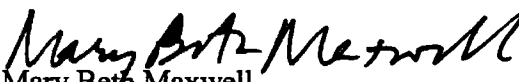


MAR 22 2013

MEMORANDUM NO. 212

TO: ALL CONTRACTING AGENCIES OF THE FEDERAL
GOVERNMENT AND THE DISTRICT OF COLUMBIA

FROM: 
Mary Beth Maxwell
Acting Deputy Administrator

SUBJECT: Applicability of Davis-Bacon labor standards to members of survey crews

This memorandum clarifies the application of Davis-Bacon standards to survey crew members who may be employed as laborers or mechanics on projects subject to the labor standards of the Davis-Bacon and related Acts. This guidance supplements the guidance provided in letters that were distributed as attachments to All Agency Memorandum (AAM) No. 16, dated July 25, 1960, and AAM No. 39, dated August 6, 1962, available at <http://www.wdol.gov/aam.aspx>.

The Wage and Hour Division (WHD) has historically recognized that members of survey crews who perform primarily physical and/or manual work on a Davis-Bacon covered project on the "site of the work" immediately prior to or during construction in direct support of construction crews may be laborers or mechanics subject to the Davis-Bacon labor standards. As a result of a review of WHD practices and procedures in applying this policy, and in light of information indicating that the composition and work of field survey crews have evolved with new technology field surveyors use in their work, WHD has determined that steps should be taken to ensure that the policy of recognizing survey crew members as laborers or mechanics is implemented appropriately in the administration and enforcement of Davis-Bacon labor standards on covered projects. The discussion below focuses on appropriate processing of requests for additional classifications and rates (conformance requests), reporting of data during the conduct of future WHD prevailing wage surveys, and the enforcement of applicable rates on covered projects.

To ensure that WHD enforcement policy regarding survey crew members is clear, section 15e20 of the Field Operations Handbook (FOH) has been revised to reflect that survey crew members who perform primarily physical and/or manual work while employed by contractors and subcontractors immediately prior to or during actual construction, in direct support of construction crews, will be considered laborers or mechanics when

employed on the site of the work. The FOH, as revised, addresses applicability of Davis-Bacon requirements to survey crew members as follows:

15e20 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. In determining whether a worker is a “laborer or mechanic” as defined under the Davis-Bacon Act, the touchstone is whether the worker’s duties are manual or physical in nature (including those workers who use tools or who are performing the work of a trade). 29 CFR 5.2(m). Such a determination must take into account the actual duties performed. A survey crew member who performs primarily physical and/or manual duties while employed by a contractor or subcontractor in work performed immediately prior to or during actual construction in direct support of construction crew(s) on the site of the work will be considered a laborer or mechanic covered by the DB requirements.

With regard to requests for additional classifications and rates (conformance requests), contracting agencies are advised to accept requests for classifications to be added to applicable Davis-Bacon wage determinations for survey crew members whose duties are primarily physical and/or manual while employed by the contractor or subcontractor(s) on Davis-Bacon covered projects immediately prior to or during construction in direct support of construction crews. In order to facilitate WHD’s processing of conformance requests, each request should include information describing the duties of the survey crew members employed on the project. In examining whether the proposed wages bear a reasonable relationship to the rates in the applicable wage determination, proposed survey crew classifications should be compared with skilled classifications (excluding laborers, power equipment operators, and truck driver classifications) already listed in the applicable wage determination.

With regard to future Davis-Bacon prevailing wage surveys conducted by the WHD for issuance of new wage determinations, we request that contracting agencies encourage contractors and subcontractors to participate in those surveys by providing data to WHD for workers who performed surveying work immediately prior to or during construction in direct support of construction crews on construction projects in the area being surveyed. Information on upcoming surveys and other information concerning Davis-Bacon prevailing wage surveys is available at <http://www.dol.gov/whd/programs/dbra/surveys.htm>, and contacts in each of the WHD

Regional Offices regarding such surveys are available by clicking on the map or links above the map at <http://www.dol.gov/whd/programs/dbra/regions.htm>.

We also note that, as the Davis-Bacon Act requires the Secretary of Labor to determine prevailing wage rates for inclusion in covered contracts based on wage rates paid to “corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the civil subdivision of the State in which the work is to be performed,” the classifications used for survey crew members may differ from area to area both in nomenclature (job titles) and in the content of the duties performed by particular classifications. The status of survey crew members as laborers and mechanics on projects to which the Davis-Bacon labor standards apply depends on the duties they perform, as well as whether they are employed by a contractor or subcontractor and whether they are employed on the site of the work immediately prior to or during actual construction in direct support of construction crew(s).

Finally, we note that in determining whether a survey crew member performs primarily physical and/or manual duties (including those workers who use tools or who are performing the work of a trade), the principal, main, major or most important duty or duties that the individual performs are considered to be his or her “primary duty.” Determination of a survey crew member’s primary duty must be based on the facts in a particular case, with the major emphasis on the character of the worker’s job as a whole. In this context, when determining the primary duty of a survey crew member it is appropriate to consider the relative importance of the manual and/or physical duties as compared with other types of duties performed by the workers in a particular classification. The amount of time normally spent performing manual and/or physical duties can be a useful guide in determining whether that work is the primary duty of an employee. Thus, survey crew members who normally spend more than 50 percent of their time performing such work will generally satisfy the primary duty requirement. Time alone, however, is not the sole test. For example, if a survey crew member meets the tests for exemption as a professional, executive or administrative employee under the rules established by 29 CFR Part 541, that survey crew member is not a laborer or mechanic as defined under 29 CFR 5.2(m).