



December 14, 2020

ALL AGENCY MEMORANDUM NUMBER 236

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

FROM: Cheryl M. Stanton, Administrator *Cheryl M Stanton*

SUBJECT: Updating the \$1 Million Threshold for Multiple Davis-Bacon Wage Determinations

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The purpose of this All Agency Memorandum (AAM) is to update the \$1 million threshold that contracting agencies and the Wage and Hour Division (WHD) use to determine whether more than one wage determination applies to a project because there is substantial construction in a category of construction that is different from the overall project. When a project has construction items in a different category of construction, contracting agencies should generally apply multiple wage determinations when the cost of the construction exceeds either \$2.5 million or 20% of the total project costs.

In 1978, WHD issued AAMs 130 and 131 to provide guidance to contracting agencies regarding the incorporation of wage determinations into federal or federally funded contracts subject to the Davis-Bacon labor standards provisions. AAM 130 explains the four general categories of construction for which WHD issues wage determinations (building, residential, highway, and heavy) and provides a brief description of the projects that are generally included in each category. AAM 131 provides further guidance for agencies when a project in one category of construction also includes “construction items that in themselves would be different categories of construction.” AAM 131 at 1-2. AAM 131 explains that when a project includes construction items in an additional category of construction, an additional wage determination for that category should generally be applied to the project if “the construction items are substantial in relation to project cost.” *Id.* (emphasis added). A single wage determination applies only “if construction items in a second category of construction are ‘incidental’ in function to the over-all character of a project . . . and if there is not a substantial amount of construction in the second category.” *Id.* (emphasis in the original).

AAM 131 provides two guidelines for determining whether the cost of construction items in a different category is substantial. First, AAM 131 states that construction items in a different category are substantial if they comprise “more than approximately 20%” of the total project cost. AAM 131 at 2; see also AAM 130 at 2 n. 1. Second, AAM 131 states that “when a project is very large, items of work of a different character may be sufficiently substantial to warrant a separate schedule even though these items of work do not specifically amount to 20 percent of the total project cost.”

Since 1987, WHD has used \$1 million as an indicator for whether the cost of construction items in a different category is substantial despite not exceeding 20% of total project costs. See Prevailing Wage Resource Book, Tab 6, Davis-Bacon Wage Determinations, at 11 (2015) (providing for multiple wage determinations if “items that fall in a separate type of construction will comprise at least 20% of the total project cost and/or cost at least \$1 million”); see also Central Energy Plant, ARB Case No. 01-057, 2003 WL 22312694, at \*9 n.15 (ARB Sept. 30, 2003); WHD Field Operations Handbook Ch. 15, § 15f02(b) (2016).

Although the \$1 million threshold has served as a useful benchmark for agencies in determining when multiple wage determinations should be applied to a project, the cost of construction projects has increased in the past thirty years. As a result, \$1 million is no longer a reliable indicator of when construction items in a different category are substantial despite not exceeding 20 percent of total project costs.

WHD has decided to update its guidance on determining when construction items in a different category are substantial, and has determined that the \$1 million threshold should be updated to account for inflation and rising costs if it is to continue to serve as a useful point of reference. To establish the current equivalent of the original \$1 million threshold, WHD considered sources including the Bureau of Labor Statistics Producer Price Index and industry specific sources such as the Turner Actual Cost Index, U.S. Census Price Index for Single Family and Multi-Family Houses under Construction, National Highway Construction Cost Index, and the Bureau of Reclamations Construction Cost Trends. The result of this analysis indicates that an appropriate benchmark, accounting for inflation and rising costs, is \$2.5 million.

Accordingly, in determining whether a project includes a substantial amount of construction items in a second (or third or fourth) category of construction, contracting agencies should determine whether the cost of the construction items in the different category of construction exceeds either \$2.5 million or 20% of the total project costs. To ensure that the monetary threshold continues to be a reliable indicator of when construction items in a different category are substantial, WHD will re-evaluate annually whether an update to the monetary threshold is warranted by inflation and rising costs.

When work in a different category exceeds either \$2.5 million or 20% of costs, a contracting agency should generally apply the wage determination for the different category in addition to the wage determination for the overall project. WHD will consider on a case-by-case basis exceptional situations, where the cost of construction items in a different category is not significantly greater than \$2.5 million or 20% of the total project cost, and the agency can demonstrate that applying multiple wage determinations would not reflect local area practice or would otherwise be inappropriate.

In such circumstances, or if any other questions arise as to whether a project requires additional wage determinations, the contracting agency should consult with WHD as soon as possible. Questions should be directed to the Division of Government Contracts Enforcement, Wage and Hour Division, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, D.C. 20210; telephone number (202) 693-0064.