

Approved:

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Responsible Office: Highway Management

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Director

## **ENFORCEMENT OF PREVAILING WAGE LAWS**

### **PURPOSE:**

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

### **AUTHORITY:**

Projects with Federal-aid:

Title 29 Code of Federal Regulations, Subtitle A, Parts 1, 3, and 5

Form FHWA 1273, "Required Contract Provisions Federal-aid Construction Projects," Parts IV and V

Davis-Bacon Act, Sections referred to by Form FHWA 1273

Copeland Act, Sections referred to by Form FHWA 1273

Projects without Federal-Aid:

Ohio Revised Code (ORC), Chapter 4115

Ohio Administrative Rules, Chapter 4101:9-4-01 through 4101:9-4-28

Construction and Material Specifications, Sections 108.01 and 108.09

### **REFERENCES:**

Prevailing Wage Resource Book 1998, issued by the United States Department of Labor (USDOL)

Wage and Hour Prevailing Wage Packet, issued by Ohio Bureau of Employment Services (OBES)

### **SCOPE:**

This policy is for the use of each District and the Office of Highway Management (OHM) in establishing effective and consistent procedures to discharge the Department's legal responsibilities to require payment of established prevailing wages to the Contractor's, Subcontractor's, and Vendor's workers on Department construction, purchase order, and emergency projects.

**BACKGROUND:**

This policy supersedes Standard Operating Procedure PH-C-203 ("Minimum or Prevailing Wage Requirements on Highway Construction Projects") dated September 21, 1992.

The Department is required as a condition of Federal-aid to enforce the Davis-Bacon Act on projects with Federal funding. The Contractor and Subcontractors are required to comply with this act by proposal note and inclusion of USDOL established wage rates in the contract proposal. The rates established in the contract proposal remain in force for the duration of the project. Federal wage laws supercede State prevailing wage laws. Some types of Federal-aid transportation enhancement projects are excepted from the Davis-Bacon Act.

Projects without Federal funding are subject to State of Ohio prevailing wage laws if they meet the definition of "construction" in ORC Section 4115.03(B) and exceed the threshold limits established in the same ORC Section. Current Department projects which are not defined as "construction" and are exempt are mowing, herbicidal spraying, trash hauling, sign inventories, and centerline surveys. The required prevailing wages are established by the OBES and are listed in the contract proposal. These rates may change during the life of the project and the Contractor, Subcontractor, or Vendor must pay the new rate when officially informed by the Department.

**DEFINITIONS:**

CMS: Construction Management System, the Department's computer system for administration of construction projects.

Construction Contract: Contract awarded to the lowest competent and responsible bidder after advertisement as provided in ORC Section 5525.01. Such contracts are administered in CMS and are paid for by construction contract estimates.

Contractor: Defined in Construction and Material Specifications, Section 101.14.

DPWC: District Prevailing Wage Coordinator

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

contract will be administered in CMS.

OBES: Ohio Bureau of Employment Services

OHM: Office of Highway Management

ORC: Ohio Revised Code

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

Purchase Order Contract: Contractor supplies material or equipment with operators under the Department's direction in accordance to ORC Chapter 5513. Such contracts are not administered in CMS and are paid for by purchase order contract invoices.

Subcontractor: Defined in Construction and Material Specifications, Section 101.50.

USDOL: United States Department of Labor

Vendor: Contractor on a purchase order contract.

**PROCEDURE STATEMENT:**

- I. Each District shall establish procedures and assign personnel to enforce applicable prevailing wage requirements on construction, purchase order, and emergency contracts.
  - A. Each District shall designate a District Prevailing Wage Coordinator (DPWC).
  - B. The DPWC shall be the principal administrator of prevailing wage requirements in the District.
  - C. The DPWC will be trained by the OHM.
  - D. Each DPWC shall be the District's liaison with the OHM.
  - E. By March 1 of each year, each District shall submit to the OHM their plan and assignment of personnel to carry out the District responsibilities listed in this Policy.
- II. District Duties

- A. Explain the applicable prevailing wage requirements to the Contractor or Vendor.
  - 1. For construction contracts, this shall be done at the Preconstruction Conference.
  - 2. For emergency and purchase order contracts, this shall be done prior to starting work. The Contractor or Vendor shall be informed of the pay dates at this time.
  
- B. Certified Payrolls
  - 1. Establish and maintain for each project a file of certified payrolls submitted by each Contractor, Subcontractor, and Vendor.
  - 2. Receive from each Contractor, Subcontractor, and Vendor for each pay date, certified payrolls covering all workers employed on the project in classifications subject to prevailing wage requirements.
  - 3. If a review of the certified payroll establishes that the submitted payroll is in the proper format, document the receipt of the certified payroll. If this contract is administer in CMS, this documentation should be entered in CMS. This review shall include checking for:
    - a. Correct project number.
    - b. Correct end of pay week date.
    - c. Signed with an original signature.
    - d. The method of fringe payment is indicated.
    - e. The listed pay rates are appropriate for the classifications.
  - 4. Perform a detailed review of a random sample of the certified payrolls for compliance with prevailing wage requirements:
    - a. The project records are used to determine the hours and classifications worked during the payroll period.
    - b. Once the review is complete, sign and date the first page of the payroll to indicate the review was completed.

5. Failure of any Contractor, Subcontractor, or Vendor to comply with the payroll requirements shall result in a cessation of construction contract estimates or purchase order contract invoices until the payroll deficiencies are corrected.
- C. Conduct and document wage interviews of workers from various classifications on each active project that is subject to prevailing wage laws. The number and frequency of the interviews shall be sufficient to verify the accuracy of the submitted certified payrolls.
- D. Determine if any work classifications in addition to those listed in the contract proposal are required for the project and request a determination of the proper classifications and rates from the USDOL or OBES, with a copy to the OHM.
- E. Certifications of Apprenticeship
  1. Receive, review, and determine the acceptability of certifications of apprenticeship covering all apprentices and trainees employed on a project by the Contractor, Subcontractors, or Vendors
  2. The District shall maintain these certifications on file and inform the Contractor, Subcontractors, or Vendors involved of their acceptability and expiration.
- F. Record Storage
  1. Maintain certified payrolls, certifications of apprenticeship, wage affidavits (for projects without Federal-aid), and all other payroll records in the District project files.
  2. Records shall be retained for three years after project finalization and resolution of any prevailing wage violations.
- G. When requested, provide local public agencies with applicable Federal wage rates.

### III. Violations

- A. When a wage complaint occurs or the District learns of a possible wage violation, the District shall:
  1. Document the wage complaint or possible violation by:
    - a. For projects administered in CMS, enter the information into CMS.



wage laws, regulations, and policies.

5. Obtain wage determinations for projects without Federal-aid and maintain these determinations in the OHM project files.
  6. Receive from OBES all wage modifications affecting Department construction projects and transmit to the various DPWC these modifications for transmittal to the affected Contractors with active projects in their Districts.
  7. Prepare the Semiannual Labor Compliance Enforcement Report:
    - a. Collect information for report from the DPWCs.
    - b. Submit report to FHWA by April 20 and October 20 of each year, using Form FHWA 1494.
    - c. Maintain a file of the submitted reports.
  8. Maintain a current list of DPWCs and provide it to OBES and USDOL.
- B. The OHM shall hold a statewide DPWC meeting a minimum of two times a year to review common problems and establish common understandings of prevailing wage enforcement procedures, policies, regulations, and laws.

### **TRAINING**

The OHM will provide individual training to District personnel when requested.

### **FISCAL ANALYSIS**

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