're unable to correct a problem and hopefully that won't happen on the small ones or if there are indications of substantial noncompliance, as an example we talked about the hours not matching the work, the classification not matching the activity, then the issue should be sent up to the grantee, the state in most cases, and to the Department of Energy. The Department of Energy should be notified. Depending again on the terms of the grant, DOE or the state would be the ones to take any corrective action in that issue.

Payrolls are not received from the contractor. If the payrolls are not received by the contracting officer on a timely basis the contracting officer must withhold funds from the contract. Now there is no definition of a timely basis. But if a payroll was due a week after the pay period and it goes another week before and is not received, I think we have gone past the limits of a timely basis. But that is at the discretion of the contracting officer. They must withhold funds. That's mandatory. It's a statutory and regulatory requirement. It's not optional. The amount withheld should be sufficient to protect the employees and the government.

As an example if a subcontractor on one particular project failed to submit the payroll but the prime contractor submitted theirs and those from the other subs, the amount of withholding might equal the expected payroll for that one sub for the week and what happens? Because you withhold from the prime contract that's who you have the agreement with, the prime contractor will get with that subcontractor very quickly and you probably will get the certified payrolls rather soon and at that point you could release the funds again and with that, that should conclude this part of our presentation and we will go into –

[End of audio]