

**CIRCULAR LETTER**

**SECTION: 1230 EQUAL EMPLOYMENT OPPORTUNITY**  
**NUMBER: 1230-01**  
**SUBJECT: ON-THE-JOB TRAINING PROGRAM REQUIREMENTS**  
**DATE: MAY 1, 2009**

All Prime Contractors holding contracts on projects with Federal-Aid in excess of \$10,000, shall as part of their Equal Employment Opportunity requirements, be required to have an On-the-Job Training Program. The contractor's individual programs shall be submitted to the Tennessee Department of Transportation's OJT Program Coordinator for approval. The Prime Contractor may adopt the program as defined in the OJT Desk Reference, prepared by the TDOT Civil Rights Office, or they may submit an individualized program that at a minimum must include the requirements of the OJT Desk Reference. The contractor's approved program will be in effect until he/she submits revisions for approval or until there are changes in the Federal Regulations.

The Prime Contractor shall submit, for each individual project, an "On-the-Job Training – Initial Training Schedule" form (Attachment 1) to the OJT Program Coordinator prior to the Pre-Construction Conference. This form lists the Classification and Number of Trainees that the contractor intends to employ on the project. The contractor shall make an effort to employ trainees on each project; however, in the event that the number of trainees will be zero, the contractor shall provide adequate documentation on Attachment 1 to justify the absence of trainees on the project.

The Prime Contractor will not be allowed to commence construction until an "On-the-Job Training – Initial Training Schedule" form (Attachment 1) has been approved by the OJT Program Coordinator. Failure of the contractor to provide an approved training program shall not be considered "As a condition not under the control of the contractor" in regards to Contract Time.

The OJT Program Coordinator will maintain a database of approved OJT programs. He/she will forward a copy of each approved "On-the-Job Training – Initial Training Schedule" form to the Contractor and Project Supervisor for inclusion in the project files. By approving this form, the OJT Program Coordinator is affirming that the Prime Contractor has an approved OJT Program on file with the OJT Program Office.

## On-the-Job Training – Initial Training Schedule

TDOT Contract No.: \_\_\_\_\_

TDOT Project No.: \_\_\_\_\_

Reference No.: \_\_\_\_\_

County: \_\_\_\_\_

Prime Contractor: \_\_\_\_\_

Address: \_\_\_\_\_

Phone No.: \_\_\_\_\_

Contact Name: \_\_\_\_\_

Classification	Number of Trainees	Required Hours	Projected Start Date of Trainees

Remarks/Justification:

Submitted by:

Name: \_\_\_\_\_ Title: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Approved: \_\_\_\_\_ Date: \_\_\_\_\_

**CIRCULAR LETTER**

**SECTION: 1240 TRAINING PROGRAM**  
**NUMBER: 1240-01**  
**SUBJECT: TRAINING PROGRAM REQUIREMENTS**  
**DATE: MAY 1, 2009**

The following outlines the procedures and documentation necessary to implement the training program as noted in Special Provision 1240.

## **PROCEDURES TO BE FOLLOWED RELATIVE TO TRAINING PROGRAM REQUIREMENTS**

### **1. TRAINING PROGRAM**

The Contractor shall use the Tennessee Department of Transportation On-The-Job Training Program Desk Reference. The TDOT On-The-Job Training Program Desk Reference is the approved training plan by the Tennessee Department of Transportation and Federal Highway Administration.

The contractor shall not be permitted to commence construction without an approved training program. Failure of the contractor to provide an approved training program shall not be considered "As a condition not under the control of the contractor" in regards to Contract Time.

### **2. PRE-CONSTRUCTION CONFERENCE**

It is essential that the Affirmative Action Program Office (AAPO) be advised of the date, time and location of the pre-construction conference in order that he/she may have a representative present.

The contractor should be thoroughly familiarized with the administrative procedures of this program and the importance of prompt reporting should be stressed.

### **3. CLASSIFICATION APPROVAL**

Prior to the pre-construction conference, the contractor shall submit to the AAPO, the "On-The-Job Training – Initial Training Schedule" form (Attachment 1) for at least the minimum number of training hours required by the contract. The trainees may consist of new hires or trainees presently enrolled in the training program and transferring to the project or a combination of the two. However, if a trainee is in the training program and is transferring to the project, approval from AAPO is required before the trainee can begin.

Upon approval of the "On-The-Job Training – Initial Training Schedule" form by the OJT Program Coordinator a copy of this approved form will be forwarded to the Contractor and the Project Supervisor. By approving this form, the OJT Program Coordinator is affirming that the Contractor has an approved OJT Program on file with the OJT Program Office.

**The Project Supervisor shall not permit the contractor to start work on the project prior to receipt of an approved training plan.**

If urgency exists for the construction to commence, the AAPO or his/her representative may give verbal approval and follow with the necessary written formal approval.

#### 4. ENROLLMENT AND TRANSFER

Before a trainee is employed on the project the contractor shall submit an "On-The-Job Training Enrollment Form" (Attachment 2 - herein after referred to as the enrollment form) to the AAPO. The AAPO will forward approved copies of the enrollment form to the Contractor and the Project Supervisor.

Trainees, for which payment will be made, may not be shown on the contractor's payroll unless the AAPO's files contain an approved "On-The-Job Training Initial Training Schedule" in the proper classification and an enrollment form for the trainee approved prior to the trainees employment on the project. A contractor employing an individual as a trainee without proper approval is in violation of labor laws.

Any number of trainees, for which payment will not be made, may be employed on the project in any classification provided the AAPO's files contain an enrollment form approving the trainees prior to their employment on the project. In this case the enrollment form will be noted to the effect that the trainee is not filling a training slot and no payment is requested.

The contractor may, at any time during the progress of the project, request changes in training classifications or additional trainees for payment. The same procedures will be followed in processing these requests as outlined above. In the case of requests for additional trainees for payment an approved Construction Change setting up additional training slots will be required as well as the AAPO's approval before the additional trainees are employed on the project.

#### 5. EMPLOYMENT

Normally a trainee should be employed on the project within two weeks after the type work in which he/ she is to be trained has started. If the contractor has not employed a trainee in the classification he/ she has requested by the time approximately 15 percent of that type work has been performed, the Contractor shall advise the AAPO, in writing, why the trainee has not been furnished. Failure to receive an acceptable explanation from the contractor may be cause to withhold progress payments.

#### 6. TERMINATION OF TRAINING

When the trainee terminates training on the project for any reason-----completes training, quits, is fired, transfers, etc.--- the OJT Program Coordinator should receive a letter of termination within one week of separation. This letter must contain Trainee's Name, Address, Phone Number, TDOT Contract Number, Project County, Hours Completed, Classification and reason for termination.

#### 7. DOCUMENTATION OF TRAINING TIME

##### a. Contractor's Payrolls

When a trainee appears on the payroll for the first time the AAPO should check his/ her files to assure that the training classification is approved and that he/ she has an enrollment form for the

trainee approved on or before his/ her first date of employment, otherwise, the payroll should be returned for correction. A log should be kept of the training hours for payment as taken from the payroll. The rate of pay the trainee receives should be at least the minimum required by the Special Provision Regarding Training Program Requirements.

b. OJT Weekly Progress Report (Attachment 3)

This report must be signed by the Contractor's Supervisor and trainee with attached payroll and submitted to the AAPO. This report will be used as the primary documentation for payment of Trainees. However, the hours shown on this report must be in agreement with the total hours shown on the accumulated payrolls.

8. PAYMENT

No payment for training hours will be made until the trainee has terminated training on the project and the AAPO has received and approved a letter of completion and "OJT Request for Payment" (Attachment 4). Upon approval by the OJT Program Coordinator of the Request for Payment a "Memo to Pay" or "Memo of No Pay" and supporting documentation will be sent to the Project Supervisor. Payment shall not be made without approval from the TDOT OJT Program Coordinator. In addition, the Final Estimate will not be paid without a "Memo to Pay" or "Memo of No Pay" from the TDOT OJT Program Coordinator. All payments shall be made under Item 109-10.01, Trainee, at the unit price of \$0.80 per hour for each hour of approved training whether or not the trainee completes the approved training program.

However, no payment shall be made to the contractor if either the failure to provide the required training or the failure to hire the trainee as a journeyman is caused by the contractor and a lack of good faith on the part of the contractor in meeting the requirements of the training Special Provision.

The contractor may elect to graduate the trainee before completion of the required training hours and receive payment for the total number of hours required by the applicable training classification provided that the total of the hours trained and the hours the trainee has been employed as a journeyman equals or exceeds the required training hours.

# On-The-Job Training – Initial Training Schedule

TDOT Contract No.: \_\_\_\_\_

TDOT Project No.: \_\_\_\_\_

Reference No.: \_\_\_\_\_

County: \_\_\_\_\_

Prime Contractor: \_\_\_\_\_

Address: \_\_\_\_\_

Phone No.: \_\_\_\_\_

Contact Name: \_\_\_\_\_

Classification	Number of Trainees	Required Hours	Projected Start Date of Trainees

Remarks/Justification:

Submitted by:

Name: \_\_\_\_\_ Title: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Approved: \_\_\_\_\_ Date: \_\_\_\_\_

### On-The-Job Training Enrollment Form

Prime Contractor \_\_\_\_\_

TDOT Contract No \_\_\_\_\_ TDOT Project No \_\_\_\_\_

Reference No \_\_\_\_\_ County \_\_\_\_\_

Trainee Name \_\_\_\_\_

Address \_\_\_\_\_

Phone No \_\_\_\_\_

Gender M F (circle one)

Race \_\_\_ Asian/Pacific Islander \_\_\_ Black \_\_\_ Hispanic \_\_\_ Native American \_\_\_ White \_\_\_ Other

Trainee Classification \_\_\_\_\_ Number of Required Hours \_\_\_\_\_

Enrollment Date \_\_\_\_\_

Prime Contractor's Project Manager \_\_\_\_\_

Wages Starting \_\_\_\_\_

1<sup>st</sup> Quarter Training Complete \_\_\_\_\_

2<sup>nd</sup> Quarter Training Complete \_\_\_\_\_

3<sup>rd</sup> Quarter Training Complete \_\_\_\_\_

Completed Training \_\_\_\_\_

Trainee Signature \_\_\_\_\_ Date \_\_\_\_\_

Employer Signature \_\_\_\_\_ Date \_\_\_\_\_

OJT Program Coordinator Signature \_\_\_\_\_ Date \_\_\_\_\_

FOR CONSTRUCTION FIELD OFFICE USE ONLY

The trainee has reported to work on this project

# OJT Weekly Progress Report

(attach payroll records to report)

Trainee Name: _____	Contractor: _____
Classification: _____	TDOT Contract No: _____
Enrollment Date: _____	County: _____
Wage: _____	Contact: _____
Week Ending: _____	Phone No: _____

Training Phase*	Total Hours This Week	Total Accumulated Hours

\*Familiarization, Safety, Maintenance, Clean-Up, Traffic Control, Equipment Operations, etc...

Trainee's Supervisor Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Trainee Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Send or Fax to: OJT Program Coordinator  
 Civil Rights Office  
 505 Deaderick St. Ste. 1800  
 James K. Polk Building  
 Nashville, TN 37243  
 Fax – 615.741.3169



# OJT REQUEST FOR PAYMENT

Prime Contractor: \_\_\_\_\_

Address: \_\_\_\_\_

Contact Person: \_\_\_\_\_

TDOT Contract No.: \_\_\_\_\_ TDOT Project No.: \_\_\_\_\_

Reference No.: \_\_\_\_\_ County: \_\_\_\_\_

Trainee Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone No.: \_\_\_\_\_

Trainee Classification: \_\_\_\_\_ Number of Required Hours: \_\_\_\_\_

Enrollment Date: \_\_\_\_\_ Number of Hours Completed: \_\_\_\_\_

Starting Wage: \_\_\_\_\_ Ending Wage: \_\_\_\_\_

Contractor Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Approved for payment: \_\_\_\_\_ Amount to pay: \_\_\_\_\_

Special comments: \_\_\_\_\_

OJT Program Coordinator Signature: \_\_\_\_\_

Date: \_\_\_\_\_



**CIRCULAR LETTER**

**SECTION: 1247 DBE SUBCONTRACTING**  
**NUMBER: 1247-01**  
**SUBJECT: MONITORING OF PROJECTS WITH DBE SUBCONTRACTS**  
**DATE: NOVEMBER 1, 2011**

**\*Note\*- This Circular Letter applies to ALL projects with Federal funds that utilize DBE's**

**I. Contract Award**

At the time of contract award with projects containing SP1247, the contractor has made commitments to subcontract certain portions of the contract to DBE contractors. This information, since not always contained in the contract proposal, is being submitted by the Civil Rights Office (CRO) Small Business Development Program (SBDP) to the Regional Construction Offices for dispersion to the Project Supervisors. These commitments are contract requirements and are to be adhered to unless revised with approval of the CRO SBDP Director. The Project Supervisor should review this contract information to verify the actual work to be performed by the DBE contractors and review any lease agreements allowed as part of the DBE commitment.

**II. Pre-Construction Conference**

At the Pre-Construction Conference, the contractor should identify all DBE subcontractors indicating approximate dates for their appearance on the project.

**III. Construction**

After the project has been awarded, the contractor, "as soon as practical", shall submit copies of all binding subcontracts and purchase orders with DBEs to the Project Supervisor and Small Business Development Program Director. It is important that this information be provided so TDOT can accurately report DBE race conscious and race neutral participation to the FHWA. No progress estimates shall be processed until this information is received when the Contract Proposal includes SP 1247 and a DBE Goal is specified. The subcontracts are to be submitted in such detail as necessary to explicitly show the project personnel what is to be performed by the DBEs. (These agreements are not to be confused with the approved subcontract forms distributed by the Headquarters Construction Division which is an entirely different form.) These agreements should be checked against the commitments submitted by the contractor at the time of award. Any discrepancies should be resolved with the Contractor and the CRO SBDP prior to processing any estimates.

The following required forms shall be submitted:

1. The attached Commercially Useful Function (CUF) Checklist shall be completed as described below.
2. When the project has been completed, the contractor and the DBE must submit Form CC-3 certifying to the amount paid the DBE on all projects where a DBE participated in the work. The final estimate is not to be processed until this form has been received.

Originals of all forms submitted to the Project Supervisor shall be retained in the project files with copies being transmitted to the CRO SBDP and Regional Construction Office.

In addition to review of the forms submitted by the Contractor, the project personnel shall monitor DBE work during the life of the project to ensure the work committed to DBEs is performed as committed. The monitoring shall include the following:

- Any work committed to DBEs not performed in accordance with submitted subcontract agreements will not be allowed unless the deviation is as provided for in the contract and has been approved by the CRO SBDP.
- If work committed to DBEs is found being performed by others, it is to be halted and reported to the CRO SBDP immediately. It is not to be resumed until instructed by the CRO SBDP.
- If a DBE performing on the contract is found to be using the Contractor's forces and/or equipment that was not outlined in the subcontract agreement, this shall be reported to the CRO SBDP. This is allowable in certain instances but a determination by the CRO SBDP is necessary. If found unacceptable, the work is to be halted until such time as the matter is resolved.

At the discretion of the Engineer, an exception to all of the above will be allowed should an emergency situation develop requiring actions to the contrary for the Public's safety or for environmental compliance. If such an emergency occurs, the Public's safety and environmental compliance is to be ensured first by whatever means appropriate. Thereafter, the occurrence should be reported to the Region and CRO SBDP for review and disposition.

The Contractor must provide documentation of good cause to terminate a DBE subcontractor on a project with SP 1247 included in the Contract Proposal. Acceptable reasons for good cause are stated in 49 CFR 26.53(f) and the proper process for terminating a DBE subcontract are also included in this section. After adequate notice by the Contractor, if any DBE is unable to perform work committed toward the goal, the DBE shall provide to the CRO SBDP a signed statement saying why they are unable to complete the work. The Contractor shall document their efforts to have another DBE perform the item or to have a DBE perform other items to replace the original DBE commitment amounts. In the event the Contractor is not able to find replacement DBE work, the Contractor must provide the CRO SBDP documentation clearly evidencing good faith efforts. Any request for substitution of a DBE subcontractor shall be made to the Department and approved by the CRO SBDP

#### Transportation or Hauling of Materials-

Leases- A DBE must own and operate a minimum of one (1) truck. A DBE may "lease to own" a truck from licensed truck dealership/leasing agency for consideration as "ownership" if there is a finance (capital) lease which meets at least one of the following criteria: 1) ownership of the asset is transferred to the lessee at the end of the lease term; 2) the lease contains a bargain purchase option to buy the equipment at less than fair market value; 3) the lease term equals or exceeds 75% of the asset's estimated useful life; 4) the present value of the lease payments equals or exceeds 90% of the total original cost of the equipment. (For additional lease to own information refer to Statement of Financial Accounting Standards No. 13 (FAS 13).

SP 1247 states the following “The DBE who leases trucks from a non-DBE is entitled to the total value of transportation services provided by non-DBE lessees not to exceed the value of transportation services provided by DBE-owned trucks on the contract.” The following example is used to clarify this provision:

*DBE Firm X uses two of its own trucks on a contract. It leases two trucks from DBE Firm Y and six trucks from non-DBE Firm Z. DBE credit would be awarded for the total value of transportation services provided by Firm X and Firm Y, and may also be awarded for the total value of transportation services provided by four of the six trucks provided by Firm Z. In all, full credit would be allowed for the participation of eight trucks. With respect to the other two trucks provided by Firm Z, DBE credit could be awarded only for the fees or commissions, and driver if provided by the DBE, pertaining to those trucks Firm X receives as a result of the lease with Firm Z.*

The Contractor/DBE Hauler is required to complete the “TDOT DBE Truck List” to identify which trucks will be used towards DBE goal participation. If the DBE hauler leases trucks or subcontracts hauling from a non-DBE, they must also complete the “TDOT DBE Trucking Credit Worksheet” to accurately document eligible DBE participation.

### **Commercially Useful Function (CUF) Checklist**

The CUF Checklist applies to ALL DBEs on ALL projects. *A DBE performs a commercially useful function when it is actually performing, managing, and supervising the work of the contract. To perform a commercially useful function, the DBE must also be responsible with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, installing (where applicable), and paying for the material itself.* If a DBE is using a prime contractor’s equipment, manpower or supervision, it is merely an extra participant. This checklist is designed to be a snapshot of the day to ensure a DBE is an independent firm that is in control of day-to-day operations.

Instructions for completing the CUF Checklist are as follows:

1. On DBE goal projects, the HQ Civil Rights Office Small Business Development Program (CRO SBDP) will supply Project Supervisors with the DBE Company Profile and all other necessary forms and DBE certification data.
2. *If a Prime Contractor or Subcontractor (if 2<sup>nd</sup> Tier agreement) will be using a DBE Material Supplier/Trucker, then a DBE Material Supplier/Trucker Contract Certification form must be completed and submitted to the HQ Civil Rights Office with the actual Subcontract Agreement and/or purchase order prior to the pre-construction conference.*
3. The Project Inspector will complete the CUF Checklist once a DBE begins work and will submit the completed form to the CRO SBDP. This shall be done for ALL DBEs on ALL projects. If at any time a DBE is observed not performing a CUF or if there are any items that are suspicious, red flags or warrant further attention, this must be reported to the Regional Construction Supervisor and CRO SBDP Director immediately.

The Construction Field Office and CRO SBDP shall review the checklist to ensure completeness and file it with the project records.

**CIRCULAR LETTER**

**SECTION: 1273 CONTRACT PROVISIONS – FEDERAL-AID CONTRACTS (AND/OR 1280 – STATE FUNDED CONTRACTS)**  
**NUMBER: 1273-01**  
**SUBJECT: PROJECT SITE POSTERBOARD**  
**DATE: JULY 1, 2013**

The following posters and notices are to be posted on all construction projects by the contractor. This includes resurfacing projects and projects of short duration. For moving operations, or projects where there is not a suitable location for a stationary posterboard, contractors may use magnetic poster boards/notices on the side of trucks wherever equipment is stored or where individuals congregate, to meet the posting requirements.

**Certificate of Non-Segregated Facilities**

**Complaint Procedures**

**Federal Posters/Notices:**

1. Equal Opportunity is the Law Poster. (Form EEOC-P/E-1, required by FHWA 1273.
2. Your Rights Under USERRA (The Uniformed Services Employment and Reemployment Rights Act). (Use poster or text from [www.dol.gov/vets](http://www.dol.gov/vets) website, required by 20 CFR Part 1002). Poster and/or text posted should be material published after January 2006 when this rule became effective.
3. NOTICE Federal Aid Projects – False Statements . (Form FHWA 1022, required by 18 CFR 1020 and 23 CFR 635.119).

Note: State Highway Department Representative should be inserted as:  
Commissioner  
Tennessee Department of Transportation  
Suite 700, James K. Polk Building  
Nashville, TN 37243-0326

FHWA Representative should be inserted as:  
Division Administrator  
Federal Highway Administration  
404 BNA Drive  
Building 200, Suite 508  
Nashville, TN 37217

4. Fair Labor Standards Act (FLSA) Minimum Wage Poster. (Form WH 1088 and WH 1313, required by 29 CFR 5.5(a)(1). Note actual wage rates must be entered on WH 1313

5. Employee Rights for Workers with Disabilities Paid at Special Minimum Wages (Form WH-1284, required by CFR 525.14)
6. Contractor's EEO Policy Statement and Letter Appointing the Company's EEO Officer for the Project. (Statement must be developed by contractor per requirements of 41 CFR 60-741.44)
7. Job Safety and Health IT'S THE LAW Poster. (OSHA Form 3165, required by 29 CFR 1903.2(a)(1) through FHWA-1273.
8. NOTICE Employee Polygraph Protection Act. (Form WH 1462, required by 29 CFR 801.6).
9. Employee Rights and Responsibilities Under the Family and Medical Leave Act. (Form WHD 1420, required by 29 CFR 825.300 and 825.400 for employers of more than 50 people.
10. Employee Rights Under the Davis-Bacon Act. (Form WH 1321, required by 29 CFR 5.5 (a)(3) and FHWA-1273).
11. Prevailing Wage Rates. (Required by WH 1321).
12. 24 Hour Emergency Numbers. (Contractor must post numbers to call in the event of an emergency, required by 29 CFR 1926.50(f) through FHWA-1273

**State Posters/Notices:**

1. Wage Regulation/Child Labor Poster. Tennessee Code paragraph 50-5-111. (Applies to employers of minors subject to the child labor regulations).
2. Tennessee Law Prohibits Discrimination in Employment. Tennessee Code paragraph 4-21-904.
3. Tennessee Worker's Compensation Insurance Poster. Tennessee Code paragraph 50-6-407.
4. Tennessee Unemployment Insurance Poster for Employees. Tennessee Code paragraph 50-7-304.
5. Payday Notice. Wage Regulation Act Tennessee Code 50-2-103(d).
6. TOSHA Safety and Health Poster. Tennessee Code paragraph 50-3-2005. Posting of the Federal Poster meets requirement.
7. Prompt Payment. Tennessee Department of Transportation. Standard Specifications, Section 109.02.

**The posters/notices listed above may be obtained at:**

[www.dol.gov/esa/whd/resources/posters.htm](http://www.dol.gov/esa/whd/resources/posters.htm)

[www.tn.gov/labor-wfd/poster.htm](http://www.tn.gov/labor-wfd/poster.htm)

**Environmental Permits:**

The following items must be posted if the project is covered under the applicable environmental permit(s):

1. Notice of Coverage (NOC) for TDEC Construction General Permit.
2. Any other applicable environmental permits for the project site where permit conditions require posting a permit copy at the project site.
3. Location of SWPPP along with an individual contact name, company name, phone number and email address (if applicable).

## **CIRCULAR LETTER**

**SECTION: 1273 CONTRACT PROVISIONS – FEDERAL-AID CONTRACTS**  
**NUMBER: 1273-02.01**  
**SUBJECT: CONTRACTOR’S PAYROLLS - CORRECTIONS**  
**DATE: MAY 15, 1994**

If the Engineer discovers either through review of contractor payrolls, monthly labor interviews and/or labor complaints that incorrect wages are being paid, it is his responsibility to initiate immediate action to correct the same. An outline of actions to correct are offered for your use.

- (1) Notify the contractor of the infraction giving him sufficient time to investigate and correct with documentation of his actions (two weeks).
- (2) Progress estimates should be withheld if the contractor fails to initiate corrective action with written notification to the contractor.
- (3) Failure on the part of the contractor to make corrections after #2 above requires notification to this office and the Tennessee Department of Labor for further handling.

Please note that the above is for those instances in which proof positive exists that an infraction has occurred. In those instances, where an infraction is alleged but can not be verified by TDOT personnel one way or the other the following is offered.

- (1) Notification to the contractor of the infraction giving him sufficient time to investigate and correct or explain his action otherwise.
- (2) Field people should closely monitor circumstances around the alleged infraction from the point of the complaint to determine if a violation is continuing to occur.
- (3) If #2 indicates an infraction, the contractor must correct immediately with documentation or have progress estimates withheld.
- (4) If the contractor fails to comply with #3 notification to this office and Tennessee Department of Labor is required.
- (5) If #2 fails to disclose an infraction and/or the complaint is not resolved, the complaint should be passed on to this office and the Tennessee Department of Labor for further handling.

In all instances it is the intent that any infraction be dealt with immediately and at the lowest level possible.

**NOTE:** Procedures also apply to State Funded projects.

**CIRCULAR LETTER**

**SECTION: 1273 CONTRACT PROVISIONS – FEDERAL-AID CONTRACTS (1280-STATE FUNDED PROJECTS)**  
**NUMBER: 1273-02**  
**SUBJECT: CONTRACTOR’S PAYROLLS**  
**DATE: OCTOBER 1, 2016~~JANUARY 15, 2014~~**

In accordance with Special Provisions 1273, 1270 and Section §107.20, the Contractor and all sub-contractors must submit each week in which any contract work is performed, one (1) copy of the weekly payroll with a signed “Statement of Compliance” to the District Operations Project Supervisor. THE PRIME CONTRACTOR IS RESPONSIBLE FOR THE SUBMISSION OF COPIES OF PAYROLLS FOR ALL SUBCONTRACTORS.

Effective with contracts in the February 14, 2014 letting, Prime Contractors must submit payrolls electronically. The electronic copy shall be a scanned copy of the original weekly payroll with a Statement of Compliance. Originals shall be maintained by the contractor and subcontractors during the work and for at least three (3) years after issuance of the Completion Notice and shall make them available for review upon request. For projects let prior to February 14, 2014, the contractor may elect to submit electronic payrolls in accordance with this circular.

The required weekly payroll information may be on any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <https://www.dol.gov/whd/programs/dbra/wh347.htm> ~~http://www.dol.gov/esa/whd/forms/wh347instr.htm~~ or its successor site. If Form WH-347 is not used, the payroll shall contain:

1. Payroll number, including begin/end dates.
2. Each employee's full name and individually identifying number (such as the last 4 digits of SSN).
3. Each employee's classification.
4. Each employee's hourly wage rate (including fringe benefits) and hourly overtime pay rate.
5. Daily and Weekly number of regular hours worked in each of the employee's classification including number of overtime hours worked.
6. Itemized deductions for each employee.
7. Net wages paid to each employee.

Each payroll submitted shall be accompanied by a “Statement of Compliance,” signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract. Signing the “Statement of Compliance,” certifies the following:

- (i) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29CFR part 5, and that such information is correct and complete;

- (ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;
- (iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

The first payroll submitted by the prime contractor and each sub-contractor shall be thoroughly checked to ensure the payroll is certified (contains Statement of Compliance), contains the information required (as detailed above), all laborers and mechanics, are paid, at a minimum, the rate specified in the contract for the associated classification and overtime rates are correct. It is not necessary to compare daily DWR workforce entries to the payrolls. On a monthly basis, a randomly selected contractor's or sub-contractor's payroll should be checked to assure the payroll is correct and complete. On Federally funded projects, the monthly payroll checked should be that of the contractor/sub-contractor of the employee interviewed (CL 1273-03) to assure continued conformance.

Thorough payroll reviews shall be made when the project supervisor has any reason to believe that any contractor or sub-contractor employee is not being paid the minimum prevailing wage. Any necessary corrections shall be made as stated in Circular Letter 1273-02.01 and shall be requested through the Prime Contractor.

All payrolls (paper or electronic) must be submitted to the Project Supervisor weekly for the previous week in which any contract work is performed to the Project Supervisor within 7 days after the regular payment date of the respective contractor's weekly payroll period or progress payments shall be withheld. The payroll (paper or electronic) is to be retained with the project records at the Project Supervisor's Office.

For electronic payrolls, once reviewed for formatting as stated below, the Project Supervisor (or designee) will create a sub folder labeled with the payroll ending date (Ex: 01/01/01) under the File Management folder labeled "Payrolls" and save all the payrolls and email sent by the Prime Contractor for each ending date. It will not be necessary to maintain a printed copy in the project records

For electronic submittals, the PRIME contractor shall follow the formatting below:

1. Send one email per week.
2. Include in the email the individual payrolls for the Prime and all Subcontractors (DO NOT send one pdf containing all payrolls)
3. The subject line of the email may shall read: CNxxx, Payrolls, Week ending: xx/xx/xx
4. Individual files shall be designated as: CNxxx\_PrimeContractorName\_Endingdate.pdf, CNxxx\_SubContractorName\_Endingdate.pdf (Ex.:CNA123\_JohnDoeContracting\_01/01/01.pdf)
5. In the email text, the Prime shall list all approved subcontractors for the project. This list may grow during construction, as additional subcontractors are added.

6. If during the week being reported, the Prime or any individual subcontractor has not performed work, then in the email text next to the listed contractor, the Prime shall note "No work performed by (Contractor Name) for the week ending \_\_\_\_\_. (See Section §107.20 of the Standard Specifications.)

The Tennessee Department of Labor and Workforce Development (TDLWD) does not need to receive a copy of the certified payroll, but may be allowed access to review any payroll upon request. Payrolls shall not be made available to public inspection (except as indicated above) by the Project Supervisor.

TENNESSEE DEPARTMENT OF LABOR  
LABOR STANDARDS STAFF

NASHVILLE OFFICE - (615) 741-2858  
220 French Landing Dr., Suite 1B  
Nashville, TN 37243  
Director

CHATTANOOGA OFFICE - (615) 634-6421  
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Kingsport, Tennessee 37660  
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Jackson, Tennessee 38301  
Charles Humphrey

**CIRCULAR LETTER**

**SECTION: 1273 CONTRACT PROVISIONS – FEDERAL-AID CONTRACTS**  
**NUMBER: 1273-03**  
**SUBJECT: LABOR INTERVIEW (DAVIS-BACON ACT)**  
**DATE: APRIL 15, 2007**

TDOT Departmental Policy 301-02 shall be adhered to when conducting contractor employee interviews.

Labor interviews shall be conducted on all Federal Aid contracts. A minimum of one (1) interview shall be performed on each Federal Aid contract every month. An employee of either the prime contractor or a sub-contractor may be interviewed. If an employee declines a request for an interview, the employee's name and "Declined to Interview" shall be recorded on the form. This will be considered as a completed interview. All interviews shall be recorded on the attached form "Contractor's Employee Interviews".

After the interviews are made and recorded, they are to be compared to the contractor's certified payrolls submitted for the corresponding time frame. The project supervisor or his/her representative shall verify that the employee is properly classified and is being paid the proper hourly wage rates. Any discrepancies between the two must be resolved as stated in Circular letter 1273-02.01.

Approval by the Project Supervisor of the progress payment certifies that the labor interviews have been conducted unless an exception (i.e. no work, final estimate, etc.) exists.

Interviews may be conducted more often if conditions warrant.

## CONTRACTOR'S EMPLOYEE INTERVIEWS

(Form C-27)

Contract Number	County	Contractor or Sub-Contractor
Employee Name	Payroll Classification	Hourly rate for classification
Type of work being performed by employee as observed by interviewer:		
Hourly Rate for work employee is performing:   \$		
I affirm that the information shown above is correct and that I <b>am</b> / <b>am not</b> receiving the number of hours for normal time and overtime.		
Complaints/comments/remarks:		
Contractor Employee's Signature		Interviewer's Signature
Date:		Date:

The Contractor's/Sub-Contractor's (as identified above) payroll for this project have been checked for the period covering this interview and it is apparent that the subject employee <b>is</b> / <b>is not</b> properly classified and <b>is</b> / <b>is not</b> receiving the correct wage scale for the work he is performing in accordance with the wage established, for this project as specified in the Contract Proposal.	
Comments/Remarks:	
Project Supervisor's/Representative's Signature	
Date:	

**CIRCULAR LETTER**

**SECTION: 1273 CONTRACT PROVISIONS – FEDERAL-AID CONTRACTS**  
**NUMBER: 1273-04**  
**SUBJECT: DAVIS-BACON ACT RELATING TO TRUCKERS**  
**DATE: JULY 1, 1992**

Enclosed herewith is a copy of the Federal Highway Administration's, December 4, 1991, letter together with Mr. Thomas O. Willett's memorandum of October 3, 1991, pertaining to the application of the Davis-Bacon Act to truck drivers.

It appears this is different from the interpretations, therefore, please be governed accordingly.



U.S. Department  
of Transportation  
Federal Highway  
Administration

Tennessee Division Office

112 - 2544

249 Cumberland Bend Drive  
Nashville, Tennessee 37228

December 4, 1991

Mr. Carl Wood, Executive Director  
Bureau of Operations  
Tennessee Department of Transportation  
Nashville, Tennessee

112-2544  
DEC 11 1991

Dear Mr. Wood:

Subject: Application of Davis-Bacon Act

We are transmitting a copy of a memorandum from our Washington Office concerning application of the Davis-Bacon Act as it relates to truck drivers on Federal-aid highway projects. The memorandum discusses a current court ruling on this subject.

In short, the court has ruled that Davis-Bacon requirements do not apply to truck drivers delivering materials to a project site even if the drivers are employed by the contractor or a subcontractor. An exception would be if the driver's jobsite is the project itself. Decisions are to be made on a case by case basis. This is contrary to 29 CFR 5.2 (j) and will require a change from current practices.

This interpretation is to be implemented immediately. If there are any questions, please contact Gary Hamby of this office.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Dennis C. Cook".

(For) Dennis C. Cook  
Division Administrator

Enclosure



U.S. Department  
of Transportation  
Federal Highway  
Administration

# Memorandum

RECEIVED  
FHWA REG 4

112-2564

OCT 08 '91

Subject: Application of Davis-Bacon Act  
to Truckdrivers - Midway Decision

Date: OCT 3 1991

From: Director, Office of Engineering

Reply to  
Attn. of: HCC-32/HNG-2:

To: Regional Administrators  
Federal Lands Highway Program Administrator

## BACKGROUND

The purpose of this memorandum is to provide policy guidance to the Divisions and States as a result of the decision reached in Building and Construction Trades Dept. v. Midway, decided on May 17, 1991. The Court of Appeals for the District of Columbia Circuit held in Midway that Department of Labor (DOL) regulation 29 C.F.R. § 5.2(j) is inconsistent with the Davis-Bacon Act, 40 U.S.C. § 276(a). The Court of Appeals ruled that the regulation, which defines work covered under the Act to include "transporting materials and supplies to or from the building or work by the employees of the construction contractor or construction subcontractor," is invalid because it conflicts with the statutory objective of the Davis-Bacon Act, which is to pay prevailing wages to "mechanics and laborers employed directly upon the site of the work." In the view of the Court of Appeals, the Act covers only mechanics and laborers who work on the site of the federally-funded public building or public work, not mechanics and laborers employed off-site, such as suppliers, materialmen and material delivery truckdrivers, regardless of their employer. According to the Court, material delivery truckdrivers who come on to the site merely to drop off construction materials, are not covered by the Act even if they are employed by the government contractor.

The Court of Appeals in its analysis focused on the statutory text of the Act, and the phrase "site of the work." The Court relied on and quoted from DOL regulation 29 C.F.R. § 5.2(1)(1) in defining that the site of the work is "limited to the physical place where the construction, will remain," along with off-site facilities that are "dedicated exclusively" to the performance of the contract and are "so located in proximity to the actual construction location that it would seem reasonable to include them." 29 C.F.R. § 5.2(1)(2).

The Court, in its review of the legislative history of the Act, concluded that Congress clearly intended the Act to apply only to on-site workers and affirmatively intended it not to apply

to off-site workers. In the Court's view, there is no legislative history to suggest, as the DOL has ruled, that Congress intended the employment status of the worker rather than the location of his job to be determinative of the Act's coverage.

#### APPLICATION OF MIDWAY TO THE FEDERAL-AID HIGHWAY PROGRAM

The Court of Appeals' decision is final, as neither the Solicitor General, U.S. Department of Justice, nor the union will seek appeal to the U.S. Supreme Court.

Since we have yet to receive any guidance from DOL on its reaction to Midway, the following is our interim policy and guidance based on the Midway ruling. To the extent that the interim policy conflicts with any subsequently issued statement from DOL, the policy will then be accordingly modified.

The Court of Appeals ruled that material delivery truckdrivers, who come onto the site of the work merely to drop off construction materials, are not covered by the Davis-Bacon Act even if they are employed by the government contractor, because they are not employed directly upon the site of the work. Application of the Midway ruling relative to what constitutes the "site of the work" shall continue to depend upon DOL's definition of that term as set forth in 29 C.F.R. Part 5.2(1). The regulation states that "the site of the work" is limited to the physical place or places where the construction called for in the contract will remain when work on it has been completed and other adjacent or nearby property used by the contractor or subcontractor in such construction which can reasonably be said to be included in the "site." Further, it defines "site of the work" by stating that fabrication plants, mobile factories, batch plants, borrow pits, job headquarters, tool yards, etc., are part of the "site of the work" provided that they are dedicated exclusively, or nearly so, to performance of the contract or project, and are so located in proximity to the actual construction location that it would be reasonable to include them.

DOL defines what is not included in the term "site of the work" in 29 C.F.R. Part 5.2(1)(3). Not included in the term "site of the work" are such facilities as permanent home offices, branch plant establishments, fabrication plants, and tool yards of a contractor or subcontractor whose locations and continuance in operation are determined wholly without regard to a particular Federal or federally assisted contract or project. In addition, fabrication plants, batch plants, borrow pits, tool yards, etc., of a commercial supplier or materialmen which are established by a supplier of materials for the project before opening of bids and not on the project site, are not included in the "site of the work." Such permanent, previously established facilities are not a 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.

It is important to remember that the above DOL regulation defining "site of the work" was not changed by the Midway decision. As the Midway court stated in a footnote, the validity of the "site of the work" regulation was not before the Court. What has changed is the application of this regulation to determine if a particular group of truckdrivers or haulers are covered by the Davis-Bacon Act.

When determining whether the hauling work done by truckdrivers falls under Davis-Bacon coverage, one must look at three scenarios.

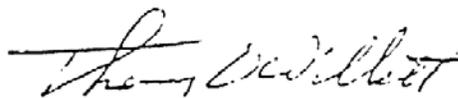
(1) If the work involves hauling being done on the actual "site of the work," that is the physical place or places where the construction called for in the contract will remain when work on it has been completed, then the truckdrivers are covered by the Davis-Bacon Act and are subject to prevailing wage rates.

(2) Similarly, if the work involves hauling from an adjacent or nearby property dedicated exclusively, or nearly so, to performance of the contract or project, and so located in proximity to the actual construction location that it would be reasonable to include them, then the truckdrivers are again covered by the Davis-Bacon Act and are subject to prevailing wage rates.

(3) However, if the work involves hauling being done from an off-site location, for example at permanent home offices, branch plant establishments, fabrication plants, and/or tool yards of a contractor or subcontractor whose locations and continuance in operation are determined wholly without regard to a particular Federal or federally assisted contract or project, then the truckdrivers are not covered by the Davis-Bacon Act and are not subject to prevailing wage rates. Similarly, fabrication plants, batch plants, borrow pits, job headquarters, etc., of a commercial supplier or materialman which are established by a supplier of materials before opening of bids and are not on the project site 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.

Because of the Midway decision, these determinations of Davis-Bacon coverage must now be based solely on the location of the truckdrivers' jobsite, rather than the employment status of the driver. These determinations of coverage must occur on a case by case basis, so it is important that the contractor indicate as early as possible how trucking and handling operations will occur on the project.

If there are any questions concerning this policy guidance, please contact Mr. Robert S. Wright (HNG-22) at FTS 366-1558 or Mr. Terence Carlson (HCC-32) at FTS 366-1395.

A handwritten signature in cursive script, appearing to read "Thomas O. Willett".

Thomas O. Willett

**CIRCULAR LETTER**

**SECTION: 1273 CONTRACT PROVISIONS – FEDERAL-AID CONTRACTS**  
**NUMBER: 1273-04.01**  
**SUBJECT: DAVIS-BACON ACT RELATING TO TRUCKERS (SUPPLEMENTAL)**  
**DATE: JULY 1, 1992**

Attached is a copy of Supplemental Information Relative to Implementation of the Midway Decision which amplifies the information furnished you with Circular Letter 1273-04.

This additional information is intended to further clarify the application of Davis-Bacon requirements to truck drivers pursuant to the Midway Decision and FHWA's interim policy for implementation.

Supplemental Information Relative to  
Implementation of the Midway Decision

The following information is offered as supplemental guidance in response to questions and scenarios that have been brought to our attention from the various field offices since the Midway Decision was issued.

Questions:

1. What is the effective date for implementation of policy changes arising from the Midway Decision?

May 17, 1991, the date of the court's decision, is the effective date, since all motions for rehearing were denied and the parties in question never petitioned to the Supreme Court.

2. What projects may the Midway Decision affect?

The decision may affect Federal-aid construction projects that were authorized on or after May 17, 1991, as well as work that occurred on or after May 17 on projects authorized prior to that date.

The impact of Midway to existing and completed projects will depend upon the number of contractors who desire to make adjustments in payments made to truck drivers pursuant to the ruling and States' reactions to such requests. States with their own minimum wage legislation may find that such statutes preclude any adjustment.

3. Does the Midway Decision have applicability to owner/operators?

No, there is no impact on owner/operator trucking agreements. Davis-Bacon wage rates do not apply to owner/operator trucking transactions.

4. Has the Midway Decision ruling affected the Department of Labor's (DOL's) policy involving hauling operations from the project site to a "non-dedicated" off-site facility?

Yes, the Court's decision held that DOL's regulation, 29 CFR Section 5.2(j), defining "construction" to include the hauling of materials to and from a construction site, is invalid because it conflicts with the language of the Davis-Bacon Act in that such hauling is not performed "directly on the site of the work." As a result, the Court concluded that truck drivers engaged in hauling materials and supplies to and from a construction site are not employed "on the site of the work" and, therefore, the DOL is without statutory authority to extend the prevailing rate requirement to such drivers. It is noted that this application is in reference to only those hauling operations to and from an "off-site" facility that has been determined to be "non-dedicated."

5. In view of the Midway Decision, a number of inquiries have been made regarding applicability of Davis-Bacon wage rates under several scenarios of truck/hauler operations involving various "off-site facilities." To properly address each scenario, the "off-site facility" must be evaluated to assure it meets the criteria for "site of the work" as defined in DOL's regulations (29 CFR 5.2). The criteria is as follows:

An "off-site" facility that comes under the definition of "site of the work" must be considered "dedicated exclusively" to the performance of the contract, and be so located in proximity to the actual construction location that it would be reasonable to include it.

An evaluation of the "off-site" facility should address the following issues:

- (a) Does the "off-site" facility exist because of the Federal-aid project? If the answer is yes, then it probably meets the "dedicated exclusively" criteria, which means all truckers hauling from this facility to the project site and from the project site to the facility, regardless of whom they are employed by, are covered by Davis-Bacon wage rates.

However, when it comes to certain "off-site" facilities, such as borrow or waste pits, one must also examine whether or not it has a "commercial nature". This can be done by answering the following questions:

- Was the "off-site" facility established by a commercial supplier or materialman prior to award of the project?
- Will the "off-site" facility be used for multiple purposes (by other projects, i.e., State or the private sector)?

If the answer is yes to either of these questions, then the "off-site" facility most likely cannot be considered "dedicated exclusively" and be included as part of the "site of the work", even when the operations for a period of time may appear dedicated exclusively, or nearly so, to the performance of the contract.

- (b) If the "off site" facility being evaluated is determined to meet the "dedicated exclusively" portion of the criteria, it next must be tested to assure it also meets the "in proximity to" portion. To accomplish this, several factors should be examined. These include:

- the type/nature of the project, and
- the geographical elements involved (i.e., geological and whether the project is in an urban or rural location).

The key word in this test is "reasonable." The determination of reasonableness is very subjective and best left to be determined at the local or State level based on the factors involved. For this reason, no specified distance limitations have been developed as they may vary from State-to-State and region-to-region.

- (c) Scenarios that involve major route/corridor type work that consists of multiple adjacent contracts/projects and/or different contractors represent a unique set of circumstances. As a general rule, if such a group of projects have "off-site" facilities that meet the test criteria noted above for being "dedicated exclusively" and "in proximity to" for the "group of projects" only, then such facilities can be considered to be included in the definition of "site of the work." This would include "shared" facilities from different contracts/projects by the same contractor, as well as, the possibility of "shared" facilities from different contracts/projects by different contractors.

6. In light of the Midway Decision, how will determinations be made with regard to "split-trip" operations?

Due to the Midway Decision, contractors will need to establish payroll records that indicate the times that truck drivers are hauling under conditions that meet the criteria for Davis-Bacon coverage and the times when conditions do not meet the criteria. Since wage determinations are usually based on hourly increments, the wage rate that dominates for any given hour of the day will depend on the type of operation that dominates for that given hour of the day.

In cases where the legs of the trip are split (i.e., hauling from a commercial site to the project site in one leg of the trip, then hauling from the project site to a "dedicated exclusively" off-site facility in the other leg), DOL has in the past ruled the trip-leg that meets the criteria for Davis-Bacon wage rate coverage will dominate the wage coverage determination for that entire operation. It is noted that the impact of the Midway Decision on this "split-trip" issue is currently being examined in the Ames Construction Case. Until a decision is conclusively reached on this matter, DOL's current policy will stand with respect to the Midway Decision.

#### Application Scenarios:

Using the guidance provided above, the following scenarios furnished by the field offices are now examined to demonstrate the application of Davis-Bacon to truck drivers under Midway:

(Remember, whether or not the truck drivers are directly employed by the government contractor is no longer a relevant factor.)

Scenario 1: A trucking firm is contracted to haul materials from a commercial production source. The contract may be with the supplier or the prime contractor.

(The work is not covered under the Davis-Bacon Act.)

Scenario 2: The prime contractor hires drivers to operate trucks from a commercial production source.

(The work is not covered under the Davis-Bacon Act.)

Scenario 3: A project involves milling a bituminous overlay from concrete pavement, rubblizing and hauling off old concrete pavement, re-compacting the subgrade, placing a lime treatment on the subgrade, placing a Portland cement treated base, followed by Portland Cement Concrete Pavement. A trucking firm is subcontracted to do the following:

- (a) to haul millings, dirt, debris, etc.; from the project site to a State designated location adjacent to or near the project;

(The designated location is an "off-site" facility which meets the criteria for "site of the work." Therefore, the hauling of millings, dirt and broken concrete to this location is covered and subject to the prevailing Davis-Bacon wage rates.)

- (b) to haul Portland cement treated base from a plant located in a commercial quarry which is set up specifically for the project;

(The plant used to produce Portland cement treated base was set up "off-site" specifically for the project, therefore it meets the criteria for "site of the work." Thus, work done at the plant and hauling from and to the plant from the actual site of work is covered and subject to the prevailing Davis-Bacon wage rates.)

- (c) to haul concrete aggregate from a commercial quarry to the concrete plant location.

(The source of concrete aggregate is a bona fide commercial quarry, (i.e., a commercial supply source not dedicated exclusively to the project). It, therefore, is not considered a part of the "site of work." Work performed by drivers hauling from this source and to this source from the actual site work is not subject to the prevailing Davis-Bacon wage rates.)

Scenario 4: The project involves hauling excavated earth from various locations on the project to other locations on the same project and from a borrow site established by the contractor at the same location as the commercial hot mix plant. The hot mix plant is located within a reasonable hauling distance to the project site. The prime contractor owns several trucks capable of hauling both dirt and bituminous material and does the following work:

- (a) Drivers employed by the contractor haul excavated material within the project limits for construction of the roadway embankment;

(Since the hauling of excavated materials involves working within the actual site of the work, the hauling is covered and subject to the prevailing Davis-Bacon wage rates.)

- (b) After hauling all available embankment material within the project limits, the contractor's drivers haul excavated overburden from a commercial borrow site, owned by the contractor, to complete the roadway embankment;

(The contract plans required the contractor to furnish embankment material for the project. The location that the contractor furnished embankment borrow from is a commercial supply source. The source, even though owned by the contractor, does not meet the "dedicated exclusively" criteria. Thus, the hauling work is not covered by the provisions of the Davis-Bacon Act.)

- (c) After completion of the roadway embankment and trimming of the subgrade to the proper grade, the contractor placed a surface of bituminous material which was hauled from his commercial hot mix plant and dumped into a laydown machine.

(The material delivery truck drivers who came onto the site of the work merely to drop off construction materials are not covered by the Davis-Bacon Act regardless if employed by the prime contractor or subcontractor. The source of the materials is of a commercial nature not "dedicated exclusively" to the project.)

Scenario 5: The project involves grading and bituminous surfacing of an existing roadway for a distance of 16 km (10 miles) with limited right-of-way. The plans call for the roadway to be widened and the shoulders to be stabilized. Included in the plans is a requirement for the contractor to furnish embankment from a location approved by the State. The contractor locates an area approximately 3.2 km (2 miles) from the nearest point of the project. The haul road from the borrow area intersects the project midway through the project. The contractor is

required to strip vegetation from the area and, by an agreement with the land owner, stockpile the top soil which will be replaced after use of the borrow pit is no longer needed. The contractor subcontracts a trucking firm to:

- (a) haul embankment from the borrow location to the project site;

(The borrow pit was required by the construction plans and was not open to commercial sales. Therefore, it is considered to be included in the "site of the work" and the drivers hauling from the site are covered by the Davis-Bacon Act.)

- (b) to haul aggregate from a commercial quarry to the hot mix plant that was set up adjacent to the project site at the intersection with the borrow pit haul road;

(The hauling of the aggregate from a commercial quarry to the hot mix plant site is considered a supply activity. Therefore, the drivers of these trucks are not covered by the provisions of the Davis-Bacon Act.)

- (c) to haul a portion of the bituminous surfacing material from the hot mix plant to the job site;

(The hot mix plant was set up specifically (i.e., dedicated exclusively) for this project. Therefore, all drivers hauling from the plant are covered by the provisions of the Davis-Bacon Act.)

- (d) The contractor used his own forces to haul AS-1 shoulder material from a plant set up in a commercial quarry specifically for this project.

(Even though the AS-1 was hauled from a commercial supply source, truck drivers are covered by the provisions of the Davis-Bacon Act because the plant used to produce the material was set up specifically for the project.)

Scenario 6: A contract is awarded to a company who has just completed a similar project during the later part of the preceding construction season. This project abuts one end of the project completed the preceding season and is of the same design. The contractor cannot locate an acceptable borrow pit site within reasonable hauling distance, however, there is a commercial quarry located within an acceptable distance from the project. An agreement is made with the quarry owner to allow the prime contractor to remove overburden from part of his quarry to be purchased and used for roadway embankment material. The owner of the quarry will take both original and final cross sections for measurement of the site of which borrow is purchased. The contractor moves in his own fleet of trucks to:

(a) haul embankment from the borrow site to the project site;

(The contract plans require the contractor to furnish embankment material for the project. The location of the contractor furnished material is a commercial supply source. The source is not considered to be included in the "site of the work" and the drivers are merely dropping off material to the project location. Therefore, they are not covered by the provisions of the Davis-Bacon Act.)

(b) haul bituminous material from the plant at the same location as it was for the previous project;

(Even though the plant was set up specifically for a project that was completed the previous construction season, it did not produce any bituminous material for commercial sale. Therefore, the drivers hauling from the plant are covered by the provisions of the Davis-Bacon Act.)

(c) A subcontract is approved for a trucking firm to haul the AS-1 for shoulders from a plant set up specifically for the project completed the previous construction season to the project site, dump the material into a shouldering machine;

(Even though the plant was set up specifically for a project that was completed the previous construction season, there was no material produced for commercial sales by the plant during that time. Therefore, the drivers are covered by the provisions of the Davis-Bacon Act.)

(d) to haul aggregate from a commercial quarry to the hot mix plant.

(Drivers of trucks hauling aggregate from commercial quarries to the hot mix plant are not covered by the provisions of the Davis-Bacon Act.)

**CIRCULAR LETTER**

**SECTION: 1273 CONTRACT PROVISIONS – FEDERAL-AID CONTRACTS**  
**NUMBER: 1273-05**  
**SUBJECT: SUBCONTRACTING LABOR**  
**DATE: JUNE 15, 2010 (02/01/2011)**

It has been determined that contractors may subcontract labor on highway construction projects under the following conditions:

- A. The contractor shall request and obtain permission to subcontract labor from the Director of Construction as with any other item of construction.
- B. Typically, the subcontract request will be for a partial pay item, since there is no pay item specifically for labor charges.
- C. The total amount of labor being subcontracted shall be treated as any other item of construction; therefore, the aggregate of labor and other items being subcontracted may not exceed the permissible limits set out in the contract. In addition, the dollar amount of labor subcontracted will be treated as any other subcontracted item of Subsection 108.01 of the Standard Specifications.
- D. The contractor must comply with all terms of the construction contract regarding labor, Equal Employment Opportunity, the Davis-Bacon Act and all related statutes, the Tennessee Prevailing Wage Act and all regulations of the Tennessee Department of Labor.

Contractors who utilize labor through Employee Lease Agreements (see CL 1273-05.01) cannot request subcontract approval for that labor.

Note: Procedures also apply to State Funded projects.

## **CIRCULAR LETTER**

**SECTION: 1273 CONTRACT PROVISIONS – FEDERAL-AID CONTRACTS**  
**NUMBER: 1273-05.01**  
**SUBJECT: EMPLOYEE LEASE AGREEMENTS**  
**DATE: DECEMBER 1, 2011**

Prime contractors may enter into employee lease agreements with an employee leasing firm meeting all relevant Federal and State regulatory requirements if the leased employees are under the direct supervision and control of the contractor's superintendent and/or supervisor. Leased employees may be considered part of the prime's "own organization" if the following conditions apply:

1. The prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;
2. The prime contractor remains responsible for the quality of the work of the leased employees;
3. The prime contractor retains all power to accept or exclude individual employees from work on the project;
4. The prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

If the leased personnel are treated as employees of the prime contractor, and would be considered as such but for their actual employment by a leasing agency, then they should be considered employees of the prime contractor's organization and not as a subcontractor (23 CFR 635.116(a)). Circular Letter 1273-05 contains information regarding requirements for subcontracting labor.

Additionally, for the purpose of Davis-Bacon compliance, the prime's agreement with the employee leasing firm must ensure compliance with minimum wage requirements. The prime is also responsible for providing the appropriate payroll information for all leased employees. To meet this requirement, the Employee Leasing Agency shall be responsible for submitting a certified payroll to the Prime showing the actual wages paid to the leased employee. The Prime is then responsible for verifying that the wages shown meet or exceed minimum wage requirements for the work classification performed. The Prime shall then submit the payroll to the Project Supervisor.

Prime contractors shall forward copies of any executed employee lease agreements to the Project Supervisor for inclusion in the project records.

**NOTE:** Procedures also apply to State Funded projects.

**CIRCULAR LETTER**

**SECTION: 1273 CONTRACT PROVISIONS – FEDERAL-AID CONTRACTS**  
**NUMBER: 1273-06**  
**SUBJECT: DAVIS-BACON ACT RELATING TO SURVEY CREWS**  
**DATE: DECEMBER 15, 2007**

The Wage and Hour Division of the Employment Standards Administration, U.S. Department of Labor (DOL), in its Field Operations Handbook (6/1/87) - Section 15e19(a) - "Survey Crews" states that where surveying is performed immediately prior to and during actual construction, in direct support of construction crews, such activity is covered by the Davis-Bacon and Related Acts (DBRA). Coverage to Survey Crews is also provided under the Contract Work Hours and Safety Standards Act (CWHSSA). DBRA requires payment of the prevailing wages specified in the contract and CWHSSA requires payment of time and a half for all hours exceeding 40 hours in a workweek.

If the contract contains the Item No. 105-01 or 105M01 Construction Stakes, Lines and Grades and the survey personnel are performing work that will be paid for under this item, then they must be paid the contract prevailing wage for their classification and included on weekly certified payrolls. However, if the contract does not contain Item No. 105-01 or 105M01, and no subcontract form has been submitted for a company employing the survey personnel, then these workers may be providing services to the contractor and do not have to be included on certified payrolls.

All survey personnel performing work to meet the contract's DBE goal shall be paid the contract prevailing wage and shall be included on the weekly certified payrolls.

The Tennessee Department of Labor & Workforce Development currently has the following classifications in the Highway Construction Crafts for survey party work persons:

Survey Instrument Operator (Craft 18) - Obtains data pertaining to angles, elevations, points, and contours used for construction, map making, mining, or other purposes, using alidade, level, and transurveying instruments. Compiles notes, sketches, and records of data obtained and work performed. Directs work of subordinate members of survey team. Performs other duties relating to surveying work as directed by Chief of Party.

Survey Helper/Rodman (Unskilled Laborer – Craft 23) - Performs any of the following duties to assist in surveying land: Holds level or stadia rod at designated points to assist in determining elevations and laying out stakes for mapmaking, construction, mining, land, and other surveys; calls out reading or writes station number and reading in notebook; marks points of measurement with elevation, station number, or other identifying mark; measures distance between survey points, using steel or cloth tape or surveyor's chain; marks measuring points with keel (marking crayon), paint sticks, scratches, tacks, or stakes; places stakes at designated points and drives them into ground at specified elevation, using hammer or hatchet; cuts and clears brush and trees from line of survey, using brush hook, knife, ax, or other cutting tools.

A survey crew member who primarily does manual work such as clearing brush is classified as an unskilled laborer and is covered for the time so spent. Attached are Sections 15e19(a) and (b) of the Field Operations Handbook which address this situation.

Rev. 550

FIELD OPERATIONS HANDBOOK - 6/1/87 15e19 - 15e21

15e19 Survey crews

- (a) Where surveying is performed immediately prior to and during actual construction, in direct support of construction crews, such activity is covered by DBRA. Under the United States Housing Act of 1937 and the Housing Act of 1949, the "development of the project" coverage test is broader and may also cover preliminary survey work.
- (b) The determination as to whether certain members of survey crews are laborers or mechanics is a question of fact. Such a determination must take into account the actual duties performed. As a general matter, instrumentman or transitman, rodman, chairman, party chief, etc. are not considered laborers or mechanics. However, a crew member who primarily does manual work, for example, clearing brush, is a laborer and is covered for the time so spent.

15e20 Timekeepers.

Timekeepers who perform no manual labor on construction projects are not considered to be "laborers" or "mechanics" for purposes of DBRA. However, if such workers perform other duties as laborers or mechanics, they must be paid the WD rate for the particular classification involved for the time so spent.

15e21 ~~Survey crews~~

- (a) Truck drivers employed by a construction prime contractor or ~~subcontractor~~ to transport materials or equipment to a DBRA project, or from a DBRA project to return materials to the contractor's or subcontractor's plant or yard, are covered. Drivers employed by a prime contractor or subcontractor transporting materials or equipment from one DBRA project to another DBRA project are also covered, and the time so spent is compensable at the DBRA rate required to be paid on the latter project. Drivers employed by a prime or subcontractor transporting materials or equipment away from a DBRA project to another project of the same contractor or subcontractor are also covered, even where the latter project is not subject to DBRA.
- (b) Truck drivers engaged in hauling excavated material, debris, dirt, asphalt for recycling, etc. away from a DBRA-covered construction site are covered for the time spent loading at the site, transporting the material and unloading. All truck drivers engaged in such activities are covered regardless of their employer's status as a materialman or a construction contractor. It makes no difference whether or not an employer who is engaged in