Disclaimer

- This information is of a general nature and is not intended to be legal advice.

- Each agency should seek out competent legal counsel to discuss and render an opinion on your own individual factual situation.
Tip #1

Identify Funding Source

- Identify the funding source(s) for the project:
  - Federal Davis Bacon
  - State Funding which may Trigger Special Requirements
    - 28 states have their own prevailing wage laws
  - Local Funding Restriction
Tip #2 Contract Language

- Davis Bacon funding requires specific language from 29 CFR part 5.5 MUST be included in:
  - Specifications or contract between Agency and prime contractor
  - Contract between prime contractor and subcontractor
  - Contract between all subcontractors and all subtier subcontractors
Tip #2 Contract Language

- Agency failure’s to include contract language entitles contractor to change order.

- Contractor’s failure to include the contract language in lower tier subcontracts is a violation of the Davis Bacon Act and subjects the contractor to “disciplinary action”.

*Prime contractor is ultimately responsible for wages paid to all workers.*
Tip #2 Contract Language

- Check state and local funding which may require specific contract language
  - Many states require specific Prevailing Wage language in any bid solicitation and/or contract.
  - Some Cities requires special Prevailing Wage language
Tip #3 Prevailing Wage Rates

- Davis Bacon requires a copy of the applicable wage rates MUST be included in:
  - Specifications or contract between Agency and prime contractor
  - Contract between prime contractor and subcontractor
  - Contract between all subcontractors and all subtier subcontractors
Tip #3 Prevailing Wage Rates

Including the wage rates by referencing www.dol.gov is NOT in compliance with the requirement.

DOL WILL allow an agency or prime contactor to create a dedicated weblink, hosted on the agency’s/prime’s website, which lists ALL applicable wage rates for the specific project and which the sub/contractor can access with “one or two clicks”. The Agency and /or prime contractor cannot make sub/contractors hunt for the proper determination.
Selecting DBA WDs by number:

(Enter WD number in the following format: two letter abbreviation for the state and the number of the WD. For example, VA3, NOT VA030003 or MD150 NOT MD030150.)

Search

OR
Browse by state/territory
OR

By Selection criteria beginning with:
State: ALABAMA
County: All
Construction Type: All Construction Types
WD Number: AL1
Search

View the latest modifications and additions to the Davis-Bacon Database.
View the modifications or additions to Davis-Bacon Wage Determinations due to be issued and published on WDOL.gov.
View Archived Wage Determinations
Tip #4 Eligibility to Contract

- Check to see if the successful bidder (subcontractors) is legally eligible to perform work.
  - Federal funds: Must check www.sam.gov to confirm that contractor is legally able to contract on project
  - Check State debarment list
  - Special contractor licensing requirements
  - Other special requirements
    - California - public works contractor registration
Tip #5 Misclassification

- The most frequent error contractors make is the misclassification of workers.
  - Review wage classifications and rates before starting work on the job;
  - Clarify conflicting or unclear classification issues before starting work;
  - Request conformances as soon as possible
Tip #5 Misclassification

Classifying workers as Unskilled Laborer is NOT the default classification if the worker does not fit into a clear classification.
Tip #6 Conformances and Clarification of Classifications

- Federal Davis Bacon has conformance process:
  - Submit SF 1444 (include back up documentation, scope of work and references for requested wage rates)
  - DOL will issue approval or otherwise provide direction and guidance
  - Conformance can be requested at any time during the project, but earlier is better.
REQUEST FOR AUTHORIZATION OF ADDITIONAL CLASSIFICATION AND RATE

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0601-0988), Washington, DC 20503.

INSTRUCTIONS: THE CONTRACTOR SHALL COMPLETE ITEMS 3 THROUGH 15. KEEP A PENDING COPY, AND SUBMIT THE REQUEST, IN QUADRUPLICATE, TO THE CONTRACTING OFFICER.

1. TO:  
- ADMINISTRATOR, Employment Standards Administration  
- WAGE AND HOUR DIVISION  
- U.S. DEPARTMENT OF LABOR  
- WASHINGTON, D.C. 20210

2. FROM: REPORTING OFFICE

3. CONTRACTOR

4. DATE OF REQUEST

5. CONTRACT NUMBER

6. DATE BID OPENED (SEALED BID ONLY)

7. DATE OF AWARD

8. DATE CONTRACT WORK STARTED

9. DATE OPTION EXERCISED (IF APPLICABLE) (SCA ONLY)

10. SUBCONTRACTOR (IF ANY)

11. PROJECT AND DESCRIPTION OF WORK (ATTACH ADDITIONAL SHEET IF NEEDED)

12. LOCATION (CITY, COUNTY, AND STATE)

13. IN ORDER TO COMPLETE THE WORK PROVIDED FOR UNDER THE ABOVE CONTRACT, IT IS NECESSARY TO ESTABLISH THE FOLLOWING RATE(S) FOR THE INDICATED CLASSIFICATION(S) NOT INCLUDED IN THE DEPARTMENT OF LABOR DETERMINATION NUMBER:

<table>
<thead>
<tr>
<th>PROPOSED CLASSIFICATION</th>
<th>JOB DESCRIPTION</th>
<th>DUTIES</th>
<th>RATIONALE FOR PROPOSED CLASSIFICATIONS (SCA ONLY)</th>
<th>WAGE RATE</th>
<th>PRIME BENEFITS</th>
</tr>
</thead>
</table>

   | (Please attach additional sheets, if necessary) | | | | |

14. SIGNATURE AND TITLE OF SUBCONTRACTOR REPRESENTATIVE (IF ANY)

15. SIGNATURE AND TITLE OF PRIME CONTRACTOR REPRESENTATIVE

16. SIGNATURE OF EMPLOYEE OR REPRESENTATIVE  

<table>
<thead>
<tr>
<th>CHECK APPROPRIATE BOX:</th>
</tr>
</thead>
<tbody>
<tr>
<td>SERVICE CONTRACT</td>
</tr>
<tr>
<td>CONSTRUCTION CONTRACT</td>
</tr>
</tbody>
</table>

   | AGREE |
   | DISAGREE |

   TO BE COMPLETED BY CONTRACTING OFFICER (CHECK AS APPROPRIATE - SEE FAR 22.1018 (SCA) OR FAR 22.1006 (DBA))

   | THE INTERESTED PARTIES AGREE AND THE CONTRACTING OFFICER RECOMMENDS APPROVAL OF THE WAGE AND HOUR DIVISION. AVAILABLE INFORMATION AND RECOMMENDATIONS ARE ATTACHED. |
   | THE INTERESTED PARTIES CANNOT AGREE ON THE PROPOSED CLASSIFICATION AND WAGE RATE. A DETERMINATION OF THE QUESTION BY THE WAGE AND HOUR DIVISION IS THEREFORE REQUIRED. AVAILABLE INFORMATION AND RECOMMENDATIONS ARE ATTACHED. |

   | SIGNATURE OF CONTRACTING OFFICER OR REPRESENTATIVE |
   | TITLE AND COMMERCIAL TELEPHONE NUMBER |
   | DATE SUBMITTED |

STANDARD FORM 1444 (REV. 12-2003) 
Prescribed by DOL-FAR 48 CFR 50, 03-2003

PREVIOUS EDITION IS USABLE
Tip #6 Conformances and Clarification of Classifications

- For State issues relating to classifications and “covered work”:
  - Contact State agency for clarification
  - Special Determinations
    - Many states will issue a special determination:
      For example: California - must be requested 60 days prior to bid
Tip #7 - Apprentices

- Only actively enrolled apprentices may be paid the apprentice rate.

- DOL and most states do not recognize the following as apprentices:
  - Helpers
  - Pre-apprentices
  - Trainees
Tip #7 Apprentices

- Apprentice rates are those listed in the applicable Apprenticeship Standards Agreement - ASA (rates are not published separately by the DOL)
  - Some states (California) publish apprenticeship prevailing wage rates separately;

- Apprentices must be properly supervised; and

- Apprentices must be employed in the appropriate ratios as set forth in the ASA
Tip #7 Apprentices

- Apprentices who are not supervised or who are employed out of ratio must be paid at the full journeyman rate

*Note: Many states do not recognize apprentices who are enrolled in out of state programs*
Tip #7 Apprentices

- Some States have special apprenticeship requirements:
  - California requires (on all prime contracts over $30,000)
    - Registering project (DAS-140)
    - Requesting Apprentices (DAS-142)
  - Maryland imposes training contributions to fund apprenticeship programs
Tip #8 Special Rules and Requirements

Your State or City may have special prevailing wage requirements which the Agency cannot alter:

- Overtime after 8 or 10 hours in a day
- Premium pay for work on Saturday, Sunday and designated Holidays
- Special travel and shift pay
- Special apprenticeship requirements
Tip #9 Multi-Funded projects

- Check your funding requirements to see if you have state, local and/or federal funding.

- Some states require both State (local) and federal prevailing wage requirements be met.

- Some states defer to federal Davis Bacon requirements.
Tip #10- Keep Updated on New Changes

- Realize the rules change every year or sooner;
- Have a PW resource person (inside or outside your agency);
- Review your contract language and new PW requirements at least once a year (January/July).
Credentials - Deborah Wilder

- 37+ years as a practicing attorney
- Author of *What Every Contractor Should Know About Prevailing Wages* © 2nd Edition 2015;
- Author of *AGC of America’s Davis Bacon Compliance Manual* © 3rd and 4th Editions;
- Nationally recognized speaker on the subject of Prevailing Wage and Davis-Bacon Compliance
Questions?

Thank You

Contractor Compliance & Monitoring, Inc.

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