

## 2.20 CONTRACT ADMINISTRATION

This section provides instructions and guidance to contractors and project engineers for administration of construction contracts. Instructions include information on required reports or forms, equal employment opportunity, wage reports, training program, minority recruitment, and subcontracting. Copies of all Iowa Department of Transportation forms referred to in the *Construction Manual 2.20* are included in *Appendix 2* and can be copied as needed. Electronic versions (Word, Excel or Adobe Reader format) of the forms are also available on the DOT's website:  
(<http://www.iadotforms.dot.state.ia.us/iowadotforms/Library.aspx>).

<b>Forms &amp; Reports - Prepared by Contractor</b>			
<b>Form No.</b>	<b>Title</b>	<b>Reference Section</b>	<b>Office Where Forms Are Available</b>
102116	Certification of DBE Accomplishment	2.25	Contracts
510082	Certification of Subcontractor Payment	2.25	Office Supply
650190	Reimbursable Trainee Training Record	2.23	Contracts
830176	Certified Transcript of Labor Payroll /Statement of Compliance	2.24	Construction
181321	Contractor's Statement of Sales or Use Tax	2.29	Finance
830231	Subcontract Request	2.25	Office Supply
830215	Stormwater Co-Permittee Certification Statement	10.33	Office Supply
<b>Forms &amp; Reports - Initiated by Contractor, Prepared by Project Engineer</b>			
<b>Form No.</b>	<b>Title</b>	<b>Reference Section</b>	<b>Office Where Forms Are Available</b>
830230	Plan Quantity Agreement	2.27	Office Supply

## 2.21 OCCUPATIONAL SAFETY AND HEALTH

Occupational Safety and Health Act (OSHA) regulations (federal and state) apply to all construction projects. (Federal OSHA regulations are codified in *29 CFR, Sections 1910 and 1926*.) Contractors are responsible for compliance with OSHA regulations and shall maintain a safe work site. Therefore, contractors and their employees must be familiar with the health and safety requirements of the act.

Article 1102.19,D,5 of the Standard Specifications require that a poster entitled "Safety and Health Protection on the Job" (IOSH 30) or "It's the Law" (Federal OSHA 3165) be displayed in a prominent place at all times.

Contractors can obtain OSHA forms and posters from:

Regional Director-OSHA      Labor Services Division  
Federal Office Building      Department of Employment Services  
210 Walnut                      or 1000 E. Grand  
Des Moines, Iowa 50309      Des Moines, Iowa 50319  
515-284-4794                      515-281-3606

## 2.22 EQUAL EMPLOYMENT OPPORTUNITY (EEO)

### A. Contractor's Responsibility

Contractor's and their staff who are responsible for the hiring, supervising, promoting, and discharging of employees shall be knowledgeable of the Contractor's EEO/AA Policy. The contractor's EEO/AA efforts will be reviewed on a company-wide basis rather than on project specific efforts.

#### 1. Contractor's EEO Policy

Each contractor shall have an EEO/AA policy approved by the Office of Contracts prior to awarding a contract or approving subcontracts which are \$10,000 or greater. The policy is to be reviewed and resubmitted each year.

The policy is to include:

- General operating statement
- Designation of EEO officer
- Definition of EEO & AA
- Company's recruitment policy
- Certification that the company does not possess segregated facilities
- Plan for employee training and promotion – If Contractor does not have a training program, the EEO/AA Policy shall state that there is no plan.

The contractor shall conduct periodic meetings with supervisory and personnel staff at least every 6 months to review and discuss the company's policy. All new supervisory and personnel staff shall be instructed of the policy within 30 days of being hired.

#### 2. Postings

The following are required to be posted on the project bulletin board:

Notice provided by the Iowa DOT Office of Contracts that lists the name, address and phone number of the Contractor's and all subcontractors' EEO/AA officer

"Equal Employment Opportunity is the Law"\* (EEOC P/E-1)

Form FHWA 1022 – Notice of False Statement

If predetermined wage requirements apply:

- Current Pre-Determined Wage Rate Decision
- Wage Rate Information Poster (FHWA-1495)\*

IOSH 30 – Safety and Health Protection on the Job

WH-1420 – Your Rights Under the Family Medical Leave Act of 1993

WH-1462 – Employee Polygraph Protection Act

\* The Spanish version of these posters are required where Spanish speaking employees or applicants are likely to occur.

Examples of the posters are included in *Appendix 2-4 through 2-8*. Posters may be obtained from the project engineer or Office of Contracts.

All required site postings shall be in a location that is easily accessible to all employees. Postings may be fastened to a bulletin board, tool shed, or job office/trailer and protected from weather by glass or clear plastic. Postings that become soiled, faded, or otherwise illegible should be replaced. More than one posting may be necessary if there are multiple locations where workers report for work. Such cases typically occur on complex or long projects involving several different crews and/or subcontractors.

### 3. Reports and Records

Contractors are required to maintain records to document compliance with EEO/AA requirements for a period of 3 years following completion of the contract.

These records include:

Number of minority/non-minority/females employed in each classification  
Progress and efforts made in hiring minorities and females

The contractor shall submit the following documents to the Office of Contracts:

The Company's EEO/AA Policy annually  
Annual report each July listing the number of minorities/females/non-minorities in each classification in July (FHWA-1391)  
When requested, documentation of periodic meetings, inspections, and investigations

Contractors who have not complied with the specification may be required to submit a plan for corrective action to the Office of Contracts. Failure to correct the deficiencies may result in suspension of the contractor's bidding privileges for a period up to one year.

## **B. Project Engineer's Responsibility**

While responsibility for complying with EEO requirements is solely the contractor's, project engineers' responsibility on contracts include:

### 1. Subcontract Request and Approval

Contractors submit subcontract request forms to the Office of Contracts with the signed contracts. For additional requests or modifications to existing requests, contractors are to submit the forms to the project engineer. The project engineer should confirm that the subcontractor has an approved EEO/AA policy prior to approving the subcontract. The project engineer forwards the form to the Office of Contracts so that the information can be entered into the Trans\*Port database. A list of contractors with approved policies is available from the Office of Contracts.

### 2. Review of Project Bulletin Boards

Inspection staff are to review contractor's bulletin board for required

notices/posters. Progress payments may be suspended if the appropriate notices/posters are not displayed on the project site. Work may be suspended for continued noncompliance.

3. "EEO Project Site Inspection/Wage Rate Report"

After reviewing the project's bulletin board, the inspector's findings should be documented on the "Project Engineer's EEO Project Site Inspection Wage/Rate Report." This report includes a checklist of the required postings. This report also serves to document the wage-rate interviews of contractor's employees. A copy of this report is provided in *Appendix 2-10*. The completed report is to remain in the project engineer's file.

4. In-depth EEO Inspections

On selected contracts, staff from the Office of Contracts may request that a more detailed EEO interview be conducted. The in-depth interview/report will coincide with EEO reviews of the home office conducted by staff from the EEO Section/Office of Contracts. The Office of Contracts staff will provide their request and instructions to the project engineer at the time of the in-depth review.

## 2.23 TRAINING PROGRAMS

Requirements for training of contractors' employees are included in the EEO/AA specification, Article 1102.19. Contractors are required to have a written training and promotion plan when their three-year average of all work contracted (including subcontracted work) with the Department equals or exceeds \$5,000,000. The required minimum number of trainees is dependent on the amount of work under contract.

### A. Contractor's Responsibility

When required, the written training and promotion program shall include details such as:

Designated crafts of trainees

maximum ratio of one trainee to 3 journey-workers (by craft)

Recruitment of women and minorities

See *Appendix 2-11* for a listing of organizations, agencies, schools, and newspapers, which can assist in minority recruitment. Occasionally it may be difficult to recruit members of minority groups due to minority unavailability at project location. When this occurs, contractors must have documented their efforts in attempting to recruit minorities. The Office of Contracts EEO Section should be informed of recruitment problems.

Methods for training and number of hours required for training

Payment to trainees

Rate of pay for trainees shall be described as a percentage of journey worker's rate of pay. Trainees' rate of pay shall be at least the appropriate rate that is specified in their approved training program. The project engineer should verify with the Office of Contracts that the contractor has an approved training program if trainees are being paid less than full Davis-Bacon wage rates. Training time schedules for various crafts involved in the program are shown in *Appendix 2-13*. Individuals enrolled in a training program shall be paid benefits as outlined in *Construction Manual 2.24*.

After a trainee has completed his/her training program, the trainee's base wage rate shall be increased to the Davis-Bacon's wage determination for that job classification.

Records

The contractor shall furnish a copy of the program to each trainee as well as a

certification of satisfactory completion. The contractor shall submit an annual training report to the Office of Contracts documenting their training efforts for the year.

## **2.24 DAVIS-BACON WAGE REQUIREMENTS**

### **"Certified Transcript of Labor Payroll"**

#### **A. Regulations**

Regulations covering interstate, primary, secondary, and city projects financed in whole or in part with federal funds may require submission of a "Certified Transcript of Labor Payroll" (Form 830176) in accordance with "Required Contracts Provisions" (Form FHWA-1273). These requirements will be included on the proposal and shall be carefully studied and observed. A copy of Form 830176 is provided in *Appendix 2-14*.

Davis-Bacon regulations apply to laborers and mechanics employed by the contractor and subcontractors on, adjacent or virtually adjacent to the "Site of the Work". "Site of the Work" includes the physical location of the work called for in the contract documents. Also included are tool yards, batch plants, borrow pits, etc. provided they are dedicated exclusively to performance of the contract and "provided they are adjacent or virtually adjacent to the site of the work".

The U.S. Department of Labor has interpreted "adjacent to the Site of Work" to indicate a common boundary, while "virtually adjacent" indicates a small separation between the project and temporary plant site.

Temporary plants or contractor's staging yard established for a project would be considered "Site of Work only when the site is:

adjacent (common boundary between the project and plant site) or  
virtually adjacent (plant site is separated from the project site by a narrow strip of land such as a local road between a project and a plant site)

Chapter 15 of the Department of Labor Field Operations Handbook describes Davis-Bacon, Contract Work Hours, and Safety Standard Act requirements. A link to the DOL Handbook is available under the Contract Administration/Davis Bacon Information section of the Office of Construction webpage <http://www.dot.state.ia.us/construction/index.htm> <http://www.iowadot.gov/construction/index.htm>. Project engineers shall refer questions concerning Davis-Bacon coverage to the Office of Construction. The Office of Construction will consult with the Office of Contracts so uniform interpretations can be provided.

Occasionally, project engineers receive requests from private sources for copies of certified payroll records. Iowa's "Open Records Law" provides for the release of all information except social security numbers. Requests for payroll records must be submitted in writing. Copies of these written requests are to be provided by registered mail to the contractor that initially submitted or will submit certified payrolls. If a request for subcontractor information is received, a copy of the request will also be sent to the prime contractor. Requests are to be acknowledged in writing, confirming that information is available and indicating that social security numbers will be withheld. Payroll records must not be released until fourteen calendar days after a copy of the request is received by the contractor. This allows contractors an opportunity to obtain a court injunction to stop the release if they believed the information could affect the competitive bidding

process. These procedures are to be followed for requests received from outside sources, such as labor unions.

Adherence to these procedures during investigations by the Department of Labor or FHWA is not required. Another exception has been made for representatives of the Iowa Labor Management Work Preservation Fund, who may obtain project payrolls for a given week without a written request provided it does not cause undue inconvenience for the project engineer's office (Iowa Administrative Code-761 IAC 4.9(31)).

When contract provisions state that a certified transcript of weekly payroll is required, the contractor shall submit to the project engineer one copy of Form 830176 or an alternate form which contains the information as required in FHWA-1273, Section V.2.

Project engineers must also ensure "Statement of Compliance" information is furnished with the payrolls and that the prime contractor has signed all payrolls received from subcontractors.

If an individual works on more than one project during a period, payroll information shall include adequate data to verify correct computation and payment of fringe benefits.

#### B. Postings

A copy of wage rates must be posted in a location easily accessible and visible to all employees. It should be attached or adjacent to posted "Wage Rate Information Federal-Aid Highway Project" (FHWA-1495). Supplemental wage rates requested and approved shall also be posted.

#### C. Davis-Bacon Wage Requirements for Independent Truckers

Federal-aid construction contracts may include "Required Contract Provisions" (FHWA-1273) which govern Davis-Bacon wage rates and fringe benefits for the project. Therefore, all employees of a prime contractor or subcontractor hauling on a Davis-Bacon covered project must be paid in accordance with FHWA-1273 requirements.

When an independent trucking firm is engaged to haul materials to a Davis-Bacon covered site, Davis-Bacon coverage of drivers depends on the status of the material supply source. Department of Labor has consistently held that the following are construction activities covered by Davis-Bacon provisions [*Code of Federal Regulations, 29 CFR, Section 5.2(j)(1) & (2)*]:

Employees working in situations where materials are produced from an operation, plant, or pit that is opened or installed "virtually adjacent" to a construction site for the exclusive purpose, or nearly so, of fulfilling contract material requirements, and

Truck drivers who haul and deliver materials from those locations to the job site. The only exception is for bona fide owner-operators physically driving their own trucks. This exception does not extend to other drivers of independent trucks.

Truckers hauling from a commercial source are not covered by Davis-Bacon requirements except for the time spent on the project. This ruling applies to all trucking, whether it be by an employee of the contractor, subcontractor, or an independent material supplier or transporter. A trucker employed by a prime contractor/subcontractor may be covered when hauling from portable plant to project and not covered if hauling from commercial quarry to portable plant site. Commercial sources are not considered part of the "site of work." This includes permanent plants and quarries that are not established for a specific project.

Portable plant sites set up in a commercial quarry for a specific project are considered part of the site of work when the quarry is adjacent to or virtually adjacent to the project site.

For deliveries by a supplier or an independent trucking firm from a certain material supply facility to be considered outside Davis-Bacon coverage, the facility must be off the project site and 10% or more of sales must actually be made from the facility to the general public. (See Section 5.2(1)(3) of Regulations, Part 5.) Sales to the public must be more than token sales.

#### D. Preparation of Certified Transcript of Labor Payroll

A copy of a blank "Certified Transcript of Labor Payroll" (Form 830176) is provided in *Appendix 2-14*. Electronic versions (Excel and PDF format) are also available on the Iowa DOT's website (<http://www.iadotforms.dot.state.ia.us/iowadotforms/Library.aspx>)

##### 1. Heading

The heading of a payroll transcript must include the information as shown in *Appendix 2-14*. Subcontractors shall include name of prime contractor. Wage decision number must be listed, so there will be no confusion on minimum wage rates for the project.

##### 2. Contracts with Multiple Projects

Typically, payroll transcripts are required from the prime contractor and each subcontractor for a project. However for multi-project contracts, the contractor may prepare one "combined" payroll transcript if the projects have identical wage schedules and are worked more or less as one project with individuals used interchangeably between projects.

Therefore, prime contractors and subcontractors may combine multiple projects for payroll transcripts provided:

each prime and subcontractor prepare individual transcripts, and all projects included are listed on that "combined" payroll transcript.

##### 3. Required Contract Provisions

The Required Contract Provisions (Form FHWA-1273) attached to contract documents show that at least the following items shall be observed:

a. Payrolls shall **only** contain employee's full name, ~~address,~~ and **an individually identifying number for each employee (e.g., the last four digits of the employee's social security number)**. ~~An employee's address and social security number need only appear on the first payroll on which that individual appears or if their name or address changes.~~ **Contractors and subcontractors are required to maintain complete social security numbers and addresses of employees and to provide such information to government agencies upon request.**

**This rule, effective January 18, 2009, supersedes the requirements contained in FHWA-1273.V.2.b (dated 3/10/1994) regarding employee's social security numbers and addresses and may be applied to all contracts.**

b. Employee's craft and classification must be listed exactly as shown in the wage decision. For example, it is not acceptable to simply use "Operator-Group 2" without listing the classification.

- c. If an employee works in more than one work classification during the pay period, the employee's hours may be assigned to one classification, provided the classifications are in the same Group (i.e. same wage rate and fringe benefit).
- d. Deductions must be itemized.
- e. No individual shall be employed as laborer or mechanic except on an hourly-wage basis.
- f. Contractors shall comply with all applicable federal, state, and local laws governing safety, health, and sanitation.
- g. Overtime pay shall be computed on 40 hours/week. This means an employee must accumulate the initial 40 hours before overtime becomes reimbursable. This is computed at the base Davis-Bacon rate with fringe benefits being paid at the straight time rate.

Employee work hours accumulated on a contract where the Davis-Bacon Act applies shall be reimbursed at least Davis-Bacon labor rates. Contractors shall carefully track and document time for employees who charge time to different contracts in a single pay period, especially if these different contracts are not all subject to Davis-Bacon labor rates. For example:

CASE 1:

Employee "A" has charged labor time to two projects in week "X". Project 1 is subject to Davis-Bacon, project 2 is not. Employee "A's" time sheet shows:

Monday -	4 days at 8	project 1
Thursday,	hours/day,	
Friday,	2 days at 8	project 2
Saturday,	hours/day,	

Employee "A" has accumulated 48 hours (6 days x 8 hours/day) in week "X."

Employee "A" is reimbursed:

$4 \text{ days} \times 8 \text{ hours/day} = 32 \text{ hours} \times \text{project 1's Davis-Bacon wage rate}$   
 $1 \text{ day} \times 8 \text{ hours/day} = 8 \text{ hours} \times \text{project 2's standard wage rate}$   
 $1 \text{ day} \times 8 \text{ hours/day} = 8 \text{ hours OT} \times \text{project 2's overtime rate}$

CASE 2:

Employee "B" has charged labor time to the same two projects noted in Case 1. This employee's time sheet shows:

Monday -	4 days at 10	project 2
Thursday,	hours/day,	
Friday,	1 day at 8	project 1
	hours/day,	

Employee "B" has accumulated 48 hours (4 days x 10 hours/day) plus (1 day x 8 hours).

Employee "B" is reimbursed:

4 days x 10 hours/day = 40 hours x project 2's standard wage rate  
1 day x 8 hours = 8 hours OT x project 1's Davis-Bacon overtime rate

#### 4. Work Assignments

Contractors shall acquaint their supervisors with crafts and minimum wage provisions so employees are assigned work that conforms with their classification, and the correct classification and rate may be reported to contractor's home office. Exceptions to the general rule include:

To establish a uniform procedure among contractors for future wage determinations, contractor shall show on payroll COMBINATION crafts for employees performing more than one type of work. However, all work classifications for that individual shall be listed. For example:

##### CASE 1:

Lower classification employee doing higher classification work.

Shall segregate hours and pay at higher wage rate if individual is not being reimbursed the highest rate for class of work performed.

##### CASE 2:

Higher classification employee doing lower classification work.

Not necessary to segregate hours performing separate tasks, provided individual continues to be reimbursed at the highest rate.

Shall segregate hours and classifications if individual will have their wage rate reduced when doing lower classification work

In Iowa, there is not an "Ironworker" classification for all zones. For these situations, employees erecting structural steel are to be classified as "Carpenters and Piledrivermen".

#### COMPOSITE CREW OPTION

Incorrect assignment of work classifications on construction projects is a reoccurring issue; particularly on projects with small crews, such as structures.

In response to cases of improper classification of employees, the Department has entered into a written agreement with the Associated General Contractors of Iowa (AGCI) to improve the administration of the Davis-Bacon Act requirements. The agreement, which allows "Composite Crews", applies to contracts with contract amounts less than \$1,000,000.

The agreement states:

*"The Iowa Department of Transportation (DOT) recognizes that on medium and small bridge and culvert projects, contractors in Iowa often use composite crews: where many of the crew members perform multiple classifications routinely, the Iowa DOT has approved a "Composite Crew Option" as an alternative to recording and reimbursing employees for hours worked in each classification.*

*A bridge or culvert contractor can use the "Composite Crew Option" as an alternate to recording and paying hours by classification if all of the following conditions are met:*

1. The crew must have at least one skilled craft (non-laborer) on the contract at all times. This skilled craft should be paid the wage of the highest classification being performed on the contract.
2. At least 33% of the total hours on the contract should be listed and paid for as a skilled craft.
3. *The contract is under \$1,000,000 in contract amount."*

*On contracts of \$1,000,000 or over the provisions of FHWA-1273, Part IV, Section 1b shall be enforced, which states:*

*"Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification of the time actually worked therein, provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed."*

Please note that the procedure is allowed on "contracts" (not "projects") less than \$1,000,000.

#### 5. Working Supervisors

Supervisors who spend more than 20% of their time performing other "labor type" duties as a regular part of their activities at the job site must be so designated by having the "other" work classifications listed on the payroll transcript. For example: A supervisor who also does carpentry work, or operates a dozer, or drives a truck would have to have these duties listed on the payroll transcript.

This requirement confirms their hourly rate is for the highest work classification. Any premium pay received for supervision will be over and above the rate of pay for work performed.

#### 6. Apprentices

Apprentices shall be paid fringe benefits in accordance with provisions of the apprenticeship program. If a particular apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for applicable classification. If the Wage and Hour Division administrator determines that a different practice prevails for the applicable apprentice classification, fringe benefits shall be paid in accordance with that determination.

#### 7. Trainees

Trainees shall be paid fringe benefits in accordance with provisions of the trainee program. The project engineer should verify with the Office of Contracts that the contractor has an approved training program if trainees are being paid less than full Davis-Bacon wage rates. If a particular trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination for the work actually performed. The Wage and Hour Division administrator will determine if there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices.

## 8. Owner-Operators of Hauling Equipment

Bona fide owner-operators of trucks and similar construction hauling equipment, who are independent contractors, are not subject to enforcement of contract labor standard provisions. Owner-operators of other non-hauling type equipment are considered as employees, not as subcontractors.

A ruling by the Department of Labor states in effect that:

Because owner-operators usually work under payment arrangements based on a unit price [for example, so much per cubic meter (yard) hauled] rather than on an actual truck or equipment rental rate plus the driver's (or operator's) rate, and  
Because of difficulties that have arisen with respect to securing adequate data on rental arrangements in order to determine whether contract minimum rates are being paid, therefore,  
As a matter of administrative policy, the provisions of Davis-Bacon and related acts will not be applied to bona fide owner-operators of trucks or other similar construction equipment used exclusively for hauling and who are independent contractors.

This policy, which is not intended to encompass other equipment such as bulldozers, scrapers, backhoes, cranes, drilling rigs, and welding machines, will be in effect until such time as it may appear practical to devise workable and easily enforceable procedures for obtaining compliance with respect to such owner-operators.

"Certified Transcript of Labor Payrolls" including names of such bona fide owner-operators need not show hours worked nor rates allegedly paid, but only operator's name and the notation "owner-operator." In this way, such individuals can be recognized as bona fide independent contractors NOT subject to contract labor standard provisions and can be distinguished from equipment operators who ARE subject to such provisions.

A ruling by the Chief Counsel for the Federal Highway Administration requires that data for each driver employee of truck owner-operators, regardless of number of trucks owned, must be shown the same as for any other laborer or mechanic. This means all such employees shall be listed on the payroll with a complete breakdown of hours worked, hourly rate paid, and all other required information according to "Required Contract Provisions" (Form FHWA-1273). In those instances where truck "owner operators" drive their own truck, payroll notation shall list them as "owner operator" with no further information relative to hours worked or wages paid. However, during multi-shift operations when an owner may hire a driver for a subsequent shift, a complete breakdown of information relative to daily hours worked, hourly rate paid, etc., must be shown on the payroll for "employee of owner-operator." This same procedure shall be followed if owners have several trucks for which they hire drivers. The only exception to showing a complete breakdown of information is when "owner operators" physically drive their own trucks.

## 9. Flaggers

The Department of Labor has determined that duties of flaggers are clearly manual and physical in nature and as such they are laborers or mechanics within the meaning of the Davis-Bacon Act. Flaggers who perform a dual function, such as flagger and journeyman, have to be paid journeyman's rate.

#### 10. Exempt Classifications

The Department of Labor has determined that classifications whose duties are generally not manual or physical in nature are not subject to Davis-Bacon regulations. The following classifications are considered exempt from Davis-Bacon regulations, provided that the employees are not engaged in other covered work:

- a. Ticket-taker
- b. Certified plant inspector, Quality Control technician
- c. Survey crew

#### 11. Corrections

When errors or omissions are discovered, contractor will be required to make necessary corrections by submitting a supplemental payroll transcript. Original transcript will not be returned. A Supplemental transcript shall be so labeled (e.g. No. 15 Supplemental). Examples of supplemental transcripts are shown in *Appendix 2-14*. Only employees affected by the errors or omissions are listed on the supplemental.

Contractors may be required to submit a notarized statement from the employee or a copy of both sides of a canceled check verifying that an adjustment has been made. Sufficient explanation shall be given to make any adjustment easily understood by all who may review a supplemental transcript.

#### 12. Starting, Suspending, Completing Payroll Transcripts

Payroll transcripts shall be submitted as soon as the contractor starts any project activity at the site of work. Transcripts shall be in sequential order starting with the number "1." When work on a contract is suspended, the last payroll transcript should be labeled "suspend" (e.g. No. 14 Suspend). This procedure shall be followed when work is resumed or completed (e.g. No. 15 Resume and No. 24 Final). Contractors, if they choose, may continue payroll transcripts during the suspension period with a notation on the transcript "No work during this period."

If contractor or subcontractor fails to submit required records or make them available, the Iowa DOT, FHWA, or DOL may, after written notice to contractor, take such actions as may be necessary to suspend further payments. Payment should be withheld on only the prime and subcontractor(s) who are in violation. Payment to subcontractors who submit correct payrolls should not be withheld because of mistakes of another subcontractor. Failure to submit required records upon request or make such records available may be grounds for debarment action.

#### 13. Records

Payrolls and basic records shall be maintained by each contractor and subcontractor during the course of the work, and shall be available for inspection at any time by authorized representatives of the contracting agency, DOL, or FHWA. Regulations and contract provisions require contractors to preserve employment records at least **THREE** years after completion and final settlement of the contract.

#### E. Completion of "Statement of Compliance"

A "Statement of Compliance" is printed on the backside of the "Certified Transcript of Labor Payroll" (Form 830176) and relates to wage kickbacks, payrolls, apprentices, fringe benefits, and falsification penalties. A copy is provided in *Appendix 2-14*. Contractors who

have permission to use their own payroll form must attach a copy of the "Statement of Compliance" to their payroll transcript. The statement of compliance is certified by the dated signature of the contractor or an authorized agent. Prime contractors must also sign all Statements of Compliance submitted by subcontractors.

#### F. Fringe Benefits

Davis-Bacon prevailing wages are made up of two interchangeable components - basic hourly wages and fringe benefits. Under Davis-Bacon, fringe benefits must be paid for all hours worked. The fringe benefits may be paid:

- In cash
- To an approved plan, fund or program
- Any combination thereof

Example:

The wage decision requires:

Basic hourly rate	\$10.00
Fringe benefits	<u>\$ 1.00</u>
Total prevailing rate	\$11.00

The contractor can comply by paying:

1. \$11.00 in cash wages
2. \$10.00 plus \$1.00 in pension contributions or other "bona fide" fringe benefits
3. \$ 9.00 plus \$2.00 in pension contributions or any combination of "bona fide" fringe benefits. In this example, overtime must be paid at the basic hourly rate of \$10.00

#### 1. Payment of Fringe Benefits to an Approved Plan

Contractors who pay fringe benefits to approved plans, funds, or programs in amounts not less than determined in applicable wage decision shall show on the face of their payroll the basic cash hourly rate and overtime paid to employees. Such contractors shall check 4(a) to indicate they are paying to approved plans, funds, or programs not less than the amount predetermined as fringe benefits for each craft. Any exception shall be noted in 4(c).

Included as "bona fide" fringe benefits, are benefits such as life insurance, health insurance, pension, vacation, holidays and sick leave. Credit may be taken as Davis-Bacon fringe benefits for training, provided the training program is approved by the U.S. Bureau of Apprenticeship and Training and the amount is reasonable (i.e. less than \$0.50/hr). No credit may be taken for any benefit required by federal, state or local law (i.e. worker's compensation, unemployment compensation or social security contributions). Also, travel expenses, meals, lodging, per diem expenses, uniforms, administrative expenses, union administrative dues, union working dues or industry promotional funds (i.e. Heavy Highway Advancement Fund, Labor-Management Work Preservation Fund) are not considered bona fide fringe benefits within the meaning of Davis-Bacon regulations.

## 2. Cash Payment of Fringe Benefits

Contractors who do not pay any fringe benefits to an approved plan, fund, or program must make cash payment to an employee. Payment shall not be less than the predetermined fringe benefit amount plus minimum wage rate. When fringe benefits are paid in cash, contractor shall check 4(b). Any exceptions shall be noted in 4(c). If part of the fringe benefits are paid to an approved plan, fund, or program and part in cash to an employee, then both 4(a) and 4(b) shall be checked.

## 3. Fringe Benefits and Overtime

Contracts covered by the Davis-Bacon Act are also subject to the Contract Work Hours and Safety Standards Act (CSHSSA) which requires overtime on covered projects at 1 ½ the hourly rate for hours worked in excess of 40 hours per week. The overtime rate is computed at the sum of 1 ½ times the basic rate plus the designated hourly rate for fringe benefits. It is not required that the hourly cash rate for fringe benefits be multiplied by a factor of 1 ½.

For example:

Davis-Bacon rate	\$10.00
Fringe benefit	\$ 2.00

The overtime rate of pay may be calculated by 3 methods:

1. \$10.00 (base)+ \$2 (fringe) + ½ \$10.00 (D-B rate) = \$17.00
2. \$12.00 (cash) + ½ \$10.00 (D-B rate) = \$17.00
3. \$ 8.00 (base)+ \$4 (fringe) + ½ \$10.00 (D-B rate) = \$17.00

## Project Engineer's Involvement

### A. Field Procedure

Early and complete labor compliance inspections are essential to the development of a sound compliance pattern on all contracts. At least one inspection shall be made on:

Contracts of short duration (six months or less)  
Prime contractors and each subcontractor performing more than \$10,000 of work (on any contract)

For contracts which extend over a longer period of time (greater than 6 months), inspections shall be made on approximate six months intervals. The project engineer is responsible to see that required labor compliance inspections are conducted and recorded. Whoever is assigned the compliance inspection needs to be thoroughly familiar with the regulations and instructions.

The Associated General Contractors of Iowa have implemented a Prevailing Wage Notification Program. Contractors participating in this voluntary program have established a proactive method for informing their employees of the Davis-Bacon wages and benefits to be paid on projects.

It is felt that these proactive measures by the contractor will allow the project engineer to eliminate the routine wage rate interviews and focus on complaints received from the employees. This procedure will not eliminate the need for posting the wage rate decision on bulletin boards or submittal of certified payrolls.

The list of contractors participating in the Prevailing Wage Notification Program is maintained on the AGCI's website (<http://www.agcia.info/pwnp.asp>). Contractors wishing to participate should contact the AGC of Iowa.

The project engineer's office staff review certified payrolls that have been submitted. In order to ensure that certified payrolls have been received for all subcontractors whose employees worked during a given week, the office staff must be advised of the subcontractors that worked. The project engineer's office should develop a process to provide this information between the inspection staff and office staff. This can be accomplished by having inspectors submit to the office a "Weekly Payroll Check" indicating which subcontractors worked during the week. The FieldManager inquiry, "Subcontractors Assigned to the Contract" can be used for the list of subcontractors.

If payrolls of the prime contractor are not received within 2 weeks of the period covered, the residency staff should advise the prime contractor, in writing, which payrolls have not been submitted and that progress payments for the work will be withheld. If payrolls of subcontractors are not received within 3 weeks of the period covered, the residency staff should advise the prime contractor, in writing, which payrolls have not been submitted and that progress payments for the subcontracted items will be withheld. In either case, communication with the contractor sooner than these time limits may be appropriate to inquire on the status of payrolls.

#### B. Wage-Rate Interview

When conducting a wage-rate interview, the following questions shall serve as a guide:

1. Is the employee receiving at least the specified wage rate for type and class of work performed?
2. Is proper allowance being made for fringe benefits and have the plans been explained to the employees?
3. Is work performed within the proper classification?
4. Are additional classifications necessary?
5. Does the employee have complaints as to hours, wages, and fringe benefits?

The findings of the wage rate interview are to be documented on the EEO Project Site Inspection/Wage Rate Interview form (Form No. 650170). Names of employees interviewed and date of the certified payroll transcript used are to be recorded on the interview form. If no discrepancies are identified during the interview, this should be so noted. In some instances, employees may not be knowledgeable of the pre-determined hourly wage rates and fringe benefits to which they are entitled. Furthermore, they may not be aware of the hourly wage rates and fringe benefits they have been paid or what work classification they have been assigned. In these cases, the interviewer should document on Form 650170 that the findings of the interview were inconclusive because the employee was unable to respond to the questions. Interview forms are to be retained in the project files. A copy of Form No. 650170 is included in *Appendix 2-10*.

#### C. Violations and Complaints

Any violations discovered, or complaints received, shall be investigated promptly. If a contractor is found to be in violation of the contract's labor standard provisions, a

complete report shall be written giving details of violation(s) and results of the investigation.

The report shall also include an amount of money, if any, found to be due to employees and the number of employees who shall receive these payments. A copy of this report shall be sent to the Office of Construction.

#### D. Office Procedure

##### 1. Payroll transcripts shall be checked to verify that:

Information in the heading is correct and complete.

Titles designating crafts correspond correctly with those in wage schedule for that particular contract. No others may be used unless a supplemental wage determination has been secured by the contractor. If a listed craft is not included in the wage decision, the contractor shall be advised that a supplemental wage rate must be requested.

Rate per hour is not less than that shown for each craft in the wage schedule for that contract, and overtime rates (if any) are at least one and one half times the regular base rate, plus any fringe benefits.

Exception: Contractors have the option to reduce basic cash wage by the excess payment of fringe benefits. Fringe benefits may be in cash, by contribution into a bona fide fringe benefit program, or a combination of both.

Fringe benefits (if any) have been provided and appropriate paragraph is checked on the Statement of Compliance.

The Statement of Compliance is complete and properly signed. Multiple-sheet transcripts will be considered certified if the necessary information and dated signature are shown on the last sheet of that packet.

Signature of the prime contractor appears on all payrolls submitted from subcontractors.

Transcript is submitted within one week after the end of a payroll period. ESTIMATES SHALL BE WITHHELD until such time as these requirements are fulfilled.

An occasional spot check to determine accuracy of computations.

Checking payroll transcripts can be time consuming. The primary objective is to ensure the proper wage rate is being paid. It is important to review the first 3-4 payrolls received from contractors and subcontractors carefully to be sure information is complete and accurate. Once it is apparent that wage rates used are appropriate, it is not necessary to check each line of each payroll. However, occasional spot checks should continue to be made, paying particular attention to new crafts listed. If problems are noted, subsequent payrolls must be checked until problems are resolved.

##### 2. Corrections

When errors or omissions are discovered on transcripts, contractors will be advised. Necessary corrections must be made on a supplemental payroll transcript (See example in *Appendix 2-14*). The original payroll transcript will NOT be returned to the contractor.

##### 3. Disposition

Payroll transcripts shall be retained in the project engineer's project file for at least 3 years following final federal reimbursement. The date of final federal reimbursement is provided by the Office of Finance. A link to a database of

"Reimbursement Dates for Federal-Aid Projects" is available on the Contract Administration section of the Office of Construction DOTNET page: [http://dotnet/construct/construct\\_body\\_index2.asp](http://dotnet/construct/construct_body_index2.asp). Because transcripts contain employees' personal information, including Social Security numbers, the transcripts are to be shredded, or other secure destruction method, prior to their disposal.

### **Supplemental Wage Rates**

If, after a letting, the contractor determines that the wage decision for the contract does not include wage rates for one or more work classifications to be used, the contractor must request additional classification(s) and wage rate(s). A letter to the Office of Construction, with a copy to the project engineer, shall include wage decision number, contract ID number, work classifications requested, and intended rate of pay including fringe benefits.

Approval from the U.S. Department of Labor usually takes at least 30 days, so an early request by the contractor is necessary. Final payment to the contractor shall not be held up pending a response from the Department of Labor, if the contractor has made timely submittals for additional wage classifications and there are no DOL investigations on file.

## **2.25 SUBCONTRACTS**

### **Subcontract Request And Approval**

Contractors shall submit subcontract request forms to the Office of Contracts with the signed contract for DOT administered contracts. The forms shall be submitted electronically using software furnished by the Office of Contracts, for contracts that exceed \$600,000.

The steps in the process for DOT projects are:

Contractor will submit subcontract request forms to the Office of Contracts. Prior to approval, Contracts' staff will verify subcontracted amount limitations, Form 102115 if required, current EEO/AA policy on file, etc. Contracts' staff will enter the data into TRNS\*PORT. When the information is entered, the request is considered approved, even though the form will not be physically signed. The original subcontract request form will be kept on file in the Office of Contracts. Contracts' staff will notify contractors only if a subcontract request form is disapproved or if information is missing from the form.

All subcontracts are subject to the requirements of *Specification 1108.01, FHWA-1273* (when included in the contract documents), and approval of contracting authority before they are recognized as valid.

A blank copy of the "Subcontract Request and Approval" (Form 830231) is provided in *Appendix 2-16*. An electronic version (Word and PDF format) is available on the Iowa DOT's website (<http://www.iadotforms.dot.state.ia.us/iowadotforms/Library.aspx>)

#### **A. Contractor's Requirements**

The prime contractor must initiate a request to sublet items in the contract. For contracts that exceed \$600,000, the request shall be submitted electronically using software furnished by the Office of Contracts. For other contracts and for submitting additional requests during the course of a project, Form 830231 shall

be used. "Subcontract Request and Approval" (Form 830231) shall include the following information:

1. Subcontractor's name, mailing address, and telephone number
2. Prime contractor's identification number (used on employer's quarterly federal tax return, U.S. Treasury Department Form 941)
3. A check off indicating whether or not the subcontractor is registered with the Division of Labor
4. Estimated starting and completion dates of the subcontractor's work
5. Items to be subcontracted with line numbers, item descriptions, quantities, unit prices, and amounts of non-specialty and/or specialty items. Unit prices shown must be the contract unit prices except when "labor only" or "place only" items are subcontracted. In such cases, indicate with a notation in the "Description" portion that the "item unit price" is approximate.

When a subcontracted item is used to satisfy a DBE goal, the amount paid to a DBE must be shown in Column "A." Note the additional guidelines on the administration of DBE subcontracts that follow.

6. It has been common practice for subcontractors to include appropriate mobilization costs in their unit bid prices. Prime contractors have encouraged this practice. Because of changes resulting from *Specification 1109.16*, Standard Contract Clauses, adjustment in unit prices due to overruns or underruns will have to meet the test of "significant change." To reduce the risk resulting from changes in quantities which are not subject to price re-negotiation, appropriate use of the mobilization item for subcontractors is encouraged. On all subcontract requests, mobilization must be listed for the item even if the dollar amount listed/subcontracted is zero.

7. When specific areas are sublet, such as a section of grading or paving, station limits shall be listed.

8. On structure contracts, work to be sublet shall be clearly identified by design numbers on culverts and bridges, pier number on bridges, etc.

9. Use the back of the "Subcontract Request and Approval" (Form 830231) only when the list of items subcontracted will not fit in the space provided on the front.

10. "Subcontract Request and Approval" (Form 830231) includes the following statement: **"It is clearly understood by both the prime contractor and the subcontractor that all terms of the prime contract shall apply."** When "Required Contract Provisions" (Form FHWA-1273) are part of the contract documents, the prime contractor is responsible to see that a copy of this form is physically attached to the subcontractor's copy of all subcontracts. The prime contractor is responsible for fulfilling terms of the contract, including construction work completed by approved subcontractors, plus completing all required forms or reports. Refer to *Specification 1108.01* for requirements and limitations on contract subletting.

11. All "Subcontract Request and Approvals" (Form 830231) shall be signed by the prime contractor.

12. Except for trucking by DBE firms, "Subcontract Request and Approvals" (Form 830231) are not required for trucking of materials. Trucking by DBE firms shall be documented on a "Subcontract Request and Approval" form, but the dollar value will not be used to determine the amount subcontracted. The contractor (or subcontractor) shall advise the project engineer in writing, on a daily basis, the names of independent companies that will be hauling materials on the "site of work". This will allow the project engineer to monitor trucking companies for compliance with Davis-Bacon requirements.

#### B. Project Engineer's Involvement

Information regarding approved subcontracts is available in the mainframe application, "SUBCDBE" that is accessed in TSO. Instructions for using the program are available as a Word document in the Office of Contracts folder on the Local Area Network at W:\Highway\Contracts\FieldInformation\ Subcontracts.

While contractors submit subcontract request forms to the Office of Contracts with the signed contract for DOT administered contracts, they are to submit additional requests or modifications to existing requests to the project engineer. The project engineer forwards the form to the Office of Contracts for verification of information and entering into the database. The additional/modified requests are submitted to the project engineer in order to minimize delays in providing the information to field staff.

The project engineer is responsible to make sure a subcontractor does not perform more work than described on the approved subcontract.

Occasionally, contractors may have to rent additional equipment and hire extra employees to complete their work. However, when the entire crew and equipment of another contractor is used to complete work, the prime contractor is violating the intent of *Specification 1108.01* and is considered brokering a project. If the project engineer's staff observe work performed by anyone other than the approved subcontractors, the Office of Construction should be notified. Assistance will be provided to investigate the circumstances.

At the preconstruction conference, it will be beneficial to discuss methods of keeping subcontractors informed of the work status. Although the prime contractor is responsible to make progress payments to a subcontractor, numerous incidents in the past have indicated a lack of timely progress payments from the prime contractor to the subcontractor. Subcontractors may request the project engineer to furnish them a copy of a progress voucher for informational purposes.

### **Subcontractor - Disadvantaged Business Enterprise (DBE)**

#### A. Contract Award

On Federal-aid projects with predetermined goals, all bidders will be required to submit a "Statement of DBE Commitment" (Form 102115) with their bid. A blank copy is provided in *Appendix 2-17*. This form identifies DBE subcontractors, suppliers, transporters, and/or manufacturers that will be used to satisfy the DBE goal. Form 102115 shall also include work or items to be subcontracted, cost of this work, percent applicable to DBE goal, and dollar amount committed to each DBE.

Upon execution of a contract, the prime contractor becomes committed to those DBEs listed on Form 102115. This commitment is therefore a contractual arrangement between

the State and the prime contractor with the same enforcement as any other provision specified in the contract documents. A prime contractor is required to enter into a contractual arrangement with each DBE listed by formally executing a written subcontract agreement specifying the work to be performed and appropriate compensation for that work. This two-tier process, which contractually obligates the prime contractor to both the State and each participating DBE, formalizes implementation of all DBE contract provisions.

The Office of Contracts will review the low bidder's "Statement of DBE Commitments" (Form 102115) to assure that certified DBEs are being used. After review, the DBE commitment information will be posted in the Office of Contracts' folder on the Local Area Network as a "Word" document for each respective letting at W:\Highway\Contracts\FieldInformation\DBECommitments.

#### B. Subcontract Approval

For added or modified subcontracts, the project engineer must compare the "Subcontract Request and Approval" (Form 830231) submitted by the contractor to the contractor's DBE Commitment. This information is available as a Word document in the "DBE Commitment" folder in the Office of Contracts' folder at W:\Highway\Contracts\FieldInformation\DBECommitments. Prime contractors must subcontract the work to the certified DBE subcontractor. Any request to subcontract work for less than the total amount shown on the "DBE Commitment" document shall not be approved without written approval from the Office of Contracts.

##### 1. Temporary Employees and Leased Equipment

A DBE may lease equipment consistent with standard industry practice provided a rental agreement, specifying terms of lease arrangement, is approved prior to a DBE starting work. If equipment is of a specialized nature, the lease may include an equipment operator. If this practice is generally acceptable within the industry, then the operator can remain on lessor's payroll. For equipment that is not specialized, a DBE is expected to provide the operator and be responsible for all payroll and labor compliance requirements.

Operation of equipment shall be subject to full control of the DBE. Such an arrangement shall be short term and involve a specialized piece of equipment used at the job site.

The Office of Contracts maintains an electronic roster of certified DBE trucks in their folder on the Local Area Network.

##### 2. Commercially Useful Function

A commercially useful function exists when:

DBE is totally responsible for execution of a distinct element of work by actually performing, managing, and supervising the work involved in accordance with the contract documents, normal industry practice, and That DBE firm receives due compensation as agreed upon for the work performed.

To meet commercially useful function requirements of the regulations and contract, the following statements are applicable:

DBE firm must manage the work contracted. Management shall include scheduling work operations, ordering equipment and materials (if

materials are part of the contract), preparing and submitting payrolls and all other required reports and forms, as well as hiring and firing employees, including supervisory employees.

DBE shall perform work with employees normally employed by and under the DBE's control. In all instances, the DBE shall be responsible for payroll and labor compliance requirements concerning all workers under their control. DBEs may use other means to perform work on a limited basis when the contract requires specialized knowledge, skills, or equipment. A DBE may be allowed to augment their work force with personnel which normally work for another firm, if requested and approved by the Office of Contracts prior to commencing work.

DBE must supervise daily operations of their portion of contracted work. The only two acceptable ways for a DBE to supervise daily operations are:

- 1) The DBE owner may act as the superintendent and directly supervise work, or
- 2) A skilled and knowledgeable superintendent employed and paid wages by the DBE must directly supervise that work.

If the latter is used, the DBE owner must be actively involved in making operational and managerial decisions of the firm. Basically, this means that all administrative functions shall be performed by personnel responsible to, or employed by, the DBE at facilities or locations under the DBE's control.

DBEs shall supervise and perform contracted work with workers on their payroll and under their direct supervision. The DBE and their superintendent must, on a full-time basis, supervise and control contracted work. Supervision of contract work by personnel normally employed by another contractor or by personnel not under the DBE's control constitutes failure to perform a commercially useful function.

*The DBE Specifications* includes minimum requirements for DBE manufacturers, dealers, transportation services, and subcontractors. DBE subcontractors that indicate work which will be performed by employees of another firm or with leased equipment should be questioned. The Office of Construction shall be notified in all cases where there is a question of commercially useful function before that subcontract is approved.

The Office of Contracts will assist in determining requirements of a commercially useful function for DBE suppliers and manufacturers.

### 3. Partial Subcontract of an Item

It is not unusual for DBE subcontractors to be involved in only part of a contract item. This is to be documented on Form 830231 by clearly stating in the "Description" column exactly what portion of an item is to be accomplished by the DBE and the corresponding dollar amount.

For conditions where a subcontract does not exist but a DBE firm is manufacturing, supplying, or trucking materials to the job site, terms of the agreements shall be described in Form 830231. This information is documented on Form 830231 so the project engineer can be assured that a prime contractor is meeting commitments previously stated on *Form 102115*. The work

documented on the form shall be assigned to a contract item. A typical example may be for trucking only of hot mix asphalt and should be included as: "HMA Surface-Trucking Only-Lump Sum"; Quantity =1; Unit Price= \$30,000. This dollar value will not be used to determine the percent subcontracted as specified in *Specification 1108.01*.

Inspection staff must monitor work performed and periodically inform the project engineer as to which individuals and equipment actually worked, so payrolls can be spot-checked.

### C. Construction Period

The project engineer and inspectors must routinely review work subcontracted to DBE subcontractors to assure work is being performed as intended and that DBEs are performing a commercially useful function. Where work is performed by any other contractor or with equipment not owned by the DBE, the inspector shall issue a noncompliance notice citing violation of the Specification for Disadvantaged Business Enterprises, Article 1102.17. This noncompliance shall be immediately reported to the project engineer, who will in turn notify the Office of Construction.

Prime contractors will be given credit toward the DBE contract goal only when a DBE performs a commercially useful function. The requirements for a commercially useful function are outlined in the previous section "Subcontract Approval."

A DBE may lease equipment consistent with standard industry practice provided a rental agreement, specifying terms of lease arrangement, is approved prior to a DBE starting work. If equipment is of a specialized nature, the lease may include an equipment operator. No credit will be given for the cost of equipment leased or rented from the prime contractor.

DBEs shall negotiate cost, arrange for delivery, and pay for materials and supplies required for their portion of the contract work. Invoices for materials shall be invoiced to the DBE firm and not to a prime contractor.

No credit shall be allowed toward the DBE goal for cost of materials placed by a DBE subcontractor when payment is made by deducting this payment from the prime contractor's payment to the DBE.

Project engineers must evaluate and document performance of the DBEs activity on all projects as part of the normal project contract compliance monitoring. On-site project monitoring by field personnel shall include employee assignments, equipment used, and supervision of the work as indicated on the subcontract form. All irregularities must be documented in the field books, immediately reported to the prime contractor, and the Office of Construction.

Project engineers shall not allow a prime contractor or another contractor to perform work that has been committed to a DBE subcontractor without written approval from the Office of Contracts.

In situations where a DBE subcontractor cannot (or is not) performing, the prime contractor must follow all steps described in the specifications. Upon receipt of a signed statement from the DBE and documentation where the prime contractor will satisfy the goal with other items or DBEs, the project engineer may recommend to the Office of Contracts that the commitment be waived and the required goal adjusted. The Office of

Contracts must provide written approval of all substitutions before any changes in subcontracted work are performed.

#### D. Post Construction

Prime contractors shall submit a completed "Certification of DBE Accomplishment" (Form 102116) with the final project documents for all Federal-Aid contracts where a DBE subcontractor performed work and shall list the dollar amounts paid to all DBE firms on the contract. If work was not performed by DBE firms, the form is not required to be completed. A blank form is provided in *Appendix 2-19*. This form certifies the dollar amount paid to each DBE. If the contract had a DBE commitment, project engineers must compare the dollar amounts on Form 102116 to dollar amounts committed to DBE's as shown in the "DBE Commitment" document that is located at W:\Highway\Contracts\FieldInformation\DBECommitments.

The prime contractor will be assessed a penalty by change order for failure to satisfy DBE commitments. If the contractor's commitment was greater than the goal, the penalty will be considered the difference between the actual dollars paid and the goal. This penalty may be reduced when conditions described in the specifications are satisfied (e.g. underrun of quantities, deletion of an item, etc.). Project engineers must include a written explanation describing situations, background, and findings which resulted in reductions of adjustments. This explanation shall be attached to Form 102116. The DCE shall review these adjustments prior to signing Form 830436.

When the prime contractor is a certified DBE contractor, Form 102116 is not required to be submitted upon completion of the contract.

Unique problems have been noted with the goals and variables of the DBE program. Documentation of any activity related to the program is important and must not be overlooked. Record all telephone or personal contacts noting time, place, and details.

#### **Subcontractor - Traffic Control**

Traffic control items of a contract may require designation of a subcontractor to perform the work depending on how much of the total item is performed. Some guidelines are:

A. A "Subcontract Request" (Form 830231) will NOT be required if:

1. Traffic control is a lump sum bid item and the traffic control supplier:

- Furnishes the traffic control devices
- Delivers materials to the "first use" location
- Sets devices up at the "first use" location
- Keeps equipment operational by being on call from the contractor or through periodic visits to the site
- Picks up devices when a project is completed

2. Traffic control signals are bid as furnish and install and the traffic control supplier:

- Furnishes the traffic control devices
- Delivers materials to the "first use" location
- Picks up devices when a project is completed

3. Traffic control bid as incidental to other work will not require a Subcontractor Request.

B. A "Subcontract Request" (Form 830231) shall be required if:  
The traffic control supplier performs the entire item of traffic control (lump sum, furnish and install) and provides regular surveillance, cleaning, routine maintenance and repair of devices, or changes the system between stages.

#### **Prompt Payment to Subcontractors**

##### **Progress Payments to Subcontractors**

Contractors are required to pay subcontractors for satisfactorily completed work within 7 calendar days after receiving payment (or should have received payment) from the contracting authority.

#### **Certification of Subcontractor Payment**

For all contracts let on or after April 18, 2006, the Contractor shall provide to the Engineer a "Certification of Subcontractor Payment" form (Form 518002) with the signed final voucher. The form shall include the names of all approved subcontractors, date the subcontractor's work was completed, date of final payment to the subcontractor and the number of days between when the work was completed and paid. The contractor shall provide an explanation for instances that exceed 30 days. The "Certification of Subcontractor Payment" form is not required to be submitted if there were no subcontractors on the contract. An example of the form is included in Appendix 2-23. Form 518002 is available at:  
[http://www.iowadot.gov/construction/contract\\_admin/cert\\_of\\_subcon\\_pmnts.html](http://www.iowadot.gov/construction/contract_admin/cert_of_subcon_pmnts.html).

## **2.26 USE OF EXCESS PROPERTY OR HIGHWAY RIGHT-OF-WAY**

#### **Contractor's Use of Excess Property**

A contractor who wishes to use excess property owned by the state in connection with a highway construction project must obtain a lease agreement from the Iowa DOT Office of Right of Way. Excess property is defined as property, acquired by fee title, outside of the "normal" limits of the highway right-of-way line, but excluding borrow sites.

#### **Contractor's Use of Borrow Pits for Temporary Plant Sites**

Contractors occasionally request to set their temporary paving or crushing plant in the project's borrow pit. Action required to allow use of a borrow site depends on:  
A. Method used to acquire borrow site (i.e. Temporary Easement vs. Fee Title) and  
B. Need for additional borrow material

Borrow site is acquired by Temporary Easement.

Contractor shall obtain the following two items:

1. Written agreement from property owner allowing use of site as a temporary plant.

Separate agreement is required because agreement for temporary easement obtained by the Department is rights for only borrow material and does not give the Iowa DOT authority to allow other uses. A copy shall be furnished to the project engineer.

2. Permission from the project engineer.

Borrow site is acquired by Permanent Easement or Fee Title.

If additional borrow material is not required for completion of project, contractor shall obtain lease agreement from Iowa DOT Office of Right of Way.

If additional borrow material is required for completion of project, contractor shall obtain permission from project engineer. No lease is required.

In all cases, the contractor is responsible for obtaining a storm water discharge permit for their operations.

### **Obtaining a Lease Agreement**

To initiate a lease agreement, the contractor shall submit a letter of request to the project engineer. The letter shall include a plat or map of the affected area, date when the contractor needs the property, and the intended usage.

Upon receipt of a written request from the contractor, the project engineer shall prepare and forward to the Office of Right of Way (Property Management Section), a "Request to Lease" letter along with a plat or map of the area. A sample letter is shown in *Appendix 2-20*. The Property Management Section will determine a market rental fee for use of the property, prepare a plat and a lease agreement, obtain bond and signature on lease from the contractor, and furnish the project engineer and contractor with a copy of the signed lease. Whenever any right-of-way is leased in this situation, the contractor will be responsible to initiate and provide a storm water permit for their operations in that area.

Contractors must notify the project engineer ten (10) days before vacating the premises to allow time for inspection.

After a vacate notice is received, the project engineer will inspect the condition of any contractor leased excess property. Terms of the lease forbid release of any fuel, oil, grease, any other petroleum products, hazardous materials, or hazardous substances within the leased area or on any adjacent lands. If an area is satisfactory, the project engineer must notify the Office of Right of Way (Property Management) who will release the bond. If an area is not satisfactory, the project engineer will notify the Office of Right of Way (Property Management) and explain any damages. Property Management will make a determination of charges and handle release of the bond. The Property Management section encourages project engineers to provide dollar estimates of any damage.

Both the letter of request and notification of release shall be forwarded through the District Office.

### **Contractor's Use of Highway Right-of-Way**

Occasionally a contractor requests permission to establish a plant site or a material stockpile on highway right-of-way. In reviewing these requests, the project engineer must consider the impact of vehicles (trucks or equipment) entering and leaving these sites on public traffic. In situations where these vehicles must enter an open ramp or lane at a point where access is not allowed to the general public, the request shall be denied. On two-lane roads if an access permit can be obtained and public convenience and safety is not adversely affected, the request may be approved. On closed sections of the highway, right-of-way may be used as long as trucks can enter and leave the closed road safely.

Many times a contractor will have to exit a controlled-access facility to deliver materials such as mulch, subdrain, guardrail, etc. These stockpiles may be allowed as long as the material is to be used in the general vicinity where stockpiled.

NOTE: In these situations, the contractor will be responsible to initiate and provide a storm water permit for their operations in that area.

## 2.27 "CONTRACT QUANTITY AGREEMENT" - FORM 830230

A contractor may request final payment for an item based on contract quantities. When a contract quantity request is received from a contractor, the project engineer shall verify that items included on the request are not items to be paid as contract quantity by *Specification 1109.01*. If there are no contractual conflicts, the project engineer will prepare a "Contract Quantity Agreement" (Form 830230) and send it to the contractor for signature. A blank copy of this form is provided in *Appendix 2-21*. After the contractor returns the signed form, the project engineer shall sign and file it in the project file.

## 2.28 RELEASE OF RETAINED FUNDS

Chapter 573 of the Iowa Code was amended, in part, by Chapter 26 during the 2006 legislative session. The changes include new requirements for the release of retained funds. For contracts let after January 1, 2007, Prime Contractors are required to certify that they have given notice to all subcontractors and suppliers of their intent to request early release of retained funds. The notice must be provided 10 calendar days before the release of retainage is requested. Chapter 26 allows the Contractor to request release of retainage when the contract is substantially complete or after the contract is certified complete by the Engineer. For DOT contracts, we have interpreted that to be after the DCE signs the "Statement of Completion and Final Acceptance of Work" (Form 8730435).

In consideration of these new Contractor responsibilities, the Contractor should initiate any request for release of retainage. The Project Engineer should not initiate release of retainage.

Procedure and assigned responsibilities:

### **Contractor**

Submit a signed "Request for Early Release of Retained Funds" form (Appendix 2-22)

For contracts let after January 1, 2007, the request shall include a sworn statement, signed by the Contractor, that the notice was given to all subcontractors and material suppliers at least 10 calendar days prior to the date of the request. The "Request for Early Release of Retained Funds" form shall be used (Appendix 2-22).

Shall provide a statement to every subcontractor and material supplier that the Contractor intends to request release of retainage. In accordance with Section 26.13, the notice shall be similar to the following:

*You are hereby notified that name of contractor will be requesting an early release of funds on a public improvement project or a highway, bridge, or culvert project designated as [name of project] for which you have or may have provided labor or materials. The request will be made pursuant to Iowa Code section 26.13. The request may be filed with the [name of governmental entity or department] after ten calendar days from the date of this notice. The purpose of the request is to have [name of governmental entity or department] release and pay funds for all work that has been performed and charged to [name of governmental entity or department] as of the date of this notice. This notice is provided in accordance with Iowa Code section 26.13.*

### **Project Engineer**

Acting on the contractor's request the engineer will:

1. Confirm criteria has been satisfied including receipt of the signed statement from the Contractor for contracts let after January 1, 2007.
2. Contact Office of Finance and inquire if any claims are on file.
3. Review status of working days and calculate amount of possible liquidated damages.

The amount of money which is to be retained should be not less than the sum of:

Liquidated damages

Twice the amount of all claims on file

Possible overpayments

"Incidental" items which remain to be completed

4. Submit completed "Request for Early Release of Retained Funds" form to the DCE. A copy of this blank form is in *Appendix 2-22*. Do not submit the FieldManager Retainage Release voucher (RR) at this time. Office of Construction staff will contact the project engineer and advise when the voucher is to be transmitted.
5. Provide the Contractor a written explanation, within 30 days of their request, for denying any amounts requested.

### **District Construction Engineer**

The DCE reviews Request form and, if approved, forwards to the Office of Construction.

### **Office of Construction**

The Office of Construction will advise the Project Engineer after the appropriate time period has elapsed to submit an electronic voucher in order to generate the release of retained funds.

Other items to note are:

No entries for item progress or working day charges or approval of change orders are allowed on the Retention Release voucher

For multiple project contracts, each project must have a checkmark in the "create voucher" box in the voucher tab of the estimate screen.

## **2.29 CONTRACTOR REQUIRED FINAL DOCUMENTATION**

### **Statement of Materials and Labor**

Effective May 22, 2007, the "Statement of Materials and Labor (Form FHWA-47) was no longer required to be submitted. This includes all previously let contracts.

### **Contractor's Statement of Sales or Use Tax**

The requirement for Sales and Use Taxes to be paid by the contractor on construction contracts is dependent upon the letting date and the jurisdiction of the contracting authority. Unless the contract documents specify otherwise, Sales Tax procedures are to be administered as follows:

### **Contracts let by the Iowa DOT Office of Contracts on or after October 21, 2003:**

Materials purchased for all construction contracts let by the Iowa DOT Office of Contracts on or after October 21, 2003 will be exempt from sales and use tax, including local option taxes. This exemption applies only to materials that are components of the final project. The contractor and subcontractors will be issued a Sales Tax Exemption Certificate from the Office of Contracts that is specific for a contract. Refer to Iowa Department of Revenue and Finance's website for additional information <http://www.state.ia.us/tax>.

**Interstate, primary and MP projects let by the Iowa DOT Office of Contracts after October 26, 1999 and prior to October 21, 2003:**

The contractor is required to pay sales and use tax on all items that are a component part of the completed contract. For these contracts, the refund of sales and use tax to the Primary Road Fund is accomplished through an estimating procedure and the contractor is not required to submit a "Contractor's Statement of Sales or Use Tax" (Form 181321).

**Interstate, primary and MP projects let by the Iowa DOT Office of Contracts prior to October 26, 1999 and all institutional roads (BR, MAS, DC, DHS, NG, SP), MB, secondary and city projects let by the Iowa DOT Office of Contracts prior to October 21, 2003:**

The prime contractor and each subcontractor are required to file, with the project engineer, a "Contractor's Statement of Sales or Use Tax" (Form 181321, formerly ST-172). Statements are not required to be submitted for DBE firms supplying, manufacturing, or trucking materials to a project. In these cases, the Subcontract Request form serves only to document the terms of the DBE commitment and not as a subcontractor approval. A blank copy is provided in *Appendix 2-25* and additional copies are available from the Office of Finance. This form is used to list those purchases of items that become component parts of a project and on which sales tax, local option tax, and/or use tax was paid to the State of Iowa. Do not use such terms as "supplies" or "materials" when completing Column #2, but instead list names of each item, i.e. concrete pipe, reinforcing steel, aggregates, etc.

Form 181321 has separate columns for Iowa state sales tax and Iowa local option tax. If paid, local option tax shall be reported in the proper column, rather than combining with the state sales tax amount.

When two or more projects are included in one contract, the contractor and subcontractors may prepare one form listing all projects involved and material that was incorporated into those projects. Duplicate copies must be prepared for each project.

Two copies of Form 181321 for each project are to be sent to the project engineer by the prime contractor and any subcontractors. Project engineers will not forward the final pay voucher until two properly completed copies of Form 181321 have been received. When one contract has 2 or more projects and these projects have been combined on one Form 181321, note on that form the information is duplicated and list the projects.

The Department of Revenue disallows the entire refund claim on a contract (prime contractor and all subcontractors) and returns Form 181321 if their initial review indicates an omission or discrepancy on any "Contractor's Statement of Sales or Use Tax" completed. Two problem areas on Form 181321 which most frequently prompt Department of Revenue to reject a refund claim are:

The contractor or subcontractor lists "supplies" or "miscellaneous supplies" in the "Type of Material" column. Supplies such as rags, boxes, etc. do not become an integral part of the project and, as such, are not eligible for refund. Purchases of form lumber, explosives, fuel and lubricants used in operation of equipment shall not be reported since they do not become a component part of the project. Contractors must specifically identify the type of material purchased and cannot combine several types of normal cost material into one line entry with a general description.

Contractors and subcontractors must insert "yes" or "no" in the column headed: "Did supplier collect Iowa sales or use tax?" If answer is "no," the contractor must list and explain who paid and when.