

51940.104 Wage determination.(a) Types of wage determinations.

(1) General wage determinations are published weekly in the Federal Register and are current until revised. These decisions are issued for those counties within a State where there is a high volume of construction activity.

(2) General wage determinations are also issued by DOL upon request for those counties where general or area wage decisions are not published in the Federal Register.

(3) Project wage determinations are issued by DOL on a project-by-project basis.

(b) Requesting wage determinations.

(1) Action by Community Development Manager or Rural Development Manager. At least 60 days before bid opening, the Community Development Manager (CIM) or Rural Development Manager (RDM) should notify the State Office of the anticipated dates of advertising and bid opening. If the Contracting Officer (CO) has a list of crafts that will be required to complete construction of the project, it should be forwarded to the State Office along with:

- (i) A sufficiently detailed description of the work to indicate the type of construction involved;
- (ii) Location of the proposed project; and
- (iii) Additional pertinent information.

(2) Action by State Director. If appropriate general wage decisions are not available in the Federal Register, the State Director will request a wage determination under the Davis-Bacon Act or any of its related statutes by submitting Standard Form (SF) 308, "Request for Determination and Response to Request," to: U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Branch of Construction Contract Wage Determination, Washington, D.C. 20210. The time required for processing requests for wage determinations varies according to the facts and circumstances in each case. The Agency should anticipate that such processing in the DOL will take at least 30 days.

- (i) Care should be exercised in completing SF-308 to assure that only those classifications which will be needed in the

performance of the work have been checked (inserting a note such as "entire schedule" or "all applicable classifications" is not sufficient). Additional classifications needed which are not on the form may be typed in the blank spaces or on a separate list and attached to the form. Do not list classifications which can be fitted into classifications on the form, or classifications which are not generally recognized in the area or in the construction industry.

(ii) Such requests for a wage determination shall be accompanied by any pertinent wage payment information which may be available. This information need not accompany a request in areas where the wage patterns are clearly established.

(iii) Whenever the wage patterns in a particular area for a particular type of construction are well established and whenever it may be reasonably anticipated that there will be a large volume of procurement in that area for such a type of construction, the Administrator, upon the request of the Agency, may issue a general wage determination. The Agency request should be initiated 45 days prior to the date the wage rate information is needed. Determinations for several counties can be obtained on a single request by entering "Multiple Request" in the "County" block and then listing all the appropriate counties by name on the back of SF-308.

(c) Period of wage determinations.

(1) Project wage determinations or general wage determinations not published in the Federal Register are effective for 180 calendar days from the date of such determinations. The wage determination must be in effect the date of contract award or where there is no actual contract (i.e., Owner-builder method of construction as defined in subpart A of part 1924) the date construction starts. If such a wage determination is not used in the period of its effectiveness, it is void. If it appears that a wage determination may expire between bid opening and award, the Agency shall request a new wage determination sufficiently in advance of the bid opening to assure receipt prior thereto. However, when due to unavoidable circumstances a determination expires before award and after bid opening, the Agency may request the Administrator to extend the expiration date of the wage determination in the bid specifications instead of issuing a new wage determination. Such request shall be supported by a written finding which shall include a brief statement of the factual support, that the extension of the expiration date of the determination is necessary and proper in the public interest to

§1940.104(c) (1) (Con.)

prevent injustice, or undue hardship, or to avoid serious impairment in the conduct of Government business.

(2) General wage determinations published in the Federal Register contain no expiration date.

(d) Modifications.

(1) All actions modifying a project wage determination received by the Agency before contract award (or the start of construction where there is no contract award) shall be applicable thereto. However, modifications received by the Agency less than 10 days before the opening of bids will not be effective if the Agency finds that there is not a reasonable time before bid opening in which to notify bidders of the modification. Documentation of the Agency's findings will be inserted in the docket and a copy shall be made available to the Administrator upon request. A modification will not continue in effect beyond the effective period of the wage determination to which it relates.

(2) Modifications to general wage determinations are published in the Federal Register. The State Director should monitor the Federal Register in order to maintain a file of the current decisions for those areas within the State Office jurisdiction.

(3) All actions modifying a general wage determination decision shall be applicable thereto. However, modifications published in the Federal Register less than 10 days before the opening of bids will not be effective if the Agency finds that there is not a reasonable time before bid opening in which to notify bidders of the modification. Documentation of the Agency's findings will be inserted in the docket and a copy shall be made available to the Administrator upon request.

§1940.105 Construction contract provisions.

(a) Information for bidders, which is a part of the contract documents, should include a statement similar to the following: "The contractor must comply with the minimum rates for wages for laborers and mechanics as determined by the Secretary of Labor in accordance with the provisions of the Davis-Bacon and Related Acts."

(b) Labor standards provisions (Title 29, subtitle A, part 5, section 5, paragraph (a), subparagraphs (1) through (10); and paragraph (b), subparagraphs (1) through (4) of the Code of Federal Regulations) are provided in exhibit A of this Instruction. They will be made a part of

the contract documents. Any modifications to the labor standards provisions in exhibit A of this Instruction must be approved by DOL.

§1940.106 Determination of compliance.

(a) Coordination. The Agency will consult with the Secretary of Labor and the Administrator when necessary to coordinate the administration and enforcement of the labor standards provisions in exhibit A of this Instruction.

(b) Preapplication conference. The applicant will be informed at the preapplication conference that wage rates paid for labor must not be less than the prevailing area wages as determined by the Secretary of Labor and that these wages must be embodied in all construction contracts.

(c) Contract review. The State Director will assure that the contract documents contain the clauses contained in exhibit A of this Instruction.

(d) Preconstruction conference. The CO, contractor, engineer, architect and other project participants will be informed at the preconstruction conference that:

- (1) Project or resident inspectors, on behalf of the CO, will be responsible for monitoring the contractor's adherence to the contract provisions including compliance with the labor standards provisions.
- (2) The contract may be terminated or the contractor debarred. A breach of the labor standards provisions may be grounds for termination of the contract, and for debarment as provided in 29 CFR part 5, or subpart M of part 1940.
- (3) The enforcement of labor standards provisions is the same as enforcement of other requirements of the contract and may result in penalties being imposed upon the contractor.
- (4) It will not be necessary, ordinarily, to conduct employee interviews or make detailed audits of payrolls and time sheets. By reviewing progress reports, contractor payroll records, and contractor apprentice agreements, the project or resident inspector should be able to obtain sufficient information to determine whether or not the contractor is in compliance with the labor standards provisions.

§1940.106(d) (Con.)

(5) The Agency will provide the contractor with the required Davis-Bacon poster (Form WH 1321, "Notice to All Employees Working on Federal or Federally Financed Construction Projects) to display at the work site with the wage determination. Copies of the poster may be obtained from the Finance Office or by writing to DOL.

(e) During construction.

(1) No payment advance, grant, or loan of funds shall be approved by the Agency after the beginning of construction unless there is on file a certification by the contractor that the contractor and the subcontractors have complied with the Davis-Bacon and Related Acts and copies of payroll records have been provided covering the period during which the work being considered for payment was performed.

(2) The project or resident inspector, on determining that the contractor is not in compliance with the labor standards provisions, should immediately notify the CO, the architect or engineer, and the CIM or RIM. The CIM or RIM will then contact the State Director for advice and further instructions. The State Director will review the information and determine whether there has been underpayment to laborers of \$1,000 or more, or whether other labor provisions have been violated.

(3) Where the underpayment is \$1,000 or more, or where there is reason to believe that the violations are aggravated or willful, or if the contractor has disregarded its obligations to employees and subcontractors, the Agency will furnish within 60 days after completion of its investigation, a detailed enforcement report, including its findings, recommendations, and requests for further guidance, to the Administrator.

(f) Suspension of funds.

(1) In the event of failure or refusal of the contractor or any subcontractor to comply with the labor standards provisions or upon written request of DOL, the CO shall take such action as may be necessary to cause the suspension of payment or advance of funds until such time as the violations are discontinued, or until sufficient funds are withheld to compensate employees for the wages to which they are entitled and to cover any liquidated damages which may be due.

(2) If there is not sufficient funds due the contractor or subcontractor to satisfy the claims for employee wages and to cover any liquidated damages, the CO shall withhold or cause to be

withheld from the contractor monies payable on account of work performed under any other Federal or Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, as may be necessary to meet the contractor or subcontractor's obligations.

(3) After consultation with the State Director and DOL, funds withheld for payment of employee wages will be:

(i) paid to the individual employees that have not been paid in accordance with the terms of the contract in such amounts as to correct the violation, when the contractor or subcontractor refuses to comply with the contract, or

(ii) released to the contractor after the contractor or subcontractor has made full restitution for all violations of the labor standards provisions.

(4) Funds withheld for payment of liquidated damages associated with Davis-Bacon and Related Act violations may be disbursed only after authorization from the National Office.

§1940.107 Semiannual reports.

(a) The CDM or SCM will complete Form RD 440-29, "Semiannual Labor Compliance Report," for projects requiring compliance with the Davis-Bacon and Related Acts, and submit it to the State Director for periods of October 1 through March 31, and April 1 through September 30. This report should also include those active contracts issued under RD Instruction 2024-A that are subject to the Davis-Bacon and Related Acts. Form RD 440-29 must reach the State Director no later than April 20 and October 20 of each calendar year.

(b) State Offices will consolidate all reports received from the County and District Offices and forward three copies to the Administrator no later than April 30 and October 31.

§1940.108 Recordkeeping.

The Agency official responsible for the project will preserve all payrolls and certifications for a period of 3 years from the date of final payment on the contract. The records shall be made available to the Secretary of Labor when requested during the 3-year period.

§1940.109 - 1940.150 [Reserved]

Attachment: Exhibit A