



OFFICE MEMORANDUM

DATE: June 4, 2004

TO: Region Engineers
Region Delivery Engineers
TSC Managers
Resident/Project Engineers
Region Construction Engineers

FROM: Larry E. Tibbits
Chief Operations Officer

John C. Friend
Engineer of Delivery

SUBJECT: Bureau of Highway Instructional Memorandum 2004-21
Davis-Bacon and Prevailing Wage Compliance

Effective the date of this memorandum, the following interpretation will apply to all federally funded projects as it relates to the Davis-Bacon prevailing wage.

Definition of Site of Work

The United States Department of Labor (USDOL) regulatory definition (See 29 CFR 5.2) for “site of the work is the physical place or places where the . . . work called for in the contract [is occurring]; and any other site where a significant portion of the . . . work is constructed, *provided* that such site is established specifically for the performance of the contract or project.”

The site of work for most MDOT projects is defined as the entire construction site as specified in the plans and proposal. The site of work also includes batch plants, borrow pits, job headquarters, tool yards, etc., provided they are established for and dedicated exclusively, or nearly so, to the . . . project, **and** are adjacent or virtually adjacent to the site of the work.

The following locations are specifically excluded from the site of work definition:

- Permanent home offices, branch plant establishments, fabrication plants, tool yards, etc., of a contractor or subcontractor whose location and continuance in operation are determined wholly without regard to a particular federal or federally assisted project. In other words, if it is a permanent site that is not dedicated to the job, it is not within the site of work definition.
- Fabrication plants, batch plants, borrow pits, job headquarters, tool yards, etc., of a commercial or material supplier that are established by a supplier of materials for the project

before opening of bids, **and** not on the site of the work, even where such operations for a period of time may be dedicated exclusively, or nearly so, to the performance of a contract.

Truck Drivers

Truck drivers are covered by Davis-Bacon while:

- They are working on the “site of the work.”
- Hauling to or from a facility that is deemed part of the “site of the work.” (For example, driving between the job site and a dedicated batch plant or tool yard located adjacent to, or virtually adjacent to, the job site).

Truck drivers are not covered by Davis-Bacon in the following instances:

- If the driver is not working exclusively on the site of work. To be covered by Davis-Bacon, the time spent working on site must be more than de minimis (20 percent or more of the work week).

Examples when a truck driver is not covered by Davis-Bacon include, but are not limited to, the following:

1. While off the “site of the work.” The transportation of materials supplies, tools, equipment, etc., from one site of work to another is not covered unless such sites are dedicated and adjacent.
2. While loading and/or unloading materials and supplies on the “site of the work.” As a practical matter, since the majority of time spent by material delivery truck drivers is off site beyond the scope of Davis-Bacon coverage and the time spent on site is relatively brief, MDOT chooses to use a rule of reason and will assume that some activities will never exceed de minimis. These items include, but are not limited to:
 - Trucks delivering materials to a stockpile.
 - Trucks delivering materials along the jobsite for later installation. Example: concrete pipe, traffic control devices, etc.
3. Drivers traveling between a Davis-Bacon project and a commercial supply facility, while they are off the “site of the work.”
4. The travel time between two Davis-Bacon projects. The one exception to this rule is when there are adjacent projects under the same or different contracts that were established to accomplish the same objective (60 miles of resurfacing maybe broken into several contracts),

then all of these projects are considered contiguous and travel between sites is covered by Davis-Bacon.

5. Bona fide owner-operators of trucks who own and drive their own trucks. Certified payrolls must include the names of such owner-operators but do not need to show the hours worked or rates paid, only the notation "owner-operator." (Note: This applies only to the individual owner of a truck. The same policy does not apply to owner-operators of other equipment such as bulldozers, backhoes, cranes, welding machines, etc.)

Traffic Control Companies/Suppliers

Barricade companies are not generally subject to Davis-Bacon coverage unless they are spending more than a de minimis amount of time on the site of work (20 percent or more of the work week). This 20 percent rule applies to individual projects and is not cumulative.

However, the USDOL maintains that when a material supplier, manufacturer, or carrier undertakes to perform part of a construction contract as a subcontractor, its laborers and mechanics employed at the site of the work are subject to the prevailing wage requirements in the same manner as those employed by any other contractor or subcontractor. Prevailing wages must be paid to the employees for all time spent working on the site of work, and certified payrolls must be submitted to the delivery/resident/project engineer. In other words, if the traffic control company puts the devices into place as specified by the contract documents (not just unloading them off to the side of the road), then they have undertaken the performance of part of the contract and all work done under the contract is then covered.

Examples of when Davis-Bacon coverage is required:

1. Placing/moving temporary signs and barricades on the Davis-Bacon covered site of work in accordance with the requirements of the contract (including initial placement).
2. Providing flag control on a Davis-Bacon covered site of work.

Examples when Davis-Bacon coverage **is not** required:

1. Drop off and pick up of traffic control products on the site of work when this time is de minimis.
2. Maintaining/servicing temporary signs and barricades, replacing lights, etc., when this time is de minimis.
3. Drop off and pick up of traffic control products at contractor's yard outside the site of work.
4. Travel between Davis-Bacon covered projects.

Post Tensioning of Concrete Beams at the Site of Work

The USDOL regulatory definition (See 29 CFR 5.2) of “construction” includes “[m]anufacturing or furnishing of materials, articles, supplies or equipment on the site of the . . . work” as well as the installation of items fabricated off site. For example, employees of a materials supplier who are required to perform more than an incidental amount of **construction work** in any work week at the site of the work would be covered by Davis-Bacon and due the applicable wage rate for the classification of work performed.

For enforcement purposes, the USDOL adopts a policy that if such an employee spends more than 20 percent of his/her time in a work week engaged in the work of a laborer or mechanic on the site of work, he/she is subject to Davis-Bacon coverage for all time spent on the site during the work week. Davis-Bacon coverage does not apply to factory representatives who simply observe and monitor the post tensioning activities.

Web Site for Frequently Asked Questions

The Construction and Technology Support Area is developing a website for Frequently Asked Questions and Answers related to Davis-Bacon. When it is up and running, an e-mail will be sent with the specifics. In the meantime, if you have questions, please contact the Construction and Technology Support Area’s Region Services Unit - Gian Taneja (tanejag@michigan.gov or 517-322-6181) or Ali Wellington (wellingtona@michigan.gov or 517-322-5317).

Delivery/resident/project engineers are requested to share this instructional memorandum with the local government and consultant engineers within their jurisdiction.

Chief Operations Officer

Engineer of Delivery

BOHD:C/T:AW:kab

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