Webinars on the Davis-Bacon Act for USDA-RUS & Commerce-NTIA, Broadband Grantees, and Stakeholders

American Reinvestment & Recovery Act of 2009 (ARRA)
Overview of ARRA

- Signed into law by President Obama on February 17, 2009
- Division A of ARRA appropriates substantial funding for
  - Construction, alteration and repair of federal buildings
  - Infrastructure projects such as roads, bridges, public transit, water systems, and housing
  - Various activities that federal agencies may contract out for service employees to perform

Labor Standards Coverage on ARRA funded projects

- Davis-Bacon requirements apply to:
  - Federal contracts funded by ARRA
  - Most ARRA-assisted construction projects
- Reorganization Plan No. 14 of 1950 gives:
  - Federal agencies responsibility to ensure that laborers and mechanics are paid at least the prevailing rates established by DOL
  - DOL has regulatory authority and oversight responsibility and can investigate compliance.
DOL ARRA Guidance

- All Agency Memorandum No. 207, dated May 29, 2009, provides DOL basic guidance on Davis-Bacon labor standards applicability to federal and federally assisted construction work funded under ARRA.

- Advisory letters, such as those issued to the Department of Energy and Department of Interior, provide further guidance.

ARRA Labor Standards Implementation

- Federal agencies must:
  - Ensure that their bid solicitations and resulting covered contracts contain labor standards and wage determinations in accordance with Federal Acquisition Regulations.
  - Generally, ensure that recipients of assistance funded by ARRA appropriations require contractors and subcontractors to pay laborers and mechanics employed on covered ARRA-assisted construction at least the Davis-Bacon prevailing wages.
Federal or Funding Agency Responsibilities

- Ensure proper wage determination (WD) is applied
- Advise contractors which schedule of rates applies to various construction items
- Advise contractors regarding the duties performed by various crafts in the WD
“General” WDs

- Issued-most counties, each major type of construction, nationwide


- May be used by Federal agency without notifying the WHD

Selecting Proper WD (29 CFR 1.5)

- Location of the construction project

- Type of construction

- Current Wage Determination
Selecting & Incorporating Proper WD (Construction Type - AAM 130)

- Building
- Residential
- Highway
- Heavy

Selecting & Incorporating Proper WD (Construction Type - AAM 131)

- Application of Multiple Wage Schedules
- Separate construction types (AAM 131)
  - At least 20% of the total project and/or
  - At least $1,000,000 in cost
- Separate construction types
Selecting & Incorporating Proper WD (Construction Type - AAM 131)

- Application of Multiple Wage Schedules (AAM 131)
- Incidental Construction types
  - Less than 20% of total project cost and
  - Less than $1,000,000 in cost

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Selecting & Incorporating Proper WD (Current WD)

Incorporate most current WD

- Negotiated contracts ("RFPs") – Time of award
- Competitively bids contracts: In effect 10 days (or less) before opening of bids
- Exceptions
Selecting & Incorporating Proper WD (Current WD)

Extension of General WD:
- Contract - Not awarded within 90 days of bid opening
- Any modification to the WD must be incorporated into the contract up to award unless the Federal agency requests and obtains an extension of the 90-day period

Selecting & Incorporating Proper WD (Current WD)

Issuance of WD After Contract Award or Start of Construction:
- Failure to incorporate a WD into contract
- Use of a WD that did not apply to contract
- Incorporation of wrong WD into the contract
Selecting & Incorporating Proper WD (Current WD)

- Clerical error in WD
- Letter of Inadvertence correcting the error will be issued by DOL
- Corrected WD to be included in contract retroactively

Interpreting “General” WDs

- Cover Sheet
- Body of WD (Classifications, Rates & Fringe Benefits)
- Conformance Process
- Appeals Process
Interpreting “General” WDs

Cover Sheet

- Decision Number (Supersedeas)
- State
- County or City Covered
- Type of Construction
- Description of Construction
- Record of Modifications

Interpreting “General” WDs

Cover Sheet

Decision Number (Supersedeas)

- Annual publication-General WDs
- Replace prior wage decisions
- WD numbers reflect new year
Interpreting “General” WDs
Cover Sheet

- State
- County

Interpreting “General” WDs
Cover Sheet

- Type of Construction
- Description of Construction
  - Include and Exclude Language
Interpreting “General” WDs

Cover Sheet

- **HIGHWAY** CONSTRUCTION PROJECTS (Does not include building structures in rest area projects)

- **HEAVY** CONSTRUCTION PROJECTS (includes flood control, water & sewer lines, and water wells; excludes elevated storage tanks, industrial construction-chemical processing, power plants, and refineries)

- **BUILDING** CONSTRUCTION PROJECTS (Does not include Treatment Plants or single family homes & apartments up to and including 4 stories)

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Interpreting “General” WDs

Cover Sheet

Record of Modifications

- List of all modifications of the WD
- Results of new survey
- Update union rates
Interpreting “General” WDs

Cover Sheet

Body of WD

List of classifications and rates

Basis for rates - Identifiers

- Union Identifiers
- SU Identifiers
Interpreting “General” WDs
Body of WD

Union Identifiers
ELEV0101A  10/15/2006

ELEVator Constrs: International Union
Local 101: Local union Number
A: Internal Processing Number
10/15/2006: Date of the CBA:

ELEc0194-002                   09/06/2007
BOSSIER, CADD0, & WEBSTER PARISHES

Rates Fringes
ELECTRICIAN (including low voltage wiring and installation of fire alarms and security systems) $22.35  $8.56

CBA rates are updated when CBA rates are changed
**Interpreting “General” WDs**

**Body of WD**

<table>
<thead>
<tr>
<th>SULA2004-012 06/15/2004</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>SU (Non-Union) Identifiers</strong></td>
</tr>
<tr>
<td><strong>SU:</strong> SUrvey – Basis of Rate(s)</td>
</tr>
<tr>
<td><strong>LA:</strong> Louisiana</td>
</tr>
<tr>
<td><strong>2004:</strong> Date of Survey</td>
</tr>
<tr>
<td><strong>012:</strong> Internal numbering</td>
</tr>
<tr>
<td><strong>6/15/2004:</strong> Date submitted for publication</td>
</tr>
</tbody>
</table>

*S SU rates remain unchanged until new survey*

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<table>
<thead>
<tr>
<th>Rates</th>
<th>Fringes</th>
</tr>
</thead>
<tbody>
<tr>
<td>CARPENTER (including drywall hanging, metal stud installation, and Form building and form setting)</td>
<td>$11.78</td>
</tr>
<tr>
<td>Laborer, common</td>
<td>$8.01</td>
</tr>
</tbody>
</table>

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**U.S. Department of Labor**

Wage and Hour Division

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**PREVAILING WAGE CONFERENCES**
Interpreting “General” WDs

Conformance Process

- Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR 5.5 (a) (1) (ii)).

Criteria for Conformance Actions

- Work not performed by classification in Wage Determination (WD)
- Rate must bear a reasonable relationship to WD rates
- Classification is utilized in the area by the construction industry
What does this mean for you?

Craft Classifications

- Aerial Groundman
- Aerial Lineman
- Asphalt Distributor Operator
- Asphalt Paving/Lay-Down Machine
- Blaster
- Bore Locator
- Borehole Driller
- Cable Locator
- Cable Splicer
- Cable Splicer (Low Voltage & Fiber Optic)
- Cementing Equipment Operator
- Cementing Field Technician
- Communication Technician
- Communications Equipment Installer
- Communications Lineman
- Directional Bore Operator
- Directional Drill Operator
- Driller
- Dump Truck (2 ton under 8 cyd)
- Electrician
- Electronic Technician
- Fiber Optic Cable Splicer
- Fiber optic Handler
- Fiber Optic Placement Operator
- Fiber Optic Splicer
- Fiber Splicer Fiber Tech I
- Fiber Tech II
- Field Service Technician
- Field Technician Telecommunication Equipment
- Fork-lift (under 5 ton)
- Forklift Operator (Skytrap 10,000lb boom lift)
- Fusion Technician
Craft Classifications

- Groundman
- Home Wiring Technician
- Installer
- Installer Technician
- Landscaper
- Lineman
- Lineman Foreman
- Network Technician
- Outside Plant Installer
- Outside Plant Technician
- Pipe Roller/Stabber
- Pump Rig Operator
- Radio Frequency Tech
- Rubber Tire Backhoe Operator
- Telecom Services Technician
- Telecommunication Lineman
- Tong Machine Operator
- Tower Equipment Installer/Repairer
- Tower Tech
- Trench Operator
- Trenching Machine Operator
- Truck Driver: Semi-Trailer/Low Boy
- Underground Laborer
- Vacuum Truck Driver
- Vibratory Plow Operator
- Water Truck
- Winch Operator

Processing a Craft Request

- Work not performed by classification in Wage Determination (WD)
- Rate must bear a reasonable relationship to WD rates
- Classification is utilized in the area by the construction industry
Example of a Request “Approved”
Dear Mr. Calabro:

This is in response to your request proposing the addition of a classification and wage rate to the above wage decision in accordance with 29 C.F.R. §134(b).

<table>
<thead>
<tr>
<th>CLASSIFICATIONS</th>
<th>BASIC</th>
<th>PRIME</th>
</tr>
</thead>
<tbody>
<tr>
<td>Power Delivery</td>
<td>014.40</td>
<td></td>
</tr>
<tr>
<td>Acclai License</td>
<td>014.50</td>
<td></td>
</tr>
<tr>
<td>Frame Welder</td>
<td>014.60</td>
<td></td>
</tr>
<tr>
<td>Directional Bore Operator</td>
<td>014.80</td>
<td></td>
</tr>
<tr>
<td>Operator</td>
<td>014.90</td>
<td></td>
</tr>
<tr>
<td>Unskilled Labor</td>
<td>08.00</td>
<td></td>
</tr>
</tbody>
</table>

The above classified classifications and wage rates are approved and shall be paid the above wage to all workers performing work in the classifications under this contract from the first day on which work is performed in the classifications.

This matter is subject to further review if any interested party chooses to prejudice either the classification and wage rates. Any protests of classification and wage rates must be made in writing to the Office of Prevailing Wage Determinations, U.S. Department of Labor, Wage and Hour Division, Terminal A, 14th and Constitution Avenue, NW, Washington, DC 20210. The protest must be made within 14 days of receipt of this determination. If you have any questions, please contact Mr. Evan Shahn at (202) 693-1172.

Sincerely,

Forest Fendrich

Research Chief, Construction

Wage Determinations

U.S. Department of Labor
Wage and Hour Division
Example of a Request
“Denied”
(Reasonable Relationship)
Example of a Request “Denied” (Work Already Performed)
Dear Mr. Orlando:

This is in response to your request proposing the addition of a classification and wage rate to the wage database in accordance with 29 CFR 5.15(c)(1)(ii).

The request cannot be approved because the work to be performed by the classified position is not the performance of work previously performed by a classification already included in the wage database (see section 5.15(c)(1)(ii)). Accordingly, the classifications are not subject to the wage determinations of this rule.

This matter is subject to further review if any interested party should wish to present additional information for reconsideration. Requests should be in writing and sent to the Secretary of Labor, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, D.C. 20210. If you have any questions, please contact Mr. Don Thomeczek at (202) 693-2132.

Sincerely,

Douglas Marshall
Branch Chief, Field Operations
Wage Determinations
What Should I Do for Bid Purposes When There is No Rate Listed?

- Be sure that the work is not performed by any other craft.
- Look for the lowest skilled rate on the applicable decision (typically excludes truck driver, laborer and PEO)
- Bid contract at or above this rate.

Criteria for Conformance Actions

Conformance requests are not needed for bona fide:

- Apprentices
- Trainees
- Welders
Conformance Process
Contracting Agency & Contractor

Pre-Bid/Pre-Award

- Review WD
- Compare WD with project work
- Anticipate needed classifications
- Apply key criteria

Conformance Process
Contractor

After-Award:

- Identify needed classes
  - Pre-construction conference
  - Certified payrolls
- Advise agency of needed classification
- Complete Contractor Part of SF-Form 1444
  - Apply Conformance Key Criteria
- Forward SF-Form 1444 to agency for review, signature, and submission to DOL
Conformance Process
Contracting Agency

After-Award:
- Identify needed classes
  - Pre-construction conference
  - Certified payrolls
  - On-site inspections
  - Contractor/employee/union/competitor inquiries/complaints
- Conformance requests (SF-1444 or other) to contractor

Conformance Process
Contracting Agency

- Review contractor conformance request
- Get interested parties’ and employee views
- Apply key criteria for approval
- Document parties’ agreement or dispute
- Document agency agreement or disagreement
  - Supporting information if disagree
- Contracting Officer Signature
Conformance Process
Contracting Agency

- Submit conformance request to DOL for review and determination

- Communicate with DOL to:
  - Obtain status if no response in 30 days
  - Respond to requests for additional information needed by DOL to process the request

Conformance Process
DOL

Apply Conformance Criteria

Is requested classification listed on WD or can a classification on WD perform the work?

If no, then determine if proposed rate bears a reasonable relationship to the rates already in the contract WD for the given county and type of construction
Conformance Process
DOL

If yes, then the next determination: Is the listed classification union or open-shop?

- If union, information from only the union segment of the industry is solicited.
- If open-shop, only information from open-shop contractors is requested.

Relevant data to be obtained from union or open-shop contractors:

- Project payment evidence for:
  - Same county
  - Same type of construction
  - Same work duties performed
  - Period one year prior to award of contract
Conformance Process
DOL

If data submitted shows listed classification performed the work in question, request is denied as duties of proposed classification are performed by listed classification in WD.

If data is not submitted that the work was performed by the listed classification, then the next step is to determine if proposed rate bears a reasonable relationship to the rates already in the contract WD for the given county and type of construction.

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Conformance Process
DOL

Proposed rate “bears a reasonable relationship”

- No rate below WD unskilled laborer rate.
- Skilled craft proposed rate not below WD’s lowest “skilled craft” rates (excluding laborers, truck drivers, and power equipment operators).
- Power equipment operators or truck drivers proposed rate relates to WD power equipment operator or truck driver.
Conformance Process

DOL

Verifies classification is utilized in the area by the construction industry

Returns Conformance request with approval/disapproval to agency

Conformance Process

Contracting Agency

- Communicate DOL’s determination to contractor and other interested parties

- Advise the contractor and other interested parties of procedures for reconsideration and appeal
Wage Determinations On-Line (WDOL)

http://www.wdol.gov
(An E-Government Initiative)

WDOL.GOV

- Created by an inter-agency task force including DOL, DOD, OMB, GSA, DOE, and the National Technical Information Systems

- The purpose was two-fold:
  - To meet the Presidential initiative for e-government
  - To enhance the public's ability to obtain WDs
WDOL.GOV

- Provides access to:
  - SCA & DBA Wage Determinations (WDs)
    - Current, Archived, and to be Revised
  - DBA Wage Determinations (WDs)
    - Current, Archived, and to be Revised
  - Library

WDOL Home Page
Cross Walk from Title 29 CFR to Title 48 CFR

- Cross Reference - Index between the DOL regulations and the FAR Regulations

Conformances
Additional Classification Requests

- SF-1444 – PDF Document

- Procedures
  - SCA
  - DBA
Davis-Bacon Compliance Principles

- Laborers and mechanics
- Site of the work
- Truck drivers
- Apprentices Trainees & Helpers

DBA/DBRA Compliance Principles

- Area Practice
- Fringe Benefits
- Computing overtime pay
WHD/Recovery

- Prevailing Wage Resource Book
- Videos of past Prevailing Wage Conferences
- A list of upcoming Prevailing Wage Conferences
- Other information pertaining to ARRA
- whdarra@dol.gov

Laborers and Mechanics

- Workers whose duties are manual or physical in nature
- Includes apprentices, trainees, and helpers
- For CWHSSA, includes watchmen and guards
Laborers and Mechanics

- Does not include:
  - Timekeepers, inspectors, architects, engineers
  - Bona fide executive, administrative, and professional employees as defined under FLSA

- Working foremen are generally non-exempt
  - must be paid the Davis Bacon (DB) rate for the classification of work performed if not 541 exempt

Site of the Work

- Davis-Bacon applies only to laborers and mechanics employed “directly upon the site of the work”

- A three-part definition applies to determine the scope of the term “site of the work”
Site of the Work Definition ¶1

- DBA applies only to workers on the “site of the work”
  - The physical place or places where the construction called for in the contract will remain after work has been completed; and,
  - Any other site where a significant portion of the building or work is constructed, provided that such site is established specifically for the contract.

Site of the Work Definition ¶2

- “Site of the work” also includes job headquarters, tool yards, batch plants, borrow pits, etc., provided they are:
  - Located adjacent or virtually adjacent to the “site of the work” described in paragraph 1 and
  - Dedicated exclusively or nearly so to the performance of the contract or project
  - Except if they are excluded – see next slide
“Site of the work” does not include a contractor’s or subcontractor’s
- permanent home office, branch locations, fabrication plants, tool yards, etc.,
- whose location and continuance in operation are determined without regard to a particular covered project.

Also not included in the “site of the work” are:
- Fabrication plants, batch plants, job headquarters, tool yards, etc., of a commercial supplier established by a supplier of materials
  - Before the opening of bids for a project, and
  - Not located on the actual site of the work
- Such permanent, previously established facilities, are not part of the “site of the work,” even where the operations for a period of time may be dedicated exclusively, or nearly so, to the performance of a contract
Truck Drivers

Truck drivers of the contractor or subcontractor are covered by Davis-Bacon for time:

- Spent driving on the “site of the work,” and
- Spent loading or unloading materials and supplies on the “site of the work,” if such time is more than de minimis

Truck Drivers

Truck drivers are also covered when:

- Transporting materials and supplies between a facility that is part of the “site of the work” and the actual construction site; or
- Transporting portions of a building or work between a site where a significant portion of the project is being constructed and the physical place where the building or work will remain
Truck Drivers

- Truck drivers are **not** covered in the following instances:
  - Material delivery truck drivers while off the “site of the work”
  - Truck drivers of a contractor or subcontractor traveling between a commercial facility and the Davis-Bacon job when they are off the “site of the work”
  - Truck drivers whose time spent on the “site of the work” is *de minimis* for pick-up or drop off

Owner-Operators

- DOL has an enforcement position with respect to *bona fide* owner-operators of trucks who are independent contractors (an owner-operator is a person who owns and drives a truck). Certified payrolls including the names of such owner-operators do not need to show the hours worked or the rates paid, only the notation “owner-operator”.

- This position does not apply to owner-operators of other equipment such as bulldozers, cranes, etc.
Apprentices

- Persons individually registered in a bona fide apprenticeship program registered with DOL or a DOL approved State apprenticeship agency
- Include individuals in their first 90 days of probationary employment as an apprentice
- DOL regulations: 29 CFR 5.2(n)(1) and 5.5(a)(4)(i)

Trainees

- Persons registered and receiving on-the-job training in a construction occupation under a program that has been approved in advance by DOL’s Employment Training Administration (ETA)
- DOL regulations: 29 CFR 5.2(n)(2) and 5.5(a)(4)(ii)
Apprentices and Trainees

- Are laborers and mechanics, but are not listed on the WD
- Permitted to be used on covered projects and paid less than the journeyman rate when:
  - Individually registered in an approved apprenticeship or training program
  - Paid the percentage of hourly rate required by the apprenticeship or training program

- Paid the FB’s specified in the approved program, or the full amount of FB’s listed on the WD, if the program is silent; and,

- Within the allowable ratio specified in the approved program for the number of apprentices or trainees to journeymen
Helpers

May be employed if:

- Duties are clearly defined and distinct from other classifications on the WD
- An established prevailing practice in the area,
- Not employed in an informal training program

May be added to WD if all above conditions are met; no WD class performs the work

Wages & Fringe Benefits

DBA: the term “wages” or “prevailing wages” includes:

- The basic hourly rate (BHR)
- Contractor contributions *irrevocably* made to a trustee or third party pursuant to a bona fide fringe benefit (FB) fund, plan, or program
- The rate of costs the contractor reasonably anticipates in providing bona fide FB’s where certain conditions are met
Fringe Benefits

- Under DBA, FB’s are a component “prevailing wage”
- The WD obligation may be satisfied by:
  - Paying the BHR and FB in cash
  - Contributing payments to a bona fide plan
  - Any combination of the two

Examples of Fringe Benefits

- Life Insurance
- Health Insurance
- Pension
- Vacation
- Holiday
- Sick Leave
Discharging DB
Prevailing Wage Obligation

If WD requires a prevailing wage of $14.50 ($12.00 BHR plus $2.50 in FB’s), the contractor can comply by paying:

- $14.50 in cash wages; or
- $12.00 plus $2.50 in bona fide FB; or
- $11.00 plus $3.50 in bona fide FBs

Computing Overtime Hours
(CWHSSA Earnings)

An employee worked 44 hours as electrician, where WD BHR is $12.00 plus $2.50 in FB’s:

44 hours $ X $ 2.50 $110.00 FB’s
44 hours $ X $12.00 $528.00 BHR
4 hours X $12.00/2 $24.00 OT

$662.00
Overtime Computation where Employee Employed at Two Rates

During a workweek an employee works 20 hours as an Electrician at $12.00 BHR plus $2.50 in FB’s and as a Painter for 24 hours at $10.00 BHR plus $3.00 in FB’s.

The regular rate for determining the Overtime rate is:

- $20 \times $12.00 = $240.00 \text{ (as Electrician)}
- $24 \times $10.00 = $240.00 \text{ (as Painter)}

\[
\frac{480.00}{44} = $10.91
\]

Overtime due: $10.91 \times \frac{1}{2} \times 4 \text{ hours} = $21.82

Disclaimer

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