

Davis Bacon Compliance Requirements for Borrowers Attachment B (SRF-05)

Compliance with this attachment to the loan offer will be monitored as part of the DEQ project approval process and during interim and final inspections.

1. OBTAINING WAGE DETERMINATIONS AND INCLUSION INTO PROJECT.

- a. For contacts greater than \$2,000, the Borrower shall obtain the wage determination for the locality in which project will take place prior to issuing advertisement for bids, proposals, quotes, or other methods for soliciting contracts (solicitation) for activities subject to Davis Bacon. Wage determinations can be found at www.sam.gov. These wage determinations shall be incorporated into bid documents and any subsequent contracts. Prime contracts must contain a provision requiring that subcontractors follow the wage determination incorporated into the prime contract.
 - i. While the solicitation remains open, the Borrower shall monitor www.sam.gov weekly to ensure that the wage determination contained in the solicitation remains current. The Borrower shall amend the solicitation if Department of Labor (DOL) issues a modification more than 10 days prior to the closing date (i.e., bid opening) for the solicitation. If DOL modifies or supersedes the applicable wage determination less than 10 days prior to the closing date, the Borrower may request a finding from the Idaho Department of Environmental Quality (DEQ) that there is not a reasonable time to notify interested contractors of the modification of the wage determination. DEQ will provide a report of its findings to the Borrower.
 - ii. If the Borrower does not award the contract within 90 days of the closure of the solicitation, any modifications or supersedes DOL makes to the wage determination contained in the solicitation shall be effective unless DEQ, at the request of the Borrower, obtains an extension of the 90-day period from DOL pursuant to 29 CFR 1.6©(3)(iv). The Borrower shall monitor www.sam.gov on a weekly basis if it does not award the contract within 90 days of closure of the solicitation to ensure that wage determinations contained in the solicitation remain current.
- b. If the Borrower carries out activity subject to Davis Bacon by issuing a task order, work assignment or similar instrument to an existing contractor (ordering instrument) rather than by publishing a solicitation, the Borrower shall insert the appropriate DOL wage determination from www.sam.gov into the ordering instrument.
- c. The Borrower shall review all subcontracts subject to Davis Bacon entered into by prime contractors to verify that the prime contractor has required its subcontractors to include the applicable wage determinations.
- d. As provided in 29 CFR 1.6(f), DOL may issue a revised wage determination

applicable to a sub recipient's contract after the award of a contract or the issuance of an ordering instrument if DOL determines that the Borrower has failed to incorporate a wage determination or has used a wage determination that clearly does not apply to the contract or ordering instrument. If this occurs, the Borrower shall either terminate the contract or ordering instrument and issue a revised solicitation or ordering instrument or incorporate DOL's wage determination retroactive to the beginning of the contract or ordering instrument by change order. The Contractor must be compensated for any increases in wages resulting from the use of DOL's revised wage determination.

2. CONTRACT AND SUBCONTRACT PROVISIONS.

- a. The Borrower shall insert in full, for any Contract in excess of \$2,000, Davis Bacon contractual clauses contained in Supplemental Specification Insert for Idaho Drinking Water and Clean Water State Revolving Fund attached to the loan agreement or found within the Customer Handbook at www.deq.idaho.gov/SRF.

3. REQUEST ADDITIONAL "TRADE" CLASSIFICATIONS AND WAGE RATES

- a. If a work classification(s) does not appear on the wage determination, the Borrower shall request an additional classification and wage rate. It is recommended the process be started early during the preconstruction conference. The Borrower and prime contractor for the project should identify the classification needed and recommend a wage rate through the DEQ. Requests can be approved if:
 - i. The work that will be performed by the requested classification is not already performed by another classification that is already on the wage determination (e.g., if there already is an Electrician classification and wage rate on the wage determination, another Electrician classification and rate cannot be requested.)
 - ii. The classification is utilized in the area by the construction industry.
 - iii. The proposed wage rate, including bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
 - iv. If the contractor and laborers and mechanics to be employed in the classification (if known), and the Borrower agree on the classification and wage rate (including fringe where appropriate).
- b. Requests shall be made in writing through the Borrower, including a completed Conformance Request SF 1444 Form available through DOL. The request should identify the work classification that is missing, the recommended wage rate for the classification and a copy of the project wage rate determination. The Borrower shall send the packet to DEQ for review and submission to the DOL for approval. DOL's response to DEQ will be forwarded to the Borrower.
- c. If the request is denied, the Borrower will be notified what classification and rate should be used. Requesting additional classification does not delay the payroll process. It may however result in correcting underpayments (wage restitution) if

DOL is not in agreement with the request

4. PAYROLL REVIEWS

- a. The Federal Copeland Act requires that workers be paid at least once a week, and without any deductions or rebates except permissible deductions such as payroll taxes, deductions the worker authorizes in writing, or those provided by court order. The Act also requires contractors to maintain payroll records and submit weekly certified payroll and statement of compliance to the Borrower certifying wages paid and deductions made. The appropriate wage rates are those determined pursuant to the federal Davis-Bacon related acts by the DOL.
- b. Borrower shall review payrolls to determine if workers on the construction project have received appropriate rates of overtime compensation. The Contract Work Hours and Safety Act requires that laborers and mechanics receive overtime compensation at a rate of not less than one and one-half times their regular hourly wage after they have worked 40 hours in one week on SRF funded projects.
- c. Borrower shall periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates. The Borrower shall establish and follow a spot check schedule based on its assessment of the risks of noncompliance with posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, if practicable, the sub recipient shall spot check payroll data within two weeks of each contractor or subcontractor's submission of its initial payroll data and two weeks prior to the completion date the contract or subcontract as required by paragraph 7(a). Borrower shall conduct more frequent spot checks if the initial spot check or other information indicates that there is a risk that the contractor or subcontractor is not complying with Davis Bacon requirements. Borrower's review of shall include the following:
 - i. Payrolls were submitted on time.
 - ii. Forms were filled out completely including the name, identifying number, address, and job classification for each employee.
 - iii. All self-employed owners, who have no employees, are designated as an employee, and are reported on the certified payroll of the prime contractor (or subcontractor if hired by them). In this instance, payroll records are completed the same as for employees and enter "self-employed" and contracting license number where the payroll asks for deductions.
 - iv. If the owner of the company has employees but also performs work as a laborer or mechanic on the project covered by Davis-Bacon wage decisions, the owner must list himself as an employee on the certified payroll he submits for his employees. The payroll form is completed the same as for employees and owner is identified as "self-employed, owner or owner/operator".
 - v. The wages and fringes listed on the certified payroll for each job

classification agree with those identified on the statement of intent to pay prevailing wages.

- vi. The payrolls include all the classifications being utilized even if not listed on the statement of intent to pay prevailing wages.
- vii. Payrolls only include permissible deductions.
- viii. When fringe benefits are being paid into a benefit plan, block 4(a) on the back of the certified payroll form must be checked.
- ix. Apprentices or trainees listed on the certified payroll are working under approved apprenticeship and training agreements. Copies of those certifications should be included with payrolls.
- x. The payroll form is signed.

5. CONDUCT ON-SITE REVIEWS

- a. The Borrower, or its representative, must provide for visits to the construction site to determine that:
 - i. Wage determinations are posted at the job site.
 - ii. Employees are working within the proper job classification.

6. CONDUCT EMPLOYEE INTERVIEWS

- a. If there is reason to suspect contractor noncompliance, the Borrower or its representative must conduct employee interviews with at least one employee in each trade to determine the following:
 - i. Employees are being paid the amounts/rates stated on the payrolls.
 - ii. Employees are being properly compensated for overtime hours.
 - iii. Employees are receiving their full wages and fringe benefits and are not being subjected to coercion or kickback tactics by the contractor or subcontractors.
 - iv. Contractors and subcontractors are using and paying apprentices and trainees appropriately.
- b. The Borrower shall use Standard Form 1445 (SF 1445) or equivalent documentation to memorialize the interviews. SF1445 is available from DOL.
- c. The Borrower must immediately report potential violations of the Davis Bacon prevailing wage requirements to DEQ project manager, and if directed by DEQ project manager, appropriate EPA and DOL contacts.

7. SUBMIT FIRST WEEK LABOR STANDARDS (21 DAY LABOR PACKET)

- a. For each prime and subcontractor performing work on-site during the first week of construction, the Borrower must provide a copy of the following documents to the DEQ project manager, within 21 days after the contractors start construction on the project.
 - i. Certified payroll for the first week's pay period and Borrower's analysis and opinion of compliance with Davis Bacon requirements.
 - ii. Employee interview forms for the first week (if there is a reasonable doubt

that any contractor is not fully complying with DB prevailing wages)

- b. The purpose for submitting the above information to DEQ is to assure that any underpayments are detected early, and appropriate corrections made early while easy to implement. The first week labor standards (21 day) packet must be provided to DEQ, and any underpayments resolved before DEQ will pay the construction reimbursement request. If underpayments are discovered, DEQ will notify the Borrower to work with the prime contractor to have wage restitution made and a corrected certified payroll submitted to DEQ for approval.

8. RESOLVE OVERTIME VIOLATIONS

- a. If the prime contractor or subcontractors do not compensate a worker appropriately for overtime, the Borrower shall notify DEQ and work with the prime contractor to resolve the overtime violations.
 - i. If the violation is less than \$10 per worker, the violation does not have to be reported.
 - ii. If the violation is \$10 or more per worker, the prime contractor must make payment or assure payments are made by subcontractors and submit a corrected certified payroll and a copy of the check to the worker and send it to the Borrower. Any time the violation is \$10 to \$999, the Borrower must notify DEQ in writing. If the violation is \$1,000 or more, the Borrower must submit a Labor Standards Enforcement Report to DEQ who will coordinate the violation with the DOL or EPA (contact DEQ for assistance in filing this report).

9. RESOLVE OTHER UNDERPAYMENTS

- a. If a mathematical error, misclassifications, or other error that results in the underpayment of wage or fringe benefits occurs, the prime contractor or subcontractor must make wage restitution and submit a corrected certified payroll and a copy of the check showing the underpayment made to the worker, to the Borrower.

10. MAINTAIN PROJECT RECORDS

- a. The Borrower is required to maintain project records that document all financial, monitoring and inspection transactions, and progress reviews that occur during the life of the project. Borrowers must maintain copies of weekly certified payrolls and any corrected certified payrolls, copies of correspondence and resolution of overtime violations, and copies of employee interviews in the project files for a minimum of three (3) years after final completion of the project.