

Special Report

Austin Independent School District

Prevailing Wage Rates – Texas Star



**Construction Audit Report Submitted By:
R. L. Townsend & Associates, LLC**

February 4, 2021

*The contents of this report are based on our understanding of documents and other information provided to us as of the date of this report. If anyone has any questions regarding the contents of this report, please contact our office for clarification.
A revised report will be issued with a revised date if any material representation needs to be corrected.*

Executive Summary**Audit Background:**

As a part of an overall program of controlling construction costs, Austin Independent School District (AISD) engaged R. L. Townsend & Associates to perform a review of the contract and billing records associated with the Govalle ES project.

The objective of the audit was to ensure the project was billed in accordance with the contract terms.

The audit scope included a review of labor, materials, equipment, subcontracts, change orders and prevailing wage rates.

This report is limited to the review of Texas Star's payroll as it relates to the Davis Bacon Wage Determination. The following information is based on documentation and/or emails received during the audit.

Prime and Subcontract Information:

Balfour Beatty entered into an agreement dated April 10, 2018 with AISD as the Design/Build (DB) Contractor. The following clause was included in the Contract regarding compliance with Prevailing Wage Rate Requirements by the DB Contractor and each Subcontractor:

22.6 Prevailing Wage Rate Requirements

22.6.1 In the execution of the Contract for this Project, the Design/Build Contractor must comply with and require each Subcontractor to comply with all applicable state and federal laws, including but not limited to laws concerned with labor, equal employment opportunity, safety, minimum wage and prevailing wage rates requirements under Chapter 2258 of the Texas Government Code.

22.6.2 For the duration of this Contract, the Design/Build Contractor and each Subcontractor who performs Work under this Contract, must pay not less than the prevailing wage rates, including fringe benefits, as set forth in the Notice of Prevailing Wage Rates to any worker performing labor in connection with the Work.

The Davis Bacon Wage Rates and Fringes for Travis County which were included in the specifications included a General Decision date of 7/6/18. The Davis Bacon Wage Rates for Sprinkler Fitter are shown below:

	Rates	Fringes
SPRINKLER FITTER (Fire Sprinklers).....	\$ 29.03	15.84

SHEE0067-007 07/03/2017		

The Texas Star subcontract with Balfour Beatty was signed by Mark Procyk, President & CEO of Texas Star on May 1, 2019. The original contract amount is a lump sum amount of \$173,261. **Included in the subcontract, is "Related Requirements" item 22 which states "Prevailing wages, proposal includes AISD/Davis Bacon Act prevailing wage rates".**

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Prevailing Wage Rates – Texas Star

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Review of Texas Star Certified Payroll:

Based on the Texas Star certified payroll, they began work on the project June 27, 2019.

On 10/23/19, AISD sent the following email advising us of the complaint and asking for clarity on how fringes are paid.

From: Jaime Miller

Sent: Wednesday, October 23, 2019 11:38 AM

To: Debbie Townsend

Cc: German, Scott R.

Subject: FW: *[EXTERNAL]*RE: Govalle ES - concern about prevailing wage rates

Debbie,

There has been a complaint filed regarding prevailing wages against on the Govalle ES project. My understanding is that backpay has been given to all employees already, but the individual is also asking for fringe rate as well. I know the responsibility is on each contractor to ensure wages are being met, but are you able to provide some clarity on how fringes are paid?

Scott German is the PM for the General Contractor and he is looking for guidance.

Thanks,

Jaime

On 10/23/19, R.L. Townsend responded as follows:

From: Anna Nicodemus

Sent: Wednesday, October 23, 2019 4:47 PM

To: Jaime Miller

Cc: Debbie Townsend ; SGerman@Balfour.com; Chris Irpino

; [Sarah Carraher](#)

Subject: FW: *[EXTERNAL]*RE: Govalle ES - concern about prevailing wage rates

Jaime,

Debbie forwarded this to me. The answer is that the amount to be paid is the sum of base pay plus bona fide fringe as a total. I am including here a couple of items from the DOL web site that discuss this. The second item shows examples of things which are bona fide fringe items.

It sounds like maybe this is the time for us to look at what this sub is paying to confirm that it is correct? Can you have them provide this to us. Chris Irpino is the auditor who is assigned to Govalle and so he will be the one reviewing this.

Thanks,

Anna

<https://www.dol.gov/whd/regs/compliance/whdfs66.htm>

Basic Provisions/Requirements

Contractors and subcontractors must pay [laborers and mechanics employed](#) directly upon the [site of the work](#) at least the locally prevailing wages (including fringe benefits), listed in the Davis-Bacon wage determination in the contract, for the work performed. [Davis-Bacon labor standards clauses](#) must be included in covered contracts.

The Davis-Bacon "prevailing wage" is the combination of the basic hourly rate and any fringe benefits listed in a Davis-Bacon wage determination. The contractor's obligation to pay at least the prevailing wage listed in the contract wage determination can be met by paying each laborer and mechanic the applicable prevailing wage entirely as cash wages or by a combination of cash wages and employer-provided bona fide fringe benefits. Prevailing wages, including fringe benefits, must be paid on all hours worked on the site of the work.

Apprentices or trainees may be employed at less than the rates listed in the contract wage determination only when they are in an apprenticeship program registered with the Department of Labor or with a state apprenticeship agency recognized by the Department.

Contractors and subcontractors are required to pay covered workers weekly and submit weekly certified payroll records to the contracting agency. They are also required to post the applicable Davis-Bacon wage determination with the [Davis-Bacon poster \(WH-1321\)](#) on the job site in a prominent and accessible place where they can be easily seen by the workers.

<https://www.dol.gov/whd/programs/dbra/faqs/fringes.htm>

The screenshot shows the official website of the U.S. Department of Labor, Wage and Hour Division. The page is titled "Davis-Bacon and Related Acts Frequently Asked Questions". On the left, there is a navigation menu with links for "For Workers", "For Employers", "For States", "How to File a Complaint", "News Room", "About WHD", "Contact Us", and "Email Alerts". The main content area is titled "IV. Davis-Bacon Wage Surveys" and discusses the requirements for fringe benefits. It states that in responding to a Davis-Bacon prevailing wage survey, employers must count certain fringe benefits, such as contributions to bona fide fringe benefit fund plans or programs, and the cost of providing such benefits. Examples of fringe benefits listed include life insurance, health insurance, pension, vacation, holidays, sick leave, and other bona fide fringe benefits. A "Quick Links" box on the right contains links to "Surveys", "Forms", "Help", "Regions", "Contact DBRA", "Related Links", "Accessibility", and "Wage Determinations". The page also includes a search bar and various utility links at the top.

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Prevailing Wage Rates – Texas Star

Report Date: February 4, 2021

On 11/19/19, Balfour Beatty sent certified payroll for Texas Star.

From: German, Scott R.

Sent: Tuesday, November 19, 2019 9:46 AM

To: Jaime Miller ; Anna Nicodemus

Cc: Debbie Townsend ; Chris Iripino ; Sarah Carraher

Subject: RE: *[EXTERNAL]*RE: Govalle ES - concern about prevailing wage rates

Jaime / Anna,

Attached is the certified payroll for the subcontractor in question from 6/22 thru 11/8. The employee, Zachary Harold, that filed the complaint quit Texas Star Fire Protection.

A review of a sample of the Texas Star certified payroll showed the following:

- The hours and wage information in the certified payroll reports was handwritten.
- The President and CEO signed the certified payroll reports.
- Handwritten notes on the certified payroll stated “Zachary Harold Restitution paid for back due wages” as shown below. However, these amounts could not be validated as correct because the detailed calculation was not provided by Texas Star.

- Week ending 8/30/19 \$272.00 (\$1,172-\$900) See Below.

Zachary Harold - 9783	1	Sprinkler Fitter	o														900
			s		8	4	8	8	8	36	25						1172
Ryan Dunman - 5623	0	Laborer, Pipelayer	o														512
			s		8	-	8	8	8	32	16.						512
Zachary Harold			o														
Restitution paid for			s														
back due wages			o														

- Week ending 9/13/19 \$1,362.14 (\$2,523.34 - \$1,161.20)

NUMBER OF WORKER	SSN	CLASSIFICATION		HOURS WORKED EACH DAY	HOURS	OF PAY	EARNED
Zachary Harold - 9783		Sprinkler Fitter	O				1161.20
	1		S	8	8	8	2523.34
Louis Contreras - 1607		Laborer, Pipelayer	O				725
	7		S	6	8	7	1150
Ryan Dunman - 5623		Laborer, Pipelayer	O				384
	0		S	8	8	8	384
Fernando Hernandez - 7672		Laborer, Pipelayer	O				512
	1		S	8	8	8	640
Zachary Harold			O				
Restitution paid for			S				
back due wages			O				

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- The following employees appeared not to be paid in compliance with Davis Bacon based on certified payroll:

Zachary Harold – Sprinkler Fitter (The following certified payrolls show the rate progression from \$24 to \$25 to \$29.03)

PAYROLL NO.			FOR WEEK ENDING 07/12/2019								PROJECT AND LOCATION	
(1)	(2)	(3)	(4) DAY AND DATE							(5)	(6)	
NAME AND INDIVIDUAL IDENTIFYING NUMBER (e.g., LAST FOUR DIGITS OF SOCIAL SECURITY NUMBER) OF WORKER	NO. OF WITHHOLDING EXEMPTIONS	WORK CLASSIFICATION	OT OR ST.	Sa	Su	M	T	W	Th	F	TOTAL HOURS	RATE OF PAY
				6	7	8	9	10	11	12		
				HOURS WORKED EACH DAY								
Zachary Harold - 9783	1	Sprinkler Fitter	o									
			s				8	8	8	8	32	24.

PAYROLL NO.			FOR WEEK ENDING 08/30/2019								PROJECT AND LOCATI	
(1)	(2)	(3)	(4) DAY AND DATE							(5)	(6)	
NAME AND INDIVIDUAL IDENTIFYING NUMBER (e.g., LAST FOUR DIGITS OF SOCIAL SECURITY NUMBER) OF WORKER	NO. OF WITHHOLDING EXEMPTIONS	WORK CLASSIFICATION	OT OR ST.	Sa	Su	M	T	W	Th	F	TOTAL HOURS	RATE OF PAY
				24	25	26	27	28	29	30		
				HOURS WORKED EACH DAY								
Zachary Harold - 9783	1	Sprinkler Fitter	o									
			s			8	4	8	8	8	36	25

PAYROLL NO.			FOR WEEK ENDING 09/13/2019							PROJECT AND LOCATION		
(1)	(2)	(3)	(4) DAY AND DATE							(5)	(6)	
NAME AND INDIVIDUAL IDENTIFYING NUMBER (e.g., LAST FOUR DIGITS OF SOCIAL SECURITY NUMBER) OF WORKER	NO. OF WITHHOLDING EXEMPTIONS	WORK CLASSIFICATION	OT OR ST.	Sa	Su	M	T	W	Th	F	TOTAL HOURS	RATE OF PAY
				7	8	9	10	11	12	13		
				HOURS WORKED EACH DAY								
Zachary Harold - 9783	1	Sprinkler Fitter	o									
			s			8	8	8	8	8	40	29.03

Louis Contreras - Sprinkler Fitter

PAYROLL NO.		FOR WEEK ENDING 06/28/2019							PROJECT AND LOCATION			
(1)	(2)	(3)	(4) DAY AND DATE							(5)	(6)	
NAME AND INDIVIDUAL IDENTIFYING NUMBER (e.g., LAST FOUR DIGITS OF SOCIAL SECURITY NUMBER) OF WORKER	NO. OF WITHHOLDING EXEMPTIONS	WORK CLASSIFICATION	OT OR ST.	Sa	Su	M	T	W	Th	F	TOTAL HOURS	RATE OF PAY
				22	23	24	25	26	27	28		
Louis Contreras - 1607	7	Sprinkler Fitter	o									
			s					1	2	1		25.

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- Zachary Harold's base labor rate was correctly increased to \$29.03; however, the \$15.84 fringe portion of the Davis Bacon rate did not appear to be paid.
- Louis Contreras was classified as a "Sprinkler Fitter" for a two-week period at a \$25 rate. Louis Contreras' classification was subsequently changed to Laborer, Pipelayer but was still paid at the \$25 rate. Based on the original classification and rate of pay, it appeared that the laborer classification of laborer, Pipelayer was incorrect. Also, the only evidence of a fringe benefit being paid by Texas Star is for Health Insurance which is shown as a deduction from Louis Contreras' wages.

The following certified payroll shows the hours, wages and deductions from payroll. Other than the note on the certified payroll about Health Ins., there was no evidence of any other fringe benefits being paid.

PAYROLL NO.		FOR WEEK ENDING		PROJECT AND LOCATION										PROJECT OR CONTRACT NO.						
		07/12/2019		GoValle ES - C30396										15752001						
(1)	(2)	(3)	(4) DAY AND DATE							(5)	(6)	(7)	(8) DEDUCTIONS			(9)				
NAME AND INDIVIDUAL IDENTIFYING NUMBER (e.g. LAST FOUR DIGITS OF SOCIAL SECURITY NUMBER) OF WORKER	NO. OF WITHHOLDING EXEMPTIONS	WORK CLASSIFICATION	CT	CR	ST	Sa	Su	M	T	W	Th	F	TOTAL HOURS	RATE OF PAY	GROSS AMOUNT EARNED	(8) DEDUCTIONS			NET WAGES PAID FOR WEEK	
			6	7	8	9	10	11	12	FICA	WITH- HOLDING TAX	Medicare				OTHER	TOTAL DEDUCTIONS			
Zachary Harold - 9783	1	Sprinkler Fitter	0												76.8					
			8			8	8	8	8	32	24.	76.8	47.62	48.	11.14			106.76	661.24	
Louis Contreras - 1607	7	Laborer, Pipelayer	0												675					1,183.49
			8			8	8	8	3	27	25.	2287.50	116.79	194.	27.31			736.20	1,551.30	

The following individuals were classified as "Laborer, Pipelayer" or "Laborer" and received lower wage rates than the Sprinkler Fitters. Per Davis Bacon, the total wage rate for Laborer: Pipelayer is \$12.45 which all the individual's wages exceeded. As a result, no exceptions were noted with the Labor, Pipelayer wages.

LABORER: Pipelayer.....\$ 12.45 0.00

Excerpts of certified payrolls:

Jackie Richardson - 1530	0	Laborer, Pipelayer																
													8	8	8	24	14.	

Jimmy Thedford - 1978	0	Laborer																
													3	2	5	18.		

Ryan Dunman - 5623	0	Laborer, Pipelayer																
													8	8	8	8	40	16.

Fernando Hernandez - 7672	1	Laborer, Pipelayer																
													8	8	8	8	40	16.

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The results of the review were communicated to both AISD and Balfour Beatty on 2/19/20 as shown in the following email:

From: Chris Irpino
Sent: Wednesday, February 19, 2020 11:13 AM
To: German, Scott R.
Cc: Anna Nicodemus ; 'Debbie Townsend ; Jaime Miller
Subject: RE: *[EXTERNAL]*RE: Govalle ES - concern about prevailing wage rates
Importance: High

Scott

Based on our sample of Texas Star we are not clear what Texas Star has done to correct the prevailing wage issue for both of the following personnel:

- Louis Contreras
- Zachary Harold

There were a couple of entries in their certified payroll that indicated a "correction" however, there was no methodology that we could audit in terms of how these corrections were made and how to substantiate the amount of the correction.

The sample I am referring to is within Texas Star CP 6/22/19 - 10/18/19. We need Texas Star to provide support / evidence that they resolved the prevailing issue for both of these personnel.

Thanks!

- Once Balfour Beatty was directly notified of these errors, the expectation was that Balfour Beatty would take appropriate action to resolve the issues. Balfour Beatty's contract states that "the Design/Build Contractor must comply and require each Subcontractor to comply with.....prevailing wage rate requirements". Therefore, it is Balfour Beatty's responsibility to deal directly with their Subcontractor.
- As the project was reaching substantial completion, the status of this issue was re-addressed with Balfour Beatty as shown in the 10/8/20 email below:

From: Chris Irpino <
Sent: Thursday, October 8, 2020 4:26 PM
To: German, Scott R. <
Cc: Jaime Miller <; Joshua Cheung ; Debbie Townsend <
Subject: RE: AISD Govalle ES audit

Scott

Just a quick reminder regarding our conversation this afternoon. Regarding prevailing wages that were underpaid to Texas Star (2 employees) we will need copies of the checks that were given to them for the total backpay owed.

Also, I have not seen any uploads for the data below... let me know if any problems uploading to our Box website or if you have an audit folder in your Egnyte that we need access to.

Thanks,

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- On 10/9/20, Balfour Beatty sent an email to Texas Star asking about the payment of the Fringe Benefits.

From: German, Scott R. <
Sent: Friday, October 9, 2020 11:54 AM
To: Mark Procyk <; Marlene Swed
Cc: Debbie Townsend ; Chris Irpino ; Jaime Miller ; Joshua Cheung
Subject: RE: Govalle ES - Wage complaint issue

Mark,

I'm going to copy them both to loop them back in. What I recall was that the full David Bacon rules were being followed and that if fringes weren't provided, payment in lieu of fringes was required. I don't recall any further backup of fringes being provided so the variance is due to the employees.

Debbie / Chris – please chime in on this.

- Subsequent to the above email, AISD engaged Balfour Beatty in follow up conversations related to the prevailing wage issues.

It should be noted that R. L. Townsend does not normally calculate the restitution amount as we cannot validate having complete records. We typically provide the contractor with potential errors and expect the appropriate individuals to vet and calculate the amount due. We will review the calculation for reasonableness. We always request documentation to support the payment made to the individual. In this situation, we only received the certified payroll with the handwritten notes. No other information was provided by Texas Star or Balfour Beatty.