

FACT SHEET #21 – Guidance for Business Owners, Sole Proprietors and Independent Contractors

DAVIS-BACON PROVISIONS FOR CLEAN AND DRINKING WATER SRF PROJECTS

Davis Bacon Act Guidance for Business Owners, Sole Proprietors and Independent Contractors

BONA FIDE BUSINESS OWNER

A bona fide business owner contractor who also performs construction work is exempt from reporting their wage rate but all employees ARE subject to the Davis Bacon Act. Weekly certified payrolls must be submitted listing the Owner name, Work Classification as "Owner", and hours worked, but may omit the wage rate for the Owner only. All employees performing construction work must be listed by name, work classification, hours worked AND wage rate. Per 29 CFR 541.102, Bonafide Business Owners shall be actively engaged in management activities of the Business / Company, including, but not limited to: interviewing, selecting, training, and disciplining employees; setting and adjusting employees' rates of pay and work hours; directing work of employees; maintaining production or sales records for use in supervision or control; appraising employees' productivity for purpose of recommending promotions or other changes in status; handling complaints and grievances; planning and apportioning work; determining techniques or type of materials, supplies, machinery, equipment or tools to be used to be used; determining merchandise to be bought, stocked and sold; controlling flow and distribution of materials or merchandise and supplies; providing for safety and security of employees or the property; planning and controlling budget; and monitoring or implementing legal compliance measures. Staffing levels must equal the equivalent of two full time employees throughout the year.

SOLE PROPRIETOR

A Sole Proprietor Contractor must provide copy of the company Federal Tax ID and copy of the business license to confirm their business status with respect to the Davis Bacon Act reporting. A copy of the company liability insurance coverage is acceptable if a business license is not available. Sole proprietor owners must list themselves on the certified payroll with Work Classification as "Owner", and include hours worked, but do not need to report a wage rate. The determining factor the DOL takes into consideration is that the Sole Proprietor be set up as Inc. or LLC so the money is directed to some other entity apart from themselves. The objective is to make the distinction between sole proprietor and an independent contractor.

INDEPENDENT CONTRACTOR (1099 relationship)

Workers classified as independent contractors or "1099 workers" are subject to the Davis Bacon Act. Independent Contractors must be paid corresponding DBA wages and reported on the weekly certified payroll records submitted by the contracting party.