

DAVIS BACON LAWS ARE THE FEDERAL PREVAILING WAGE REQUIREMENTS

EWONAP recently held a training session, in partnership with ONAP's Office of Davis Bacon & Labor Standard's Loretta Szweduk. Davis Bacon laws are the Federal prevailing wage requirements. They apply to any contract or agreement for assistance, sale, or lease pursuant to NAHASDA, or to any contract for construction, development, operations, or maintenance thereunder. See some of the highlights below that might be useful to your work and visit our website for more information.

WHAT IS THE DAVIS-BACON ACT?

- Requires weekly pay to laborers and mechanics working directly on the "site of work"
- Applies to construction, alteration, and/or repair of public buildings or public works contracts in excess of \$2,000
- Regardless of any alleged existing contractual relationship, i.e. 1099, W9, independent contractor or owner-operator relationship
- Requires posting of the wage decision and Davis-Bacon Poster
- Requires inclusion of Department of Labor (DOL) prevailing wages in bid specifications for covered contracts and paid to workers employed under such contracts
- Defines prevailing wage to include fringe benefits
- Permits withholding of payments from contractors for wages due to workers
- Permits payment of wage restitution from withheld amounts
- Permits contract termination – contractor underpays mechanics and laborers

TRIBALLY DETERMINED WAGES (TDW)

- Section 104(b) of the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA); 24 CFR 1000.16 and 29 CFR 1.2
- Section 104(b) of NAHASDA requires that prevailing wage rates determined by the Secretary of Labor (commonly known as Davis-Bacon wage rates) be applied to NAHASDA projects.
- On 12/27/00, NAHASDA was amended, in part, by the Omnibus Indian Advancement Act (P.L. 106-568) by adding paragraph (3) to section 104(b), which allows Indian tribes to determine and apply their own prevailing wage rates in place of Davis-Bacon and/or maintenance wage rates. Refer to Program Guidance No. 2003-4.

WHAT DO TRIBES NEED TO DO TO USE TDWS?

- The tribe (NOT the HRA Board or Tribal Employment Rights Ordinance (TERO)) must adopt a law or regulation. An official tribal council resolution must be passed;
- Define "prevailing" and adopt a way to make determinations of prevailing wages;
- Develop a monitoring and enforcement plan; and
- Notify HUD when and how TDWs will be used in NAHASDA