

## **WAGE DECISION BASICS**

The purpose of this document is to outline the first steps that are necessary in order to comply with Davis-Bacon requirements, specifically with regard to Wage Decisions and other pre-construction activities. Additional documents will be posted at a later date on other steps in the Davis-Bacon compliance process.

### **Step 1- Submit Wage Rate Request to VHDA-**

Upon the Owner's execution and return of the Wage Rate Request Form, VHDA will forward to the Owner a current Wage Decision.

The Davis-Bacon Wage Decision is a listing of various construction work job classifications (such as Carpenter, Electrician, Plumber, Laborer, etc.) and the minimum wage rates (and fringe benefits, where prevailing) that people performing work in those classifications must be paid. **Davis-Bacon Wage Decisions related to TCAP awards are to be obtained from VHDA, not from any other source such as Department of Labor or HUD.** Davis-Bacon wage decisions are established by the DOL for various types of construction (e.g., residential, heavy, highway) and apply to specific geographic areas, usually a county or group of counties. Wage decisions are modified from time to time to keep them current. In most cases, when the contract is awarded or when construction begins, the wage decision is "locked-in" and no future modifications are applicable to the contract or project involved.

### **Step 2- Preparing the bid documents/contracts-**

The contract for construction is the vehicle to ensure contractor compliance and Davis-Bacon wage enforcement. *Therefore, the bid specifications and/or the contract for each project subject to Davis-Bacon wage rates must contain both a Davis-Bacon wage decision and its own labor standards clauses.* These are often bound into the contract specifications. The labor standards clauses obligate the contractor to comply with Davis-Bacon wage and reporting requirements and provide for remedies and sanctions should violations occur. The HUD form 4010, Federal Labor Standards Provisions, should be included as part of any contract related to the construction of the property.

### **Step 3- Verifying the General Contractor's Eligibility-**

No contractor or subcontractor who is debarred by the HUD, DOL, or by an agency of the Commonwealth of Virginia is eligible to work on any TCAP funded project. After the Owner has determined the identity of the General Contractor, the Owner shall notify VHDA in writing of the name and address of the proposed General Contractor in order for VHDA to assure that the General Contractor is not on any debarred list prepared by the Commonwealth of Virginia, the U.S. Department of Labor, or the U.S. General Services Administration.

VHDA will notify the Owner in a timely manner, after receiving this General Contractor identification information from the Owner, if the selected General Contractor is not listed

on a list of debarred contractors, and whether the General Contractor Owner is otherwise approved for use as a contractor on a TCAP funded property.

The General Contractor is in turn responsible for obtaining clearance of all subcontractors by performing their own search of all subcontractors to assure that no subcontractor has been debarred by HUD, DOL, or by any agency of the Commonwealth of Virginia. To find out if the low bidder has been barred by the Commonwealth, the General Contractor can call 804- 367-8511 or go to [www.dpor.virginia.gov](http://www.dpor.virginia.gov) and click on either “Search for Disciplinary Actions” or “License Lookup.” The U.S. General Services Administration maintains a list of debarred contractors which can be accessed online at: <https://www.epls.gov/epls/search.do>.

**Step 4- Send all executed construction related contracts to VHDA-**

VHDA must be provided a copy of all construction related contracts associated with TCAP funded properties in order to ensure that the Wage Decision and contract clauses (i.e. - Labor Standards Clauses) are incorporated into the contracts for construction.

**Step 5- Owner and Contractors to Review Wage Decision and Request Additional Trade Classifications and Wage Rates, If Necessary-**

Upon receiving the Wage Decision from VHDA, the Owner and Contractor are responsible for reviewing the Wage Decision in order to assure that all of the necessary work classifications are listed.

The wage rates issued by DOL must list and identify the general types and classifications of jobs necessary to complete the project. If not, **once construction has started**, the Contractor *must* request the additional job classifications needed and recommend a wage rate for each required classification, going through the Owner to VHDA. Subcontractors’ requests must go through the prime contractor.

If the work classifications) that you need doesn’t appear on the wage decision, you will need to request an additional classification and wage rate from VHDA. A request for additional classification and wage rate must be made in writing to VHDA. VHDA will then send the request to the HUD Labor Relations staff. The HUD and U.S. Department of Labor procedures for the processing of additional classifications and wage rate are also spelled out on page 2-3 of ***Making Davis-Bacon Work***.

## **Monitoring the Use of Job Classifications**

All workers must perform in and be paid according to a specific job classification as listed on the Wage Decision. “Workers” mean anyone who is performing construction work on the project, including trade journeymen, flagmen and guards.

Apprentices and trainees may only be so classified if they are part of an apprenticeship program recognized by the Virginia Department of Labor and Industry. See below for a greater discussion on apprentices and trainees.

People whose duties are primarily administrative, executive or clerical in nature are not workers.

Foremen or supervisors who regularly spend more than 20% of their time performing construction work are workers for the time spent performing construction work. This time must be included on the payroll report and they must be paid at least the hourly rate of any job that they perform.

### ***Additional “Trade” Classifications and Wage Rates***

#### **What if the work classification you need isn’t on the wage decision?**

If the work classification(s) that you need doesn’t appear on the wage decision, you will need to request an additional classification and wage rate. This process is usually very simple and you’ll want to start the request right away. Basically, you identify the classification you need and recommend a wage rate for DOL to approve for the project. There are a few rules about additional classifications; you’ll find these rules in the DOL regulations, Part 5, and in the labor clauses in your contract. The rules are summarized for you here:

##### **a. Additional Classification Rules**

Additional classifications and wage rates can be approved if:

- 1) The requested classification is used by construction contractors in the area of the project. (The area is usually defined as the county where the project is located).
- 2) The work that will be performed by the requested classification is not already performed by another classification that is already on the wage decision. (In other words, if there already is an Electrician classification and wage rate on the wage decision you can’t request another Electrician classification and rate.)
- 3) The proposed wage rate for the requested classification “fits” with the other wage rates already on the wage decision. (For example, the wage rate proposed for a trade

classification such as Electrician must be at least as much as the lowest wage rate for other trade classifications already contained in the wage decision.) And,

4) The workers that will be employed in the added classification (if it is known who the workers are/will be), or the workers' representatives, must agree with the proposed wage rate.

### **b. Making the Request**

A request for additional classification and wage rate must be made in writing through the VHDA TCAP contract administrator. VHDA will then send the request to the HUD Labor Relations staff. If you are a subcontractor, your request should also go through the prime contractor. The request must identify the additional job classification needed and the proposed hourly pay scale and any fringe benefits. It should also provide a detailed job description, identifying all tools and equipment used by the proposed classification.

The proposed wage must be closely aligned with other wage rates already listed in the Wage Decision. For example, the wage rate proposed for an Electrician must be at least as much as the lowest wage rate for other trade classifications already in the Wage Decision. Furthermore, no additional job classification can be paid a wage rate lower than the lowest one listed for Laborers.

The request must also contain signed statements from the affected employees certifying that they are in agreement with the proposed hourly pay scale. DOL, through VHDA, has thirty (30) days from its receipt of the request to concur with or disapprove of the contractor's suggested pay rates.

### **c. HUD Review**

The HUD Labor Relations field staff will review the requested classification and wage rate to determine whether the request meets the DOL rules outlined in paragraph 2-2(a), above. If additional information or clarification is needed, the staff will contact the prime contractor (or contract administrator for local agency projects) for more information, etc. If the Labor Relations review finds that the request meets the rules, the staff will give preliminary approval on the request and refer it to the DOL for final approval. The staff will send to you a copy of the preliminary approval/referral letter to the DOL.

If the HUD Labor Relations staff doesn't think the request meets the rules and if agreement can't be reached on the proper classification or wage rate for the work described, the HUD Labor Relations staff will not approve the request. In this case, the staff will send your request to the DOL with an explanation why HUD believes that the request shouldn't be approved. The DOL still has final decision authority. You will receive a copy of the disapproval/referral letter to the DOL.

#### **d. DOL Decision**

The DOL will respond to HUD Labor Relations in writing about the additional classification and wage rate request. HUD Labor Relations will notify you of the DOL decision in writing. If the DOL approves the request, the prime contractor must post the approval notice on the job site with the wage decision.

If the DOL does not approve the request, you will be notified about what classification and wage rate should be used for the work in question. You will also receive instructions about how to ask for DOL reconsideration if you still want to try to get your recommendation approved.

#### ***Dual Classifications***

Workers engaged in more than one trade or classification must be paid either:

- The wage for that classification which pays the higher wage rate; or
- The rate specified for each classification for the time actually worked in it, provided that the contractor's payroll accurately documents the time spent in each classification.

#### ***Subcontractors***

A bona fide subcontractor with an established business must list on his payroll records all workers engaged on the contracted work, including himself, if he performs construction work. As the owner of the firm, he need only list his name and that he is the owner. If he has no other employees and claims that he is a subcontractor, he must be carried on the prime contractor's payroll and be paid at least the hourly rate and benefits which correspond to the classification in which he works.

Proof or evidence that a bona fide subcontracting business exists would include a business license, a contractor's license, contractor identification and address, or employer identification number.

#### ***Apprentices and Trainees***

The only workers who can be paid less than the wage rate on the Wage Decision for their work classification are apprentices and trainees in an approved program. The Owner must contact the Virginia Department of Labor and Industry and get verification that any program claimed by the prime or subcontractors has actually been approved. The Owner must also get documentation of the specific status of individual employees. If the Contractor has filed a copy of an approved apprenticeship program with the Grantee, apprentices and trainees are permitted to work at a predetermined rate which is less than the determined rate for their job classification if:

- They are employed and individually registered in a bona fide apprenticeship or training program, which is registered with the DOL, Manpower Administration, Bureau of Apprenticeship and Training (BAT), or with the Virginia Bureau of Apprenticeship Training, or if a person is employed in the first ninety (90) days of probationary employment as an apprentice or trainee in such a program and has been certified to be eligible for probationary employment as an apprentice or trainee;

- They are paid at the rate specified in the approved apprenticeship program for their level of progress; and
- The ratio of apprentices/trainees to journeymen is not greater than that permitted under the registered program.

If the person classified as an apprentice or trainee does not meet the above conditions, they may not be so classified and must be paid at the rate of the job classification in which they are performing.