TO: State Directors

ATTN: Community Programs Directors, PSS Architecture Services Branch

FROM: Chad Parker, Acting /s/ Chad Parker
Administrator
Rural Housing Service

SUBJECT: Application of Davis-Bacon Wage Rate Requirements to CF Projects Funded with Emergency Rural Healthcare Grants

PURPOSE/INTENDED OUTCOME:

The purpose of this Administrative Notice (AN) is to instruct and inform Rural Development (RD) staff on the application of the Davis-Bacon and Related Acts wage rate requirements in the use of Emergency Rural Healthcare Grants (ERHC) for RD projects. The intended outcome is to provide direction to all staff implementing these requirements and ensure compliance with Davis-Bacon and Related Acts.

COMPARISON WITH PREVIOUS AN:

This AN replaces RD AN No. 4644 (1940-C) dated May 17, 2012, which expired May 31, 2013.

EXPIRATION DATE: September 30, 2022

FILING INSTRUCTIONS: Preceding RD Instruction 1940-C
BACKGROUND:

Eligible applicants include public bodies, community-based nonprofits, and federally-recognized Tribes. Facilities and projects supported through this grant must be located in rural areas with populations of 20,000 or fewer and must primarily serve rural areas. Funding by RD Emergency Rural Healthcare Grants require that recipients of federal assistance under RD ensure that contractors and subcontractors performing new construction or repairs pay workers prevailing wages as required by the Department of Labor (DOL). This requirement is commonly referred to as “Davis-Bacon” requirements. RD Instruction 1940-C covers applicable requirements of the Davis-Bacon and Related Acts. Emergency Rural Healthcare Grant funds (ERHC) used for contracts or subcontracts for new construction or repair in excess of $2,000 must comply with the prevailing wage requirements of the Davis-Bacon and Related Acts.

DEFINITIONS:

Contract. Any contract within the scope of this AN which is entered into for the actual construction, prosecution, completion, or repair of a medical building or work financed either directly by authority of or with funds of the Agency to serve the interest of the general public.

Contracting Officer. The individual, a duly appointed successor, or authorized representative who is designated and authorized to enter into contracts on behalf of the applicant, sponsor or owner. (RD Instruction 1940-C)

IMPLEMENTATION RESPONSIBILITIES:

The requirements in RD Instruction 1940-C are applicable to CF programs providing Emergency Rural Healthcare Grants, except for uses of funds that are not related to construction or repair. Emergency Rural Healthcare Grants require application of Davis-Bacon wage rates and associated labor standards to all contracts associated with a project funded directly by or assisted in whole or in part with ERHC funds, even if some of the contracts are not RD funded. The attached checklist should be used to confirm Davis-Bacon and Related Acts compliance. The Contracting Officer is responsible for assuring compliance with the Davis-Bacon and Related Acts. The Contracting Officer who may perform these duties is described below under each program.

Wage Determinations: Before bidding, the general wage determination from the Department of Labor website (https://www.dol.gov) must be added to bid documents by the Contracting Officer. If no wage determination is in effect, procedures of §1940-C for requesting a project wage determination from the DOL will be followed. See RD Instruction 1940-C, § 1940.104(b)(2). If the DOL revises a Wage Determination prior to bid opening, then an addendum must be issued to notify bidders of the change. If a contract award is not issued within 90 days of bid opening, then any revised wage determinations will apply to the contract. Once a contract is awarded, the wage determination in effect does not change for the life of the contract. Wages from the DOL Wage Determinations are the minimums that may be paid by the contractor performing the work.
Construction Contract Provisions: All contracts covered by Davis-Bacon and Related Acts requirements must include the statement "The contractor must comply with the minimum rates for wages for laborers and mechanics as determined by the Secretary of Labor in accordance with the provisions of the Davis-Bacon and Related Acts." Labor standards provisions from 29 CFR 5.5(a) must be included in every contract.

Construction Phase Requirements: RD staff must ensure that contractors and subcontractors are notified of any Davis-Bacon and Related Acts requirements applicable to the contract. RD staff must also ensure that the Davis-Bacon and Related Acts poster, “Notice to All Employees Working on Federal or Federally Financed Construction Projects” (is posted at the construction site. RD staff must ensure that no payment advance, grant, guarantee or loan of funds is authorized for construction or repair unless there is a certification on file by the contractor that they and their subcontractors have complied with the requirements of Davis-Bacon and Related Acts.

Application to Owner-Construction/Force Account Projects: All employees and volunteers working for individuals or corporations (not-for-profit or for-profit entities) and their contractors and subcontractors are subject to the requirements of Davis-Bacon wage rates and associated labor standards. Employees and volunteers working for public body recipients of ERHC funds, including Tribes, are not subject to the Davis-Bacon wage rates and labor standards.

Application of Davis-Bacon to Entire Projects: Note that the DOL requires that if a project is funded in whole or in part using ERHC funds, Davis-Bacon requirements apply to the entire project, including contracts funded using non-ERHC funds. For example, if a public body received funds for a project for owner-construction/force account work using all employee labor but executed a contract with a plumber using non-ERHC funds not usually subject to Davis-Bacon requirements, the contract with the plumber would be subject to Davis-Bacon requirements because the work was part of an ERHG funded project.

Review During Construction: During construction, the Contracting Officer will review all certified payrolls or timesheets submitted with pay applications for compliance with the labor standards provisions. Copies of these payrolls or timesheets will be submitted to the Agency with the pay request. For architects, engineers, or resident inspectors, this service may be considered an additional service if not included in the basic services of an agreement for professional services. Any noncompliance must be reported to the Agency. Procedures of RD Instruction 1940-C, §1940.106(e) and (f) will be followed.

Semiannual Reports: The field office will complete form RD 440-29, “Semi-Annual Labor Compliance Report” for each project requiring compliance and submit to the State Director. The State Director will submit such forms to the Administrator of the DOL in accordance with RD Instruction 1940-C, §1940.107.
**Recordkeeping:** The Agency will preserve all payrolls and certifications for a period of 3 years from the date of final payment on the contract in accordance with RD Instruction 1940-C, § 1940.108.

Each of the program areas receiving ERHC funds are discussed below, including the designation of the person responsible for assuring compliance with the Davis-Bacon and Related Acts requirements.

**Community Facilities (Grant):** For these programs, the project architect or engineer performs the Contracting Officer duties as the owner’s representative. Alternatively, the resident inspector or owner could fulfill those duties.

When ERHC funds are used, prevailing wage requirements must be met. As noted above, the Davis-Bacon and Related Acts apply to each contract for construction, alteration, or repair (including painting or decorating) in excess of $2,000. Any construction contract in excess of $2,000 funded under the ERHC must include the appropriate Davis-Bacon and Related Act requirements covered in the attached checklist. A new construction loan funded by the allocation of funds from grant, direct or guaranteed would have no Davis-Bacon requirements tied to it unless leveraged funds trigger the Davis-Bacon requirements.

If there are questions, please contact William Downs, Chief, Architect Services Branch (PSS), at 202-720-1499 or william.downs@usda.gov
ERHC funds used for a transaction that involves a new construction or repair contract, exceeding $2,000, must comply with the prevailing wage requirements of the Davis-Bacon and Related Acts requirements. This checklist has been created to provide an overview of the requirements established by the Davis-Bacon and Related Acts requirements as prescribed in RD Instruction 1940-C. This checklist does not substitute for the detailed provisions in RD Instruction 1940-C or the Department of Labor requirements for implementing Davis-Bacon and Related Acts requirements.

As noted in this checklist, the Contracting Officer (CO) is responsible for ensuring that Davis-Bacon and Related Acts requirements are met. The person designated to perform the duties of the CO varies by program. The Administrative Notice identifies the individual or firm responsible as CO for these requirements. The RD Official shall insert the date that each requirement is completed.

Applicable requirements are listed below.

**Before awarding a construction or repair contract.**

- **Informing the Applicant and Reviewing the Contract:** When application is made to the Agency or a guaranteed lender for assistance involving construction, the Agency or approved lender must inform the applicant that wages paid for labor must not be less than the prevailing wages determined by the Secretary of Labor, RD Instruction 1940-C, § 1940.106(b). The Agency must review the contract to ensure that it contains the language provided in RD Instruction 1940.105(a) and the DOL website language (see below).

- **Wage Determination:** Before bidding, the CO shall download the applicable Department of Labor (DOL) Davis-Bacon Wage Determination for the work from the DOL website at [https://www.dol.gov/](https://www.dol.gov/agencies/whd/government-contracts/construction/guidance)

- **Information for Bidders:** Information provided to any and all bidders shall include the statement "The contractor must comply with the minimum rates for wages for laborers and mechanics as determined by the Secretary of Labor in accordance with the provisions of the Davis-Bacon and Related Acts." The CO shall verify this and include a copy of the Wage Determination in the bid information.
Construction Contract Provisions: All construction and repair contracts exceeding $2000 must include the statement "The contractor must comply with the minimum rates for wages for laborers and mechanics as determined by the Secretary of Labor in accordance with the provisions of the Davis-Bacon and Related Acts." In addition, labor standards provisions from 29 CFR 5.5(a) must be included in every contract (The DOL website includes updated information which meets the requirements of RD Instruction 1940-C, §1940.105(b).

After awarding a construction contract and before construction starts.

Pre-Construction Conference: The CO and other project participants will have a Pre-Construction Conference to discuss the following items, see requirements of RD Instruction 1940-C, § 1940.106(d).
- The CO, inspectors, or applicant may monitor contractor’s adherence to the Davis-Bacon and Related Acts requirements at any time.
- Non-compliance with the Davis-Bacon and Related Acts requirements may result in termination of the contract and debarment of the contractor.
- Enforcement of non-compliance with the Davis-Bacon and Related Acts requirements may result in penalties
- Although the Agency and owner has the right to perform employee interviews, typically information can be confirmed by reviewing progress reports and contractor’s typical payroll records.
- The contractor shall maintain posted on site a copy of the Davis-Bacon and Related Acts poster (form WH-1321) and a copy of the wage determination.

During Construction (Monitoring)

Certification of Compliance: Contractor and subcontractors must provide certification of compliance with the Davis-Bacon and Related Acts to the CO / approved lender, as well as copies of payroll records for the period during which the work was performed. See RD Instruction 1940-C, § 1940.106(e)(1).

Determination of Non-compliance: The project inspector or CO, on determining that the contractor is not in compliance, will notify the appropriate parties, including the Agency and approved lender (if applicable) who will then contact the State Director for advice and further instructions.
(Additional information on actions to be taken is available in RD Instruction 1940-C, §§ 1940.106(e)(2) and (3), and 1940.106(f).

Semiannual Report. RD field offices or approved lenders will submit to the State Director, Form RD 440-29, "Semiannual Labor Compliance Report," for projects requiring compliance with the Davis-Bacon and Related Acts for the periods established in RD Instruction 1940-C, § 1940.107(a). (October through March, and April through September)

Consolidated Report. RD State Offices will consolidate all reports received from field offices and approved lenders, and forward copies to the Administrator no later than April 30 and October 31. See RD Instruction 1940-C, § 1940.107(b).

After Construction

Recordkeeping. The Agency official or approved lender responsible for the project will preserve all payrolls and certifications for a period of 3 years from the date of final payment on the contract. See RD Instruction 1940-C, § 1940.108.

Contracting Officer date