

**STATE OF NEW JERSEY
DEPARTMENT OF CHILDREN AND FAMILIES**

DEPARTMENT POLICY GUIDELINE: DCF.PG07-1-2007

EFFECTIVE DATE: August 31, 2007

**SUBJECT: Applicability of the Federal Davis-Bacon Act and the New Jersey
Prevailing Wage Act**

I. PURPOSE

The purpose of this information memorandum is to provide assistance in understanding the federal Davis-Bacon Act and the New Jersey Prevailing Wage Act as each applies to funding allocated through the Department's Contracts. Any Department of Children and Families Services Contract in excess of \$2,000 for the construction, alteration, demolition (applies to State funding only), repair or renovations to any property or premises, may, depending on the funding source (State, local or federal) and contractual circumstances, be subject to the requirements of the Davis-Bacon Act and/or the New Jersey Prevailing Wage Act.

The federal Davis-Bacon Act and the State Prevailing Wage Acts are discussed below:

1. Davis-Bacon Act - (40 U.S.C. §276a-276a-5)

All contracts or subsequent subcontracts for construction, alteration, renovation, or repair, including painting and decorating, of a public building or public work, or building or work, financed by federal funds which meets the \$2,000 threshold are required to pay the federal prevailing wage rate for each class of laborer or mechanic employed. Regulations applicable to grant-enabling statutes incorporating the Act can be found in 29 Code of Federal Regulations (CFR), Parts 1, 3, 5 and 7. These regulations stipulate that grant funds appropriated under statutes imposing the Davis-Bacon Act requirements shall not be paid to a grantee (the Department) until contractors or subcontractors performing work under the grant certify that they will comply with the Act's requirements. The Act also applies to any contract or subcontract for similar work on public grants from a federal agency, or where the federal government acts as guarantors of mortgages. The only exception is for the transportation of materials and supplies by persons who are not employed directly at the work site, but are employed solely to make deliveries to the work site.

Provider Agencies must ensure that contracts or subcontracts for any construction/alteration projects contain the wage determinations issued and that the appropriate clauses required by the Davis-Bacon regulations (29 CFR, section 5.5) are present. It should be made clear in any announcements of projects or Raps that federal grant funds are being used and that Davis-Bacon will apply even if the federal government is not a party to the contract or subcontract. The prevailing wage must be paid regardless of any contractual relationship that may exist between a contractor or a subcontractor. Although the Department is not responsible to review sub-contracts for compliance, it has the right to require a prevailing wage.

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Sanctions for post-certification violations include suspension of payment, advances, or guarantees of grant funds, and the forced restitution of wages that should have been paid and the removal of offending contractors or subcontractors from active employment lists.

Failure to comply can bring penalties that can be severe. The contractor or subcontractor and their sureties are liable for any excess costs for completing the work; the Department may withhold accruals to ensure payment of prevailing wages to the workers; the contract or subcontract may be terminated and/or the contractor or subcontractor may be debarred for a period of three years.

2. New Jersey Prevailing Wage Act -(N.J.S.A. 34:11-56.27 et seq.)

Current law requires that workers who are compensated pursuant to a public works contract must be paid the prevailing wage when a public body is a party to said contract. If the public body is not a signatory party of the contract, the Prevailing Wage Act does not apply. The fact that the source of funds for the contract comes from a public body is immaterial in determining the applicability of the New Jersey Prevailing Wage Act.

The penalties of paying less than the prevailing wage, where applicable, may include the termination of a contract or part thereof. The State maintains the right to proceed or prosecute the contracted work to completion with the contractor's surety liable for excess costs. The Act also provides for criminal sanctions including fines and/or imprisonment. In addition, administrative assessments may be levied by the New Jersey Commissioner of Labor.

Language concerning the Davis-Bacon Act and the New Jersey Prevailing Wage Act has been included in the Department of Children and Families' Standard Language Document for Social Service and Training Contracts. When applicable, all Provider Agency Contracts must contain the federal Davis-Bacon Contract Provision (See attachment #1) and a State specific clause stating that the prevailing wage rate, as designated by the New Jersey Commissioner of Labor, must be paid to all workers employed through any subsequent Contracts or subcontracts. **These notices must be present even if the State or federal Act does not apply to a given construction/alteration project.** General federal wage determinations are kept up-to-date by modifications published in the *Federal Register*. State wage determinations can be obtained by contacting the NJ Department of Labor, Office of Wage and Hour Compliance, Public Contracts Unit by calling (609) 292-2259.

Commissioner