

UNITED STATES DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES
WASHINGTON, DC

In the matter of:

Disputes concerning the payment of
prevailing wage rates, fringe benefits, and
overtime pay by:

Case No. 2022-DBA-00007

HAMEL BUILDERS, INC.,
Prime Contractor,

V & V CONSTRUCTION, INC. d/b/a
V & V CONSTRUCTION,
1st Tier Subcontractor,

Carlos Vicente,
Owner

Cristina Vicente,
Office Manager

Respondents.

with respect to journeyman workers employed by
1st-tier subcontractor V & V Construction on
DHDC Contract no. 2018-14 for concrete
installation on the Liberty Place Apartments

CONSENT FINDINGS

Pursuant to 29 C.F.R. §§ 6.32 and 18.71, the Parties to this action, the Principal Deputy
Administrator, U.S. Department of Labor, Wage and Hour Division (“Administrator”)¹ and V &
V Construction, Inc. d/b/a V & V Construction (“Respondent”), have negotiated and executed

¹ Administrator refers to either the current Principal Deputy Administrator or to any future Administrator or person acting as the head of the Wage and Hour Division.

these Consent Findings (“Findings”). These Findings constitute a full and final resolution of all issues raised by the Administrator’s Notification Letter issued to Respondent on July 23, 2021 (“Notification Letter”).

1. This action arises under the Davis Bacon Act, 40 U.S.C. §3141, *et seq.*, and the Davis-Bacon Related Acts, including the Contract Work Hours and Safety Standards Act, 40 U.S.C. § 3701, *et seq.*, and applicable regulations issued thereunder at 29 C.F.R. Part 5 and 29 C.F.R. § 6.30 (collectively, the “DBRA”).

2. The issues resolved by these Findings were initially identified during an investigation conducted by the Wage and Hour Division of the U.S. Department of Labor (“Wage and Hour”) regarding Respondent’s compliance with the DBRA, and the applicable regulations issued thereunder at 29 C.F.R. Part 5 and 29 C.F.R. § 6.30.

3. At all relevant times hereto, Respondent had entered into a subcontract with prime contractor Hamel Builders, Inc., to perform concrete installation on the Liberty Place Apartments pursuant to Washington D.C. Department of Housing and Community Development Contract No. 2018-14. The subcontract between Hamel Builders, Inc., and Respondent incorporates the DBRA by reference.

4. On July 23, 2021, the Administrator issued a Notification Letter to Respondent which detailed the findings from its investigation. A Summary of Violations was attached to the Notification Letter. The Summary of Violations alleged that the investigation by Wage and Hour found the following violations of the DBRA:

- a. Failure to pay prevailing wage rates;
- b. Failure to pay fringe benefits;
- c. Submission of falsified payroll records in violation of 29 C.F.R. § 5.5(a)(3); and

d. Failure to pay overtime pursuant to the Contract Work Hours and Safety Standards Act.

5. As a result of the violations addressed in the Notification Letter, the Administrator determined Respondent owed \$195,492.94 in back wages to fifty-five (55) laborers and mechanics. The Administrator also issued a Notice of Debarment. As of the date of these Findings, Respondent has not paid any of the back wages alleged to be due by the Administrator.

6. On August 30, 2021, pursuant to 29 C.F.R. § 5.11(b)(2), counsel for Respondent timely requested a hearing before an Administrative Law Judge with regard to the findings set forth in the Notification Letter.

7. Subsequently, counsel for the Administrator and Respondent conducted settlement discussions designed to resolve this matter without the need for further litigation. As a result of these negotiations, the Parties have agreed to settle this matter in exchange for certain mutual agreements. These agreements, which are completely contained within these Findings, are as follows.

8. Respondent agrees to pay \$186,124.00 in back wages not more than thirty (30) days after the Administrative Law Judge enters an Order approving these Findings (“Payment Date”). Additionally, Respondent agrees to enhanced compliance in the form of an eighteen (18) month Monitoring Agreement as set forth in Paragraph 11. Respondent also agrees to withdraw its August 30, 2021, request for hearing. Respondent acknowledges that it has a right to a hearing as to the Administrator’s investigative findings, and it hereby agrees to waive such right from this date forward, upon approval of an Order by the Administrative Law Judge, based upon the full and final settlement of this matter.

9. In exchange for Respondent’s agreement to the terms discussed in Paragraph 8, Respondent’s full and timely payment of the amounts set forth in Paragraph 8, and Respondent’s

compliance with the Monitoring Agreement obligations set forth in Paragraph 11, the Administrator hereby releases Respondent, its owners, officers, directors, shareholders, insurers, sureties, and its successors and assigns, from any and all claims of any nature or amount, arising from or relating to the alleged violations described in the Notification Letter and Paragraph 4.

10. Respondent agrees to pay the total amount of \$186,124.00 in back wages, on or before the Payment Date set forth in Paragraph 8, via online payment by ACH transfer, credit card, debit card, or digital wallet by going to <https://pay.gov/public/form/start/77734139> or www.pay.gov. Alternatively, payment may be in the form of a certified check, cashier's check, or money order made payable to the order of "Wage and Hour Division – U.S. Department of Labor" and mailed to:

U.S. Department of Labor, Wage and Hour Division
Northeast Regional Office
1835 Market Street, Mailstop WHD/19
Philadelphia, PA 19103-2968

The certified check, cashier's check, or money order shall bear the following reference: Case ID 1936935. Should Respondent fail to make the full agreed payments within ten (10) calendar days of the Payment Date, the entire amount assessed shall immediately become due and payable, together with such additional collection and court costs as may be incurred by the Administrator in pursuing collections.

11. Respondent agrees to enhanced compliance in the form of an eighteen (18) month Monitoring Agreement according to the following terms:

a. Within ninety (90) calendar days from the date on which the Order approving these Findings is entered by the Administrative Law Judge, Respondent shall inform the Assistant District Director, U.S. Department of Labor, Wage and Hour Division, Richmond District Office, of its preferred Independent Monitor ("Monitor"), that is free

of conflicts and has expertise in DBRA compliance. The Administrator will have twenty (20) calendar days to object to Respondent's preferred Monitor. The Administrator shall not unreasonably object to Respondent's preferred Monitor. Should the Administrator object to Respondent's preferred Monitor, then Respondent has thirty (30) calendar days from the date of the Administrator's objection to identify another Monitor that is free of conflicts and has expertise in DBRA compliance. This process shall continue until Respondent identifies a Monitor to which the Administrator has no reasonable objections. The Monitor shall be thoroughly familiar with the DBRA regulations and requirements, and shall not be:

1. Any person or entity that has had a prior business arrangement with Respondent;
2. An employee of Respondent or its principals; or
3. A familial relative of Respondent's principals.

b. Within ten (10) calendar days of identifying a Monitor deemed acceptable to the Administrator, Respondent shall retain that Monitor at Respondent's expense for a period of eighteen (18) months from the entry of the Order approving these Findings, to provide written reports as set forth in this section detailing any problems or potential problems regarding compliance with the DBRA, along with a recommendation or recommendations of corrective actions that Respondent must take, have taken, or will take to resolve the problems anticipated and/or identified. Respondent will provide a copy of its contract with the Monitor to the Administrator within ten (10) business days of its execution.

c. In accordance with the schedule set forth in Paragraph 11(j) below, the Monitor will conduct an audit of Respondent's DBRA projects and employment practices in order

to assess Respondent's compliance with the DBRA, and the terms of these Findings, including but not limited to confirming that:

1. Respondent has paid, and will continue to pay, the minimum wage based on the wages the Secretary of Labor determines to be prevailing for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the civil subdivision of the State in which the work is to be performed, or the District of Columbia if the work is to be performed there. *See* 40 U.S.C. § 3142(b).
2. Respondent has ensured that all laborers and mechanics are paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account, the full amount of wages and bona fide fringe benefits due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor. *See* 29 C.F.R. § 5.5(a)(1)(i).
3. Respondent has paid laborers and mechanics the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed without regard to the laborer's or mechanic's skill level, except as provided in 29 C.F.R. § 5.5(a)(4). *See also* 29 C.F.R. § 5.5(a)(1)(i).
4. Where laborers and mechanics have performed work in more than one wage classification, Respondent has ensured that that its payroll records *accurately* set forth the time spent in each classification in which the work is performed. *See* 29 C.F.R. § 5.5(a)(1)(i).
5. Respondent ensured that the wage determination and the Davis-Bacon poster are posted at all times at the site of the work in a prominent and accessible place where it can be easily seen by workers. *See* 29 C.F.R. § 5.5(a)(1)(i).
6. In the event that Respondent, the laborers, or mechanics to be employed in a classification (or their representatives) and the contracting officer do not agree on the proposed classification and wage rate, Respondent has ensured that these questions are referred to the Administrator for determination. *See* 29 C.F.R. §5.5(a)(1)(ii)(C).
7. Respondent has maintained, and continues to maintain, payrolls and basic records related thereto during the course of the work, and preserved for a period of three (3) years thereafter, for all laborers and mechanics employed at the site of work, and that these records contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid, daily and weekly number of hours worked, deductions made and actual wages paid. *See* 29 C.F.R. §5.5(a)(3)(i).

8. Respondent submits weekly copy of all payrolls, in each week contract work is performed, either directly or indirectly to the appropriate federal agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 C.F.R. § 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead, the payrolls shall only need to include an individually identifying number for each employee. Moreover, these records are accompanied by a "Statement of Compliance," which includes the information outlined in 29 C.F.R. § 5.5(a)(3)(ii)(B)(1)–(3). *See also* 29 C.F.R. § 5.5(a)(3)(ii)(A)-(B).

9. In contracts involving an amount in excess of \$100,000.00, and therefore subject to the overtime provisions of the Contract Work Hours and Safety Standards Act, Respondent has paid any laborer or mechanic working in excess of forty (40) hours per workweek at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty (40) hours. *See* 29 C.F.R. § 5.5 (b)(1).

d. The Monitor will use an audit sampling method to determine the veracity of Respondent's records, and compliance with the items listed in Paragraph 11(c), sufficient to ensure a reasonable basis of opinion.

e. The Monitor is not required to provide prior notice of such necessary inspections of Respondent's facilities in order to conduct the audit; however, the Monitor may request Respondent's availability for an audit shortly before a planned inspection. In the event the Monitor does not request Respondent's availability for an inspection of Respondent's facilities and the Monitor appears at Respondent's facilities at a time which would cause business disruptions, Respondent may request that the Monitor return at another time, which shall not be more than three (3) business days later. Respondent shall produce all records, books, time records, and time recording devices upon the Monitor's request without delay and shall allow the Monitor reasonable and sufficient time to review and copy such records, including:

1. All certified payroll and time records;

2. All daily project reports and daily attendance records;
3. All subcontract documents required to outline the scope of work being performed; and
4. All internal payroll records.

f. Respondent shall allow the Monitor to conduct confidential interviews of non-exempt employees at whatever location in or near Respondent's place of business and in whatever manner the Monitor chooses that does not unduly interrupt Respondent's business activities. Respondent, its officers, agents, lessees, employees, and those persons in active concert or participation with Respondent, are prohibited from inquiring of employees about the nature of their discussions with the Monitor during these confidential interviews. At Respondent's expense, the Monitor shall have reasonable access to interpreters not employed or associated with Respondent if necessary to conduct such confidential interviews. Nothing in this paragraph shall waive Respondent's right to challenge any claims raised by employees. The Monitor shall interview as many employees as they deem necessary to ascertain Respondent's compliance as set forth in Paragraph 11(c). For each employee interviewed, the Monitor shall use Standard Form 1445, "Labor Standards Interview," and obtain all information contained therein.

g. The Monitor shall not disclose the names or statements of the confidential interviews of employees to Respondent, its officers, agents, or employees.

h. In the event the Monitor finds that back wages are due to any of Respondent's employees, the Monitor shall provide written notice to Respondent within thirty (30) calendar days of that finding.

i. Within thirty (30) calendar days of a completed audit of Respondent's DBRA projects, the Monitor will forward an Audit Report to the Assistant District Director, U.S.

Department of Labor, Wage and Hour Division, Richmond District Office, 400 North 8th Street, Room 416, Richmond, Virginia 23219. The report shall address Respondent's compliance with all the terms described herein and include:

1. The name, employer, and contact information of the Monitor;
2. The date(s) of the audit;
3. An itemized list of the documents and items inspected;
4. An itemized list of all workers interviewed and summary of their interviews, notes of their interviews, or employee statements;
5. Any and all areas of non-compliance by Respondent with the DBRA rules and regulations;
6. Specific actions and recommendations necessary for Respondent's compliance;
7. Steps taken by Respondent to remedy or correct the areas of non-compliance and to remain in compliance;
8. How effectively Respondent has implemented corrective action, if any, proposed by the Monitor; and
9. The Monitor's certification of whether Respondent is in compliance with the DBRA rules and regulations at the time the report is submitted.

j. The Monitor shall conduct audits of Respondent's DBRA projects for a period of eighteen (18) months from the entry of the Order approving these Findings, and the audits shall be conducted in accordance with the procedures outlined above. The Monitor will perform three (3) audits in total, with two (2) audits within the first twelve (12) months from the entry of the Order approving these Findings and one (1) audit within the remaining six (6) months. Reports of the periodic audits shall be provided in substantially the same format as outlined above.

k. Immediately following the Monitor's compliance with Paragraph 11(i), the Monitor shall provide Respondent with a written copy of the same Audit Report with the exception that the Monitor shall not disclose employee interviews, statements, or the contents thereof.

l. In the event the Monitor is unable or unwilling to fulfill the auditing services described herein, the procedures of Paragraphs 11(a) and 11(b) will be followed in order to select a new monitor. In addition, in the event the Administrator asserts that the Monitor failed to comply with any requirement set forth herein, the Administrator shall notify Respondent in writing and specify the asserted noncompliance (the "Administrator's Notice"). Respondent shall promptly notify the Monitor of the asserted noncompliance, and Monitor shall have thirty (30) calendar days from the Administrator's Notice to cure any alleged noncompliance. In the event the Monitor does not cure the alleged noncompliance, the Administrator may require that the procedures of Paragraphs 11(a) and 11(b) be followed in order to select a new monitor.

m. Neither the Monitor's activities identified in this Order, the failure of the Monitor to find violations, nor the Wage and Hour Division's failure to act on any information that is brought to its attention by the Monitor, or as a result of any of the compliance activities required by this Order, constitute estoppel or in any way waive the Administrator's right to conduct investigations under the DBRA or its applicable regulations, or to seek appropriate enforcement action and remedies with respect to any violations disclosed by such investigations; provided, however, the Administrator will not take enforcement action, including the imposition of civil money penalties, based on the findings and recommendations described in an Audit Report when Respondent has cured any alleged

violations within thirty (30) calendar days of said report (“Safe Harbor Window”). In the event Respondent objects to any finding in an Audit Report, Respondent may submit a Request for Review along with the Audit Report to the Wage and Hour Division. If Respondent submits a Request for Review to the Wage and Hour Division within the Safe Harbor Window, such period will extend to ten (10) business days after Wage and Hour Division issues a response to Respondent’s Request for Review including its findings, during which Respondent may cure any alleged violation before the Administrator may take enforcement action.

n. Nothing in these Findings or the Order approving these Findings preempts the Wage and Hour Division’s authority to conduct unannounced inspections of Respondent’s facilities at any time and at the office’s discretion.

12. The Parties agree that all matters addressed in the Notification Letter have been fully and finally resolved by these Findings. The Parties further agree that Respondent’s full and timely payment of the amount set forth in Paragraph 8 constitutes full satisfaction of all back wages due and owing in this matter.

13. Nothing in these Findings or the Order approving these Findings shall be deemed an admission by Respondent to any of the allegations contained in the Notification Letter.

14. Respondent affirms that, as of the date of its execution of these Findings, it is complying with all provisions of the DBRA and its applicable regulations. Respondent further stipulates and agrees to remain in full compliance with all applicable provisions of the DBRA, and applicable regulations, as well as other applicable regulations and federal wage standards, and will continue to comply therewith in the future.

15. The Parties agree that these Findings are deemed to cover the relevant investigative period from February 15, 2020, to February 13, 2021, as set forth in the Notification Letter. The Parties agree that these Findings shall not, in any way, affect, determine, or prejudice the rights of any persons, be they current or former employees. Further, the Parties agree that these Findings do not affect the rights of any of Respondent's employees receiving payment of back wages outside the scope of the DBRA and its applicable regulations.

16. The Administrator does not waive their right to conduct future investigations under the DBRA, or any other federal statute it has authority to enforce, and to take appropriate action with respect to any violations disclosed by such future investigation or any violations by Respondent for failure to comply with the Order approving these Findings, including seeking debarment as a relief. Furthermore, the Administrator does not waive their right to initiate or maintain enforcement actions with respect to past or ongoing investigations that are not covered by the Notification Letter.

17. The Administrator affirms that they will not seek debarment of Respondent as part of the Notification Letter and will not seek debarment of Respondent as a result of the alleged violations set forth in the Notification Letter, so long as Respondent fully and timely complies with Paragraph 8 and its obligations related to the Monitoring Agreement set forth in Paragraph 11. Moreover, the Administrator reserves their right to pursue debarment of Respondent in connection with any past, future, or ongoing enforcement actions arising out of other investigations of Respondent.

18. The Administrator and Respondent hereby consent that the above Findings, as well as the Order approving these Findings and disposing of this proceeding, shall have the following effect:

- a. The Order approving these Findings entered into in accordance with this agreement shall have the same force and effect as an order made after a full hearing;
- b. The entire record on which any Order may be based shall consist solely of the Notification Letter and the Findings;
- c. The Administrator and Respondent waive any right to challenge or contest the validity of the Findings or the Order entered into in accordance with this agreement;
- d. All alleged violations set forth in the Notification Letter shall be deemed fully resolved by these Findings;
- e. The Administrator and Respondent waive any further procedural steps before the Administrative Law Judge; and
- f. This Decree shall become final immediately upon approval of the Administrative Law Judge.

NOW, therefore, with agreement having been reached by the Administrator and Respondent as to all contested charges set forth in the Notification Letter, the Parties further stipulate and agree that each party shall bear its own costs as to this proceeding. Specifically, each party agrees to bear its own attorney's fees, costs, and other expenses incurred by such party in connection with any stage of the above-referenced proceeding, including, but not limited to, attorney's fees and costs which may be available under the Equal Access to Justice Act, as amended.

(Signatures on following page)

Respectfully Submitted,

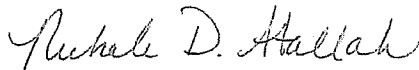
For Respondent:



Carlos Vicente, Owner
V & V Construction, Inc.
12950 Railroad Avenue
Bowie, MD 20715

Date:

12/4/23



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Date:

12/5/23

For the Administrator:

U.S. DEPARTMENT OF LABOR

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12/11/23