



STATE OF NEVADA
DEPARTMENT OF TRANSPORTATION
1263 S. Stewart Street
Carson City, Nevada 89712

BRIAN SANDOVAL
Governor

RUDY MALFABON, P.E., Director
In Reply Refer to:

POLICY MEMORANDUM

DATE: August 4, 2015
TO: Assistant Directors; District Engineers; Division Heads; Resident Engineers
FROM: Rudy Malfabon, Director *Rudy Malfabon*
SUBJECT: NDOT Policy Memo 15-01
CERTIFIED PAYROLL COMPLIANCE FOR PRIME CONTRACTORS,
SUBCONTRACTORS AND SERVICE PROVIDERS

Effective immediately, the Director is implementing the policy below regarding checking of prime contractors', subcontractors' and service providers' certified payrolls on construction contracts.

1. PURPOSE

To establish policy, procedures and responsibilities to ensure the timely entering, monitoring and reviewing of weekly certified payroll submission requirements for all federal and state funded highway construction contracts.

2. POLICY

It is the policy of the NDOT to review and audit certified payroll information entered into the electronic payroll submission system (LCPTracker) in accordance with the Certified Payroll and Compliance Manual. These procedures are considered necessary to ensure compliance with federal and state regulations.

3. SCOPE

This policy is applicable to the Director's Office, District Engineers, Construction Division, Resident Engineers, Contract Compliance and Project Accounting.

4. RESPONSIBILITY

State funded contracts greater than \$250,000 and federally funded contracts greater than \$2,000 require the submission of weekly certified payrolls each week for work performed during the preceding weekly payroll period, or non-performance payroll reports when no

work is performed during the preceding weekly payroll period. Penalties for payrolls that are determined late in accordance with NRS 338 (15 days after the end of the month) shall be calculated and forwarded to the Nevada Labor Commissioner for a violation determination. Payrolls that are determined late in accordance with 29 CFR and FHWA 1273 (one week following the preceding weekly payroll period) but do not exceed the 15 days after the end of the month, shall be identified and written notification forwarded to the prime contractor with possible recommendations to withhold the next progress payment.

a. The Resident Engineer is responsible for:

- (1) Confirming that a Request to Sublet and Subcontract Agreement have been fully executed prior to the subcontractor's start of work.
- (2) Confirming that a hauling agreement has been received prior to the trucking company's start of work (if applicable).
- (3) Confirming a Request to Utilize Service Provider has been fully executed prior to the service provider's start of work.
- (4) Verifying that each prime contractor, subcontractor and service provider (excluding owner operators) have uploaded a Fringe Benefit Statement into LCPtracker.
- (5) Verifying that each prime contractor, subcontractor and service provider have uploaded a current Request for Apprentice Verification form, and apprenticeship agreement into LCPtracker for each apprentice for each contract.
- (6) Verifying that each prime contractor, subcontractor and service provider have uploaded an approved request to work 4-10 hour days into LCPtracker (if applicable).
- (7) Ensuring that each prime contractor, subcontractor and service provider that worked on the contract the preceding week have submitted a payroll into LCPtracker (weekly).
- (8) Ensuring that each prime contractor, subcontractor and service provider that did not work on the contract the preceding week have submitted a non-performance payroll report into LCPtracker (weekly).
- (9) Reviewing payrolls and submission dates in LCPtracker (weekly).
- (10) Informing the prime contractor in writing of payrolls that were not entered weekly or payrolls not entered at all into LCPtracker. The letter will include a recommendation to withhold the next progress payment until the issue is addressed. Continue weekly letters to address each week's payrolls.

- (11) Preparing a monthly summary of payrolls entered late or not entered at all and forward to Contract Compliance within three (3) business days of the 15th of each month.
- (12) Assessing penalties on the progress payment as requested by Contract Compliance upon receipt of the Labor Commissioner's Affirming Order. After the penalty is assessed, notify Contract Compliance with the contract number, name of prime contractor, penalty amount assessed and the payment number confirming the penalty was held.
- (13) Notifying Contract Compliance if there are no more progress payments to process or if the contract is picked up by the Construction Division.
- (14) Taking a proactive role to reduce late payroll submissions by contacting prime contractors who continually submit payrolls late. With the prime contractors' knowledge, contact subcontractors and service providers if necessary.
- (15) Submitting CERTIFIED PAYROLL LOG to District Engineer for signature (monthly). Place signed copy with contract files.

b. Contract Compliance is responsible for:

- (1) Assisting the Resident Engineer with payroll issues.
- (2) Providing contract information regarding payroll requirements during the preconstruction meetings.
- (3) Investigating questions/discrepancies concerning wages, overtime, working out of classification, etc.
- (4) Providing ongoing training for Resident Engineers and their staff to monitor payrolls in LCPtracker.
- (5) Providing ongoing training and guidance for prime contractors, subcontractors and service providers to enter and monitor payrolls in LCPtracker.
- (6) Reviewing active contracts in LCPtracker for payrolls entered late or not entered at all within five (5) business days of receipt of the Resident Engineer's monthly summary, or within eight (8) business days of the 15th of each month, whichever is less. Compare information against the Resident Engineer's summaries received and verify that the information is complete and accurate.

- (7) Applying late payroll considerations uniformly and if applicable, prepare a letter to the prime contractor informing them of the requirement and violation, and why penalties were waived.
 - (8)
 - a. If late payroll considerations are not applicable, calculate the late payroll penalty in accordance with NRS 338 and prepare a late payroll determination letter to the Labor Commissioner that the prime contractor, subcontractor or service provider is in violation. Since penalties are based on the number of employees per day for the late payroll period, the amount cannot be calculated until the payroll is submitted.
 - b. Upon receipt of the Labor Commissioner's review and Affirming Order, notify the Resident Engineer to withhold the penalty as a liquidated damage on the next progress payment.
 - c. If there are no further progress payments to be made by the Resident Engineer, notify the Construction Division requesting to withhold the penalty from the final payment/retention release.
 - d. If final payment/retention release has already been processed, prepare a billing request with proper coding obtained from Project Accounting. Deliver to Project Accounting.
 - (9) Reviewing and investigating all disputed violations returned to NDOT from the Labor Commissioner.
 - (10) Checking all prime contractor, subcontractor and service provider payroll and non-performance payroll submission dates as part of the Contract Compliance Clearance for all contracts. Document all late (15 days after the end of the month) payrolls and verify that violation letters were submitted to the Labor Commissioner, and a determination was received by NDOT. Verify that all penalties were assessed in accordance with Item (8) above. Any discrepancies will be discussed with the Resident Engineer, and if necessary, prepare additional violation letters to the Labor Commissioner. Contract Compliance shall not grant clearance for any contract until all issues are resolved.
 - (11) Notifying the Labor Commissioner in writing after violation penalty has been held from the prime contractor by the Resident Engineer or by the Construction Division, or when payment from the prime contractor, subcontractor or service provider is received in Project Accounting.
- c. The District Engineer is responsible for:
- (1) Conducting monthly payroll reviews of the Resident Engineers' CERTIFIED PAYROLL LOG to assure that payroll submissions are checked weekly in accordance with requirements mentioned above.

Acknowledge review by signing CERTIFIED PAYROLL LOG and returning to Resident Engineer for his contract files.

- (2) Discussing late payrolls with the Resident Engineers monthly.
 - (3) Taking a proactive role to reduce late payroll submission by contacting prime contractors who continually submit payrolls late.
- d. The Construction Division is responsible for:
- (1) Obtaining Contract Compliance Clearance before final payment/retention release is processed.
 - (2) Assessing late payroll penalty on the final payment if the Resident Engineer was unable to assess on a progress payment or if the contract is already picked up.
 - (3) Notifying Contract Compliance that penalty was assessed on final payment/retention release and that final payment/retention release was processed.
 - (4) Notifying Contract Compliance if the final payment/retention release has already been processed through Project Accounting and they are unable to assess the late payroll penalty.
- e. Project Accounting is responsible for:
- (1) Providing proper coding to Contract Compliance upon their request for any billing request necessary to receive payment for penalties directed on the Labor Commissioner's Affirming Order.
 - (2) Notifying Contract Compliance when payment is received from the prime contractor, subcontractor or service provider.
- f. The Assistant Director, Operations is responsible for:
- (1) Reviewing the Resident Engineers' weekly letters to prime contractors.
 - (2) Approving or waiving the Resident Engineers' recommendations to withhold progress payments for late payrolls.
 - (3) Providing written confirmation to the Resident Engineers to withhold the progress payment.
- g. The Deputy Director - Southern Nevada is responsible for:
- (1) Updating this POLICY MEMORANDUM as necessary.

5. DEFINITIONS

- a. **DBRA - Davis Bacon and Related Acts** - a federal regulation requiring the payment of prevailing wages on federally funded or assisted construction projects and the weekly submission of the prime contractors', subcontractors' and service providers' certified payrolls into the electronic payroll submission system (LCPtracker). The Davis Bacon Act applies to each federal government contract in excess of \$2,000.
- b. **Federally funded** - any project or activity that is awarded to a prime contractor, assigned a contract and project number, and the contract is funded with any amount of federal funds.
- c. **NRS 338 - Nevada Revised Statutes** - state regulations requiring the payment of prevailing wages on state funded construction projects and the submission of the prime contractors', subcontractors' and service providers' certified payrolls. NRS 338 applies to each public works project in excess of \$250,000.
- d. **State funded** - any project or activity that is awarded to a prime contractor, assigned a contract and project number, and the contract is funded without any federal funds.
- e. **Picked up** - Construction Division has reviewed pay quantities and required documentation in order to establish final quantities and prepare a final payment/retention release to the prime contractor.

6. PROCEDURES

- a. **The Resident Engineer shall oversee the process and assure that compliance is achieved.** The inspector shall be aware of the prime contractor, subcontractors and service providers working on the project and document them on the Daily Construction Report (NDOT Form 040-056) or Inspector Daily Report (IDR in FieldBook). The office person will review the reports daily and document which prime contractor, subcontractors and service providers worked for each week. During the weekly check of LCPtracker, the office person will verify that payrolls were submitted for those weeks employees were working on the contract, and non-performance payroll reports were submitted for all others.
- b. **For late payroll or no payroll submissions, the Resident Engineer and Contract Compliance will take appropriate action as outlined in the Certified Payroll and Compliance Manual.**