

Approved:

Policy Number: 26-002(P)
Effective: March 15, 2004
Responsible Division: Contract Administration
Supersedes Policy: 512-006
Dated: April 1, 1999



Gordon Proctor
Director

ENFORCEMENT OF PREVAILING WAGE LAWS

PURPOSE:

This policy establishes procedures and assigns responsibilities on a uniform basis in the Districts and Central Office for the enforcement of applicable prevailing wage laws on Department construction and emergency contracts.

AUTHORITY:

Projects with Federal-aid:

Title 29 Code of Federal Regulations, Parts 1, 3, and 5
Form FHWA 1273, "Required Contract Provisions Federal-aid Construction Projects," Parts IV and V
Davis-Bacon and Related Acts

State Funded Projects:

Ohio Revised Code (ORC), Chapter 4115
Ohio Administrative Rules, Chapter 4101:9-4-01 through 4101:9-4-28
Construction and Material Specifications, Section 108.10

REFERENCES:

Prevailing Wage Resource Book, November 2002, issued by the United States Department of Labor (USDOL)
Wage and Hour Prevailing Wage Packet, issued by the Ohio Department of Commerce, Wage and Hour Division (ODOCWH)
Office of Contract's Prevailing Wage Enforcement Manual

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SCOPE:

This policy is for the use of each District and the Office of Contracts in establishing effective and consistent procedures to discharge the Department’s legal responsibilities requiring the payment of established prevailing wages to the Contractor’s, Subcontractor’s, and Vendor’s workers on the Department’s construction and emergency projects.

BACKGROUND:

This policy supersedes Policy 512-006 (“Enforcement of Prevailing Wage Laws”) dated April 1, 1999.

The Department is required as a condition of Federal-aid to enforce the Davis-Bacon and Related Acts on all projects with Federal funding including Local Public Agency (LPA) projects. The Contractor and Subcontractors are required to comply with this act by proposal note and inclusion of USDOL established wage rates in the contract proposal. The rates established in the contract proposal remain in force for the duration of the project. Federal wage laws supercede State prevailing wage laws.

Projects without Federal funding are subject to State of Ohio prevailing wage laws if they meet the definition of “construction” in ORC Section 4115.03(B) and exceed the threshold limits established in ORC Section 4115.03(B). Current Department projects which are not defined as “construction” and are exempt from the above referenced laws are: mowing, herbicidal spraying, tree trimming and tree removal (with no construction to follow), trash hauling, sign inventories, and centerline surveys*. The prevailing wages are established by the ODOCWH and are listed in the contract proposal. These rates may change during the life of the project and the Contractor, Subcontractor, or Vendor must pay the new rate when officially notified by the Department. Notification will be in writing from the DPWC.

*Prevailing Wages must be paid to employees performing labor type activities involved in surveying, i.e., staking the surveying site, hauling equipment. Operating the survey equipment is exempt from prevailing wage.

DEFINITIONS:

- CMS: Construction Management System, the Department’s computer system for administration of construction projects.
- Construction Contract: Contract awarded to the lowest competent and responsible bidder as provided in ORC Section 5525.01.
- Contractor: Defined in Construction and Material Specifications, Section 101.03.

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DPWC: District Prevailing Wage Coordinator

Emergency Contract: Contract awarded without advertisement as provided in ORC Section 5517.02. If the contract establishes unit prices for all the items, the contract will be administered in CMS.

ODOCWH: Ohio Department of Commerce, Wage and Hour Division

ORC: Ohio Revised Code

Project: Work performed by a Contractor, Subcontractor, or Vendor.

Subcontractor: Defined in Construction and Material Specifications, Section 101.03.

USDOL: United States Department of Labor

LPA: Local Public Agency

PROCEDURE STATEMENT:

- I. Each District shall establish procedures and assign personnel to enforce applicable prevailing wage requirements on construction and emergency contracts.
 - A. Each District shall designate a District Prevailing Wage Coordinator (DPWC).
 - B. The DPWC shall be the principal administrator of prevailing wage requirements in the District.
 - C. The DPWC will be trained by the Office of Contracts
 - D. Each DPWC shall be the District's liaison with the Office of Contracts.
 - E. District offices shall notify the Office of Contracts of any changes in personnel assignment.

- II. District Duties (excluding LPA projects - see "LPA Section" in the Office of Contract's Prevailing Wage Manual located on the ODOT website.)
 - I. Explain the applicable prevailing wage requirements to the Contractor.
 - A. This shall be done at the Preconstruction Conference.

- B. For emergency projects, this shall be done prior to starting work. The Contractor shall be informed of the pay dates at this time.

II. Certified Payroll Reports

- A. Establish and maintain for each project a file of certified payrolls submitted by each contractor and subcontractor.
- B. Receive from each contractor and subcontractor for each pay date, certified payrolls covering all workers employed on the project in classifications subject to prevailing wage requirements.
- C. If a review of the certified payroll report establishes that the submitted payroll is in the proper format, document the receipt. CMS documentation is required if the contract is administered through CMS. For further clarification, please see the "Certified Payrolls" section in the Office of Contract's Prevailing Wage Manual located on the ODOT website. This review shall include verifying the following:
 - 1. Project number.
 - 2. Statement of Compliance and certified payroll contain identical week ending day and date.
 - 3. Verify that all certified payrolls for a said contractor end on same day of the week.
 - 4. Original signature or certified signature stamp.
 - 5. The method of fringe payment is indicated on the Statement of Compliance.
 - 6. Verify the breakdown of fringe benefits paid per hour.
 - 7. The listed pay rates are appropriate for the classifications.
- D. Perform a detailed review of 30 percent of the certified payrolls for compliance with prevailing wage requirements:
 - 1. The project records are used to determine the hours and classifications worked during the payroll period.
 - 2. Once the review is complete, sign and date the first page of the payroll to indicate the review was completed.

- E. Failure of any contractor or subcontractor to comply with the payroll requirements, may result in the withholding of funds from construction contract estimates until the payroll deficiencies are corrected. The authorization to withhold project estimates can be found in *29 CFR, 5.5(3) and 5.9*.

Cross-withholding provisions under the Davis-Bacon and Related Acts give DOL and contracting agencies (ODOT) some recourse in collecting back wages in situations where the contract on which the violations occurred has been paid off by the contracting agency. Where funds remaining on the contract under which the violations occurred are insufficient to cover the back wages due, ODOT can withhold funds from other contracts subject to DBA/DBRA/CWHSSA or any other federal contract held by the same contractor.

The Office of Contracts will require the districts to take the following actions with regards to withholding money from project estimates.

- **Delinquent Wages:** Withhold an amount equal to that owed to an employee(s), plus 100%, until restitution has been made. This assures the availability of monies for the payment of back wages if a contractor refuses to make restitution when back wages are found due to covered workers. The prime contractor is responsible for compliance on the contract, will be liable for payment of the back wages not paid by a subcontractor, and may decide to withhold payments from the subcontractor until the back wages issues are resolved.
 - **Delinquent Payrolls:** Withhold 100% of each reference item affiliated with the delinquent payroll. Continue to withhold this amount, until the delinquent payrolls have been received.
 - **Unapproved Subcontractors:** Withhold 100% of the money for the work performed by that subcontractor, until a valid C92 is in place, and the Payroll reports have been submitted by the prime for the unapproved subcontractor.
- F. Conduct and document wage interviews of workers from various classifications on each active project that is subject to prevailing wage laws. The number and frequency of the interviews must be sufficient to verify the accuracy of the submitted certified payrolls.
- G. In addition to those listed in the contract proposal, determine if any work classifications are required for the project and request a determination of the proper classifications and rates from the USDOL or ODOCWH, and submit a copy to the Office of Contracts.

H. Certifications of Apprenticeship

1. Receive, review, and determine the acceptability of certifications of apprenticeship covering all apprentices and trainees employed on a project by the contractor and subcontractors.
2. The District shall maintain these certifications on file and inform the contractor and subcontractors involved of their acceptability and expiration.

I. Record Storage

1. Maintain certified payroll reports, certifications of apprenticeship, wage affidavits (for projects without Federal-aid), and all other payroll records in the District project files.
2. Records shall be retained for three years after project finalization and resolution of any prevailing wage violations.

J. Reporting Requirements

1. Monthly reports shall be submitted to the Office of Contracts by the DPWC's no later than the 15th of the following month.
2. Twice a year, on or before April 20 and October 20, the District shall submit to the Office of Contracts any wage complaint and investigation information necessary for the required Semiannual Labor Compliance Enforcement Report on Federal-aid projects.

III. Violations

- I. When a wage complaint occurs or the District learns of a possible wage violation, the District shall:
 - A. Document the wage complaint or possible violation by entering the information into CMS.
 - B. Investigate the complaint or possible violation. **YOU MUST ENSURE THAT THE IDENTITY OF THE COMPLAINANT IS KEPT CONFIDENTIAL.**
 - C. If the investigation finds that the contractor or subcontractor did not pay prevailing wages or fringes, the District shall:

- D. Notify the contractor or subcontractor involved, in writing, of any violations and request correction of such violations.
- E. Estimate the amount of the deficiency and withhold from the contract pay estimate an amount equal to that deficiency plus 100%, until the contractor or subcontractor has paid any back wages or fringes owed to the workers.
- F. After a period of 30 days, any violations that a contractor or subcontractor is unwilling to correct, shall be referred to the USDOL or ODOCWH for further investigation and action.
- G. This referral will be coordinated by the Office of Contracts.
- H. The District shall provide documentation of its investigative efforts and the Office of Contracts will refer this and other necessary documentation to USDOL or ODOCWH.

IV. Central Office Duties

- I. The Office of Contracts shall ensure uniform administration of applicable prevailing wage requirements by the various Districts and perform the following functions:
 - A. Act as a liaison between the Department and the ODOCWH and USDOL.
 - B. Advise Districts of wage problems and changes in prevailing wage laws.
 - C. Provide training on prevailing wage enforcement to the Districts.
 - D. Conduct Quality Assurance Reviews (QAR) of District compliance with prevailing wage enforcement, regulations, and policies.
 - E. Obtain wage determinations for projects without Federal-aid and maintain these determinations in the Office of Contracts project files.
 - F. Receive from ODOCWH all wage modifications affecting Department construction projects and transmit to the various DPWC these modifications for transmittal to the affected Contractors with active projects in their Districts.
 - G. Prepare the Semiannual Labor Compliance Enforcement Report:
 - 1. Collect information for report from the DPWCs.
 - 2. Submit report to FHWA by April 30 and October 31 of each year, using Form FHWA 1494.

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3. Maintain a file of the submitted reports.
 - H. Maintain a current list of DPWCs and provide it to ODOCWH and USDOL.
 - II. The Office of Contracts shall hold a statewide DPWC meeting a minimum of two times a year to review common problems and establish common understandings of prevailing wage enforcement procedures, policies, regulations, and laws.

TRAINING

The Office of Contracts will provide individual training to District personnel when requested.

FISCAL ANALYSIS

Adherence to this policy will prevent the Department from being cited by either the Federal or State governments due to non-compliance.