

ALL AGENCY MEMORANDUM NUMBER 247

TO: All Contracting Agencies of the Federal Government and the District of Columbia

FROM: Jessica Looman, Administrator *Jessica Looman*

SUBJECT: Applicability of Davis-Bacon labor standards to workers who perform testing, adjusting and balancing work on HVAC systems

The purpose of this All Agency Memorandum (AAM) is to clarify the applicability of Davis-Bacon labor standards to workers who perform testing, adjusting and balancing (TAB) work on heating, ventilation and air conditioning (HVAC) systems.

Davis-Bacon prevailing wage requirements apply to laborers and mechanics on most federal and federally assisted construction projects. The Davis-Bacon Act (DBA) applies to each contract over \$2,000 “to which the Federal Government or the District of Columbia is a party, for construction, alteration, or repair ... of public buildings and public works,” and directs the Secretary of Labor to determine locally prevailing wage rates required to be paid to laborers and mechanics employed on covered contracts. 40 U.S.C. § 3142. In addition, provisions in numerous statutes referred to as “Related Acts” apply Davis-Bacon labor standards requirements to construction projects that receive federal assistance through grants, loans, guarantees, insurance, and other methods. The DBA and the Related Acts are referred to collectively as “the DBRA.”

HVAC systems, which regulate and move heated and cooled air throughout buildings (or other works such as vessels), are a significant component of the buildings or works in which they are installed, and the installation, alteration, or repair of an HVAC system as part of a DBRA-covered project will be subject to Davis-Bacon labor standards. The applicability of Davis-Bacon labor standards to workers who perform TAB work on HVAC systems is more complex and case-specific. In order to provide additional clarity to the contracting community regarding when Davis-Bacon labor standards apply to such work, this AAM focuses on two issues:

- Are workers who perform TAB work on HVAC systems “laborers or mechanics” to whom Davis-Bacon requirements may be applicable?
- Under what circumstances is TAB work on HVAC systems part of the construction, alteration, and/or repair on a DBRA-covered project, and hence subject to Davis-Bacon labor standards?

Because TAB work on HVAC systems may vary by contract and project, this AAM contains general guidelines for determining when Davis-Bacon labor standards apply to such work. If a contracting agency or other interested party has questions regarding application of the guidelines discussed below in a specific case, they should contact the Wage and Hour Division, Division of Government Contract Enforcement, at DGCEinquiries@dol.gov. *See* 29 CFR 5.13. The referral should include a complete description of the project (including the contract number or source(s) of federal funding or assistance if the project is not covered directly by the DBA), any comments

or questions submitted to the agency by interested parties, and the agency’s recommendation in light of the guidance provided in this AAM and other relevant legal authority.

I. Are workers who perform TAB work on HVAC systems “laborers or mechanics” to whom Davis-Bacon requirements may be applicable?

Workers performing TAB duties generally are considered “laborers or mechanics” within the meaning of the DBRA because TAB work generally involves duties that are primarily “manual or physical in nature.” 29 CFR 5.2.¹ The Davis-Bacon regulations define the term “laborer or mechanic” in pertinent part as follows:

The term “laborer or mechanic” includes at least those workers whose duties are manual or physical in nature (including those workers who use tools or who are performing the work of a trade), as distinguished from mental or managerial. . . . The term does not apply to workers whose duties are primarily administrative, executive, or clerical, rather than manual. Persons employed in a bona fide executive, administrative, or professional capacity as defined in part 541 of this title are not deemed to be laborers or mechanics. . . .²

TAB work has traditionally been performed by workers in the “sheet metal” trade. Aspects of TAB work have also been performed by workers with job titles such as “TAB Technician” or “Air and Hydronic Balancing Technicians.” Because job titles can vary, consideration of the actual duties a TAB worker performs is important to determine if they are “laborers or mechanics” under the DBRA and its implementing regulations.³

Testing. The “testing” portion of TAB work on HVAC systems is performed for various purposes. For example, it can identify where adjustments, described below, will need to be made to ensure a well-functioning HVAC system continues to operate at an optimal level. Testing can also identify more substantial problems in the system that may require the replacement (i.e., alteration or repair) of damaged, defective, or otherwise nonfunctional or underperforming equipment and/or the dismantling and reconstruction of ductwork. Testing may also be necessary

¹ On August 23, 2023, the Department published in the Federal Register the final rule, “Updating the Davis-Bacon and Related Acts Regulations.” 88 FR 57526. The final rule updated various regulations issued under the Davis-Bacon and Related Acts in 29 CFR Parts 1, 3, and 5 that set forth rules for the administration and enforcement of the Davis-Bacon labor standards that apply to federal and federally assisted construction projects. The final rule became effective on October 23, 2023. This AAM cites regulations from the final rule. Unless otherwise noted, there are no substantive differences between the cited regulations and those in effect prior to the final rule.

² 29 CFR part 541 implements the exemption from federal minimum wage and overtime requirements of the Fair Labor Standards Act (FLSA) of “any employee employed in a bona fide executive, administrative, or professional capacity.” See 29 U.S.C. § 213(a)(1).

³ The following information on the duties of TAB workers is summarized from multiple sources, including the Occupational Information Network (O*NET), the Bureau of Labor Statistics *Occupational Outlook Handbook*, sample work training plans on [apprentice.gov](https://www.apprentice.gov), and various informational videos issued by the International Association of Sheet Metal, Air, Rail and Transportation Workers (SMART), the Associated Air Balance Council, and the Sheet Metal International Training Institute.

to reevaluate a system after it has been repaired or adjusted to ensure that air-flow and other operational problems have been appropriately remedied and/or that applicable standards or specifications are met.

Testing work includes taking measurements and recording data documenting the functionality and operational efficiency of HVAC systems. Most testing work involves manually accessing and taking measurements of air flows (e.g., air pressure and volume) at different locations in the HVAC system. Checking electrical connectivity is also a typical “testing” activity in which workers take amperage and voltage readings to determine, verify, and/or record system functionality.

Tools used in TAB “testing” work sense and record air flow levels where the air enters rooms. These tools include pitot tubes used with manometers—smaller, handheld devices—to measure air pressure. Workers may also use air flow capture hoods that can cover diffusers to measure air flow, as well as smaller devices such as hot wire anemometers that are manually held up or moved across fixtures such as registers where air flows into rooms and other spaces. Air pressure readings may be manually or electronically recorded. In some instances, workers may need to drill or otherwise open (and subsequently patch) holes into HVAC system components to allow the insertion of probes to test air pressure.

Adjusting and balancing. TAB “adjusting and balancing” work typically involves adjusting control devices to calibrate the equipment that regulates and directs air flows appropriately through the air handler portion of the HVAC system and duct branches to balance the delivery of air as optimally as possible into all areas of the building. Such activities include manually adjusting fan belt tensions and controls throughout the system that regulate fan speeds and dampers, including both the major air handling unit damper(s) and dampers located in numerous terminal devices delivering air through diffusers, as well as the cleaning and replacement of filters. Adjustments may be made by direct hands-on manual manipulation of the controls or by using tools to adjust dials or other mechanisms that regulate the operation of dampers. Adjustments may also be made to calibrate the electronically controlled features of equipment in the system. After such adjustments are made, retesting is appropriate to determine whether the required or desirable level of efficacy and efficiency has been achieved.

Regarding the conclusion that workers who perform TAB work on HVAC systems are generally laborers or mechanics, WHD views TAB work performed on HVAC systems as distinct from work performed by “air balance engineers” and “inspectors.” WHD Field Operations Handbook (FOH) Sections 15e06 and 15e14, respectively, provide that in general workers performing those types of work are not considered laborers or mechanics because those duties—unlike TAB work—are not manual or physical in nature. These FOH provisions recognize, however, that if a worker performs manual or physical duties in addition to inspector or air balance engineer work, then they would be considered laborers or mechanics for the time so spent.⁴

⁴ Under FOH 15e06, air balance engineers who spend a “substantial amount of time in any workweek (i.e., more than 20 percent)” performing manual, physical, and mechanical work would be considered laborers or mechanics for such time.

II. Under what circumstances is TAB work on HVAC systems part of the construction, alteration, and/or repair on a DBRA-covered project, and hence subject to Davis-Bacon labor standards?

In determining whether TAB work on HVAC systems under a federal or federally assisted contract is DBRA-covered, the contract's scope of work must be considered.⁵ This is because TAB tasks may be performed by laborers or mechanics both under federal or federally assisted contracts for construction, including contracts that call for substantial rehabilitation, replacement, or installation of HVAC systems, and under federal contracts for routine, scheduled maintenance or servicing of HVAC systems. In general, TAB work under the former contracts would be DBRA-covered, while the latter would be covered instead by the Service Contract Act (SCA).⁶

A contract's scope of work is important because the Department has long recognized that not all laborer or mechanic work is performed on DBRA-covered contracts. For example, carpet laying and exploratory drilling (other than part of construction), and maintenance and repair of all types of equipment, may be performed by laborers or mechanics on SCA-covered contracts. *See* 29 CFR 4.130; *see also* FOH 15d05(c) (soil boring). Similarly, TAB HVAC work such as the physical adjustment of dampers, physical clearing of debris obstructing airflows to be tested and measured, removal of guards to facilitate routine maintenance, and diagnostic drilling, standing alone, generally would not establish that a contract for such work is a "contract for construction" subject to Davis-Bacon labor standards. These are all physical activities and involve manual work that may be performed under non-construction contracts such as routine maintenance contracts, as well as on contracts for the construction, alteration, and/or repair of buildings or works.

Coverage also may be affected by the sequencing of TAB HVAC work in relation to contracts whose scopes of work include construction, alteration, and/or repair work. Where manual or physical activities such as TAB HVAC work are performed at the DBRA-covered site during the construction or renovation of a building or work and precede the acceptance of the completed building or work, those activities are subject to Davis-Bacon coverage. *See Norsaire Systems, Inc.*, WAB Case No. 94-06, 1995 WL 90009 (Feb. 28, 1995) (holding that warranty repair work to air cooling systems installed during the construction of a building prior to the building's

⁵ This AAM is intended to be consistent with, and therefore does not alter, existing coverage principles under the DBRA and SCA. For example, this AAM does not displace the well-settled principle that a contract is "for construction" (or repair) within the meaning of the DBRA only if "more than an incidental amount of construction-type activity is involved in the performance" of the contract. *Military Hous. Fort Drum, NY*, WAB No. 85-16, 1985 WL 167239, at *4-*5 (Aug. 23, 1985). *See also* 41 U.S.C. § 6702(b), 29 CFR 4.116, 4.130, 4.131(d), (f).

⁶ The SCA covers contracts entered into by the federal government and the District of Columbia that have as their principal purpose the furnishing of services in the United States through the use of "service employees." Under such contracts, routine and recurring maintenance or service work is covered by SCA labor standards requirements, but non-routine alterations and repairs are typically subject to Davis-Bacon labor standards requirements. (Unlike DBRA, the SCA does not apply to federally assisted contracts.)

acceptance was Davis-Bacon covered work); *see also* FOH 15d01 (carpet laying and installation of draperies is DBRA-covered when performed in connection with new construction, alteration, or renovation); FOH 15d02 (cleaning work is DBRA-covered where performed as a condition precedent to the acceptance of a building or work); FOH 15d06 (landscaping performed in conjunction with new construction or renovation work subject to DBRA is also DBRA-covered). Similarly, TAB work performed during a contract for the repair of one or more HVAC systems would be DBRA-covered.

Davis-Bacon labor standards may also be applicable where a contract calling for testing HVAC system functionality is a necessary but preliminary component of a contemplated federal or federally-assisted repair or rehabilitation project, even when the testing work is in a separate contract, as a project consists of all construction necessary to complete the building or work regardless of the number of contracts involved so long as all contracts awarded are closely related in purpose, time and place. See AAM 130 (Mar. 17, 1978). Where DBRA-covered HVAC system construction, alteration, and/or repair work is already contemplated, contracts for testing work to identify HVAC repairs, renovations, or replacements that may be needed for such projects will generally be considered directly related and integral to the project, and thus subject to the Davis-Bacon labor standards. The determination of whether covered construction is in fact contemplated when the contract for HVAC testing is awarded is fact-specific. Relevant factors include, but are not limited to, the existence of engineering or architectural plans or surveys of the site(s); the allocation of, or an application for, Federal funds; contract negotiations or bid solicitations; the stated intent of the relevant government officials; and the disposition of the site(s) after testing. Specific Davis-Bacon provisions in certain “Related Acts” may also affect coverage of such contracts.

In contrast, TAB testing work may be performed in situations in which construction activities are undertaken in segregable phases that are distinct in purpose, time, and place, or where construction is not yet contemplated. Such TAB work typically would not be DBRA-covered. For example, ventilation verification contracts may call for the performance of TAB work only to evaluate and report the extent and details of repairs, equipment replacements and construction that may be recommended or needed in the future, and it remains uncertain whether any future construction will take place. In those circumstances, the contracts for TAB testing work may reasonably be considered separate and distinct as to their purpose and/or timing from future contracts for construction planned or entered into after TAB report recommendations have been reviewed, decisions have been made based on that information, and funding has been obtained for that construction work.

Another example of TAB work not subject to DBRA requirements involves contracts solely for inspection (i.e., testing) of HVAC installation or rehabilitation work. TAB workers employed on a contract only to provide independent, “third party” inspections (but not adjustments or repairs) following the installation, reconstruction or rehabilitation of an HVAC system to determine the system’s compliance with required standards and to advise the project owner regarding readiness of the system for acceptance, would not be performing work on a DBRA-covered contract for construction. As discussed above, such workers would generally be considered inspectors rather than laborers and mechanics. *See* FOH 15e14.

Finally, the scope of work and requirements of any task order, purchase order, or other similar federal procurement instruments issued under multi-year “indefinite delivery, indefinite quantity” (IDIQ) contracts,⁷ such as “operation and maintenance” (O&M) contracts, Multiple Award Schedules (MAS) and Blanket Purchase Agreements (BPAs), are important to an analysis of whether SCA or Davis-Bacon labor standards requirements apply to the order and to workers who perform TAB work under such an order. To the extent that the order is for construction, alteration, or repair of a building or work, including an HVAC system, or involves TAB work that is closely related and integral to construction, alteration, or repair work that is already contemplated, as discussed above, Davis-Bacon labor standards would typically apply to the order.

Further Questions

Determinations as to the applicability of Davis-Bacon requirements to TAB workers performing HVAC work under a particular contract are fact-specific. Any questions about coverage should be referred to the Division of Government Contracts Enforcement, Wage and Hour Division, U.S. Department of Labor, 200 Constitution Ave, NW, Washington, DC 20210, telephone number (202) 693-0064 or DGCEinquiries@dol.gov, as early in the contracting process as possible.

⁷ Such modern contracting methods often involve a contractor agreeing to perform construction as the need arises over an extended time period, with the quantity, timing, and/or location of construction not known when the contract is awarded.