

## How Not to Become Bacon Bits



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## Complying with Davis-Bacon Requirements

Cathy Brockmann - Commerce  
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### Davis-Bacon Applies to:

- \* Contracts with the federal government.
- Or
- \* Certain federally assisted contracts.
- \* For construction, alteration, or repair projects.
- \* For public buildings or public works projects.

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### Davis-Bacon Only Applies to Construction Contracts for More Than \$2,000

Not

- \* consulting engineers.
- \* municipal staff.
- \* construction management.
- \* materials testing.
- \* supplies or equipment purchase.

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### Davis-Bacon Requirements Apply to:

- \* Clean Water and Drinking Water SRF funded projects since 2010.
- \* CDBG grants (All HUD programs).
  
- \* Separate state prevailing wage laws apply to all public works projects Statewide.

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### Bid Phase Requirements for Recipients

- \* Include required Federal language and forms in bid specifications (specs), advertisement and the contract.
- \* Include the most recent Federal Wage Determination (or Decision) for your area and project type in the bid specs and the contract.
- \* Check for changes to wage determination 10 days prior to bid opening.
- \* Follow the six good faith efforts
- \* Buy American (if applicable)

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### What is a Federal Wage Determination and How Do You Pick it?

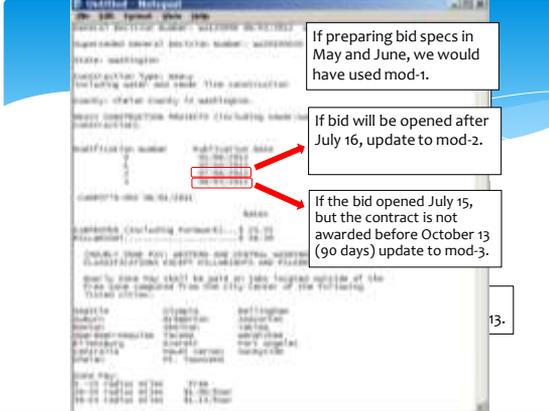
- \* A wage determination is a list of the prevailing wages for similar construction in your area of the state.
- \* Divided into 4 “schedules”.
  - \* Heavy, Highway, Residential, and Building
- \* Each schedule contains wage rates for specific job classifications.
- \* You will choose the type based on the work that will need to be completed on your project.
- \* Can be found at [www.wdol.gov](http://www.wdol.gov)

### Which Wage Determination is the “Right One”?

- \* Residential – Single Family Houses and apartment complexes.
- \* Building – Other enclosed structures.
- \* Highway – Almost anything paved.
- \* Heavy – Everything Else (including Water and Wastewater projects) On occasion there are more than one type of Heavy.
- \* Your wage determination will need to be checked 10-days before your bid opening for any modifications.

### What if US Department of Labor Issues a New Wage Determination?

- \* The wage determination must be updated in your bid specs if:
  - \* The wage determination changes prior to 10 days before bid opening.
- OR -
- \* The contract is not awarded within 90 days of bids closing.
- \* **BEST PRACTICE:**

If preparing bid specs in May and June, we would have used mod-1.

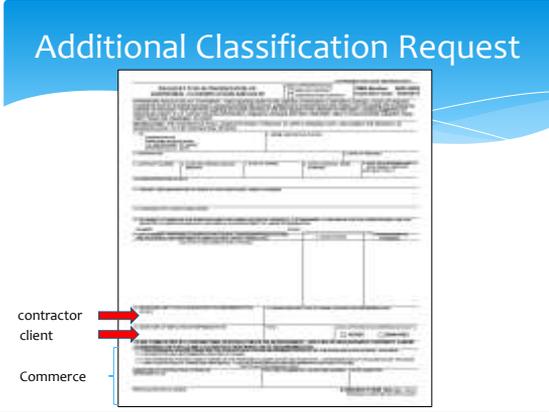
If bid will be opened after July 16, update to mod-2.

If the bid opened July 15, but the contract is not awarded before October 13 (90 days) update to mod-3.

### What if a Classification is Not on My Determination?

- \* Generally try to use the existing classifications.
- \* Can an existing classification perform the work?
- \* Additional wage rate classifications can be requested from US Department of Labor.
  - \* Use Form SF-1444
  - \* Complete the request and forward to your funding agency
- \* **Identify additional classifications early it is taking up to 30 days for approval from USDOL**
- \* Coordinate with the contractor at the pre-construction meeting.

### Additional Classification Request



contractor

client

Commerce

### What is "Zone Pay"?



- \* Zone pay applies if the job is located outside of listed cities.
- \* Zone pay is added to the base rate.
- \* This can affect overtime calculations
- \* A resource to assist you in determining if zone pay is applicable is a point to point calculator located at: <http://tjpeiffer.com/crowflies.html>

### What are Fringe Benefits?

- \* Health Insurance
- \* Paid vacation or sick leave
- \* Paid holidays
- \* Pension plans
- \* 401k contributions

### Wages and Fringe Benefits

- \* The prevailing wage is the base rate + fringe shown.

	Rates	Fringes	
CEMENT MASON/CONCRETE FINISHER...	\$ 24.50	6.30	= \$30.80
LABORER: Common or General (Water and Sewer Lines).....	\$ 20.79	4.63	
LABORER: Landscape and Irrigation.....	\$ 12.27	2.73	
OPERATOR: Asphalt Plant.....	\$ 34.14	0.68	

- \* Contractor can pay any combination of base rate and bona fide benefit
  - \$30.80 Base Rate + \$0.00 Fringe
  - \$24.50 Base Rate + \$6.30 Fringe
  - \$15.00 Base Rate + \$15.80 Fringe
  - \$8.67 Base Rate + \$22.13 Fringe

### What About Overtime Pay?

- \* Federal overtime standards are based on a 40 hour work week
- \* Workers are paid 1.5 times their base rate for every hour of overtime.
- \* Fringe benefits do not increase for overtime pay.
- \* Zone pay is an increase in the base rate, so zone pay is increased for overtime pay.
  - \* 10.00 base + 1.00 zone = 11.00 x 1.5 + fringe
- \* State Prevailing overtime may be different.

### What is a Laborer and Mechanic?

- \* Workers whose duties are manual or physical in nature
- \* Includes apprentices

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 on the site of the work"

## 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*

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## Truck Drivers

- \* Truck drivers are also covered when:
  - \* Transporting materials and supplies between staging area 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

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## 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

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## Truck Drivers 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.

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## What about State Prevailing Wages?

- \* You must also check the state prevailing wage rates.
- \* The contractor must pay the higher of the federal or state prevailing wages.
- \* Intent to pay and the Affidavit are submitted by the contractor to L&I.
- \* If you are using a classification on the State prevailing wage that is not on the federal wage determination, you must apply for additional classification on the federal wage decision.

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## Contractor Requirements

- \* Pay workers the higher of federal or state prevailing wages.
- \* Pay weekly.
- \* Post federal and state wages on job site.
- \* Information posters are to be on the job site.
- \* Provide certified payrolls to project owner. (WHD-347)
- \* Document Fringe Benefits.
- \* Ensure subcontractor compliance with all requirements.

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U.S. DEPARTMENT OF LABOR  
WHD-347  
PAYROLL

This form is required for all contracts for construction work under the Davis-Bacon Act.

Contract No. \_\_\_\_\_

Project Name \_\_\_\_\_

City and State \_\_\_\_\_

Employer's Name \_\_\_\_\_

Employer's Address \_\_\_\_\_

Employer's Phone Number \_\_\_\_\_

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### Sample Certified Payroll

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### Documentation Required During Construction

- \* Collect Payrolls and certification statements (WHD-347).
- \* Conduct Employee (wage) interviews (use form SF-1445 or HUD-11).
- \* Check apprentice to journeyman ratio and certifications.

### Employee Interview Form

U.S. DEPARTMENT OF LABOR  
WHD-347  
PAYROLL

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### Funding Agency Assistance

- \* Provides standard Specification language for your contracts.
- \* Always available to answer questions.
- \* Ecology site inspections include a bookkeeping checklist. Ecology will review your paperwork onsite.
- \* Commerce reviews your 21-day labor packet for DWSRF and CDBG.
- \* Coordinate request for additional classifications.
- \* Assist in obtaining the Federal Wage Decision.

## Questions?

- \* Contact Information

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- \* 360-725-2725