NDDOT

APPLICATION OF DBRA TO TRUCK DRIVERS

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INTRODUCTION

The scenarios that follow were developed as an aid to district, city, county, and consultant project managers-engineers in determining whether the following apply to the federal-aid highway construction projects for which they have oversight:

- *Prime Contractor's Request to Sublet (SFN 5682)* forms and subcontract agreements.
- Davis-Bacon wage and payroll requirements.
- De minimis as it applies to Davis-Bacon and truck drivers.

The district, city, county, or consultant project manager-engineer must use his or her best judgment to determine whether a location in question is considered a ***site of the work*** of a federal-aid highway construction project. If the district, city, county, or consultant project manager-engineer has questions or is unsure whether a borrow pit, stockpile site, concrete or asphalt batch plant site, etc., is covered, he or she should consult the Civil Rights Division.

Reference sources used in the development of the scenarios include:

- *2013 External Civil Rights Manual* - Section V. Labor Compliance, paragraphs A and B (unless otherwise noted).
- *2008 Standard Specifications for Road and Bridge Construction, Volume 1 - Section 104.02*, which states:

  > NDDOT will not consider off-site commercial production of materials and manufactured component products that the contractor purchases or their transportation to the project as subcontracted work.
  >
  > When a project contains a DBE goal, a subcontract is required with any DBE firms used to meet the goal; unless the DBE firm is classified as an oil hauler, supplier, broker, vendor, regular dealer, or manufacturer.

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Scenario 6: Stockpile site is located within ½ mile of the project and being used exclusively for the project (pages 14-15).

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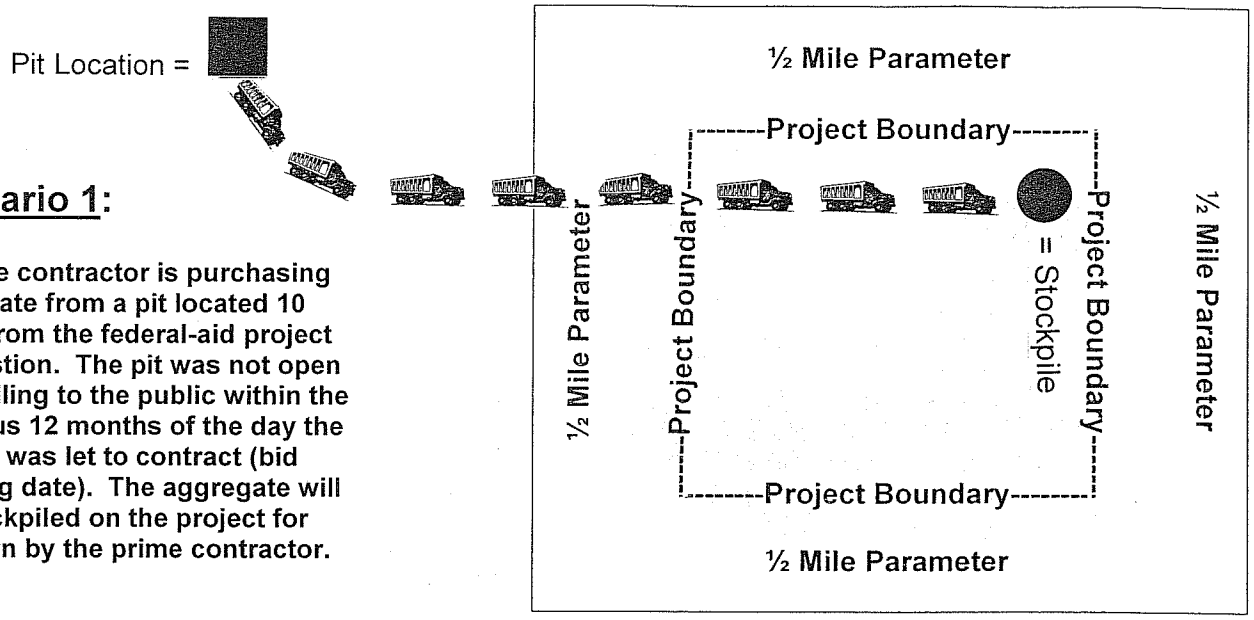
Scenario 23: Prime contractor owns mobile ready-mixed concrete batch plant located within ½ mile of the project. Batch plant has been open and selling to the public. Prime contractor is supplying the ready-mixed concrete for the project from that batch plant (pages 48-49).



Scenario 1:

A prime contractor is purchasing aggregate from a pit located 10 miles from the federal-aid project in question. The pit was not open and selling to the public within the previous 12 months of the day the project was let to contract (bid opening date). The aggregate will be stockpiled on the project for laydown by the prime contractor.

1. Is a *Prime Contractor's Request to Sublet* and subcontract agreement between the prime contractor and the aggregate supplier required?

   Answer: ☑ **Yes** ☐ **No**

2. If the prime contractor hires a trucking firm to haul the aggregate from the pit to the stockpile site, is a *Prime Contractor's Request to Sublet* and subcontract agreement between the prime contractor and the trucking firm required?

   Answer: ☑ **Yes** ☐ **No**

3. If the aggregate supplier hires a trucking firm to haul the aggregate from the pit to the stockpile site, is a *Prime Contractor's Request to Sublet* and subcontract agreement between the aggregate supplier and the trucking firm required?

   Answer: ☑ **Yes** ☐ **No**

4. Under what circumstances are the prime contractor's truck drivers, who haul the aggregate from the pit to the stockpile site, due Davis-Bacon wages?

   Answer: **Only for the amount of time they spend within the project boundaries that is more than de minimis.**

5. Under what circumstances is the trucking firm hired by the prime contractor to haul the aggregate from the pit to the stockpile site required to pay its drivers Davis-Bacon wages?

   Answer: **Only for the amount of time they spend within the project boundaries that is more than de minimis.**

6. Under what circumstances are the truck drivers employed by either the aggregate supplier or the trucking firm hired by the aggregate supplier, who haul the aggregate from the pit to the stockpile site, due Davis-Bacon wages?

   Answer: **Only for the amount of time they spend within the project boundaries that is more than de minimis.**

ANSWER KEY (Scenario 1):

1. Yes. The pit was **not** open and selling to the public within the previous 12 months of the day the project was let to contract. Therefore, the pit was **not** established by a commercial supplier. Consequently, a request to sublet and subcontract agreement between the prime contractor and the aggregate supplier is required.

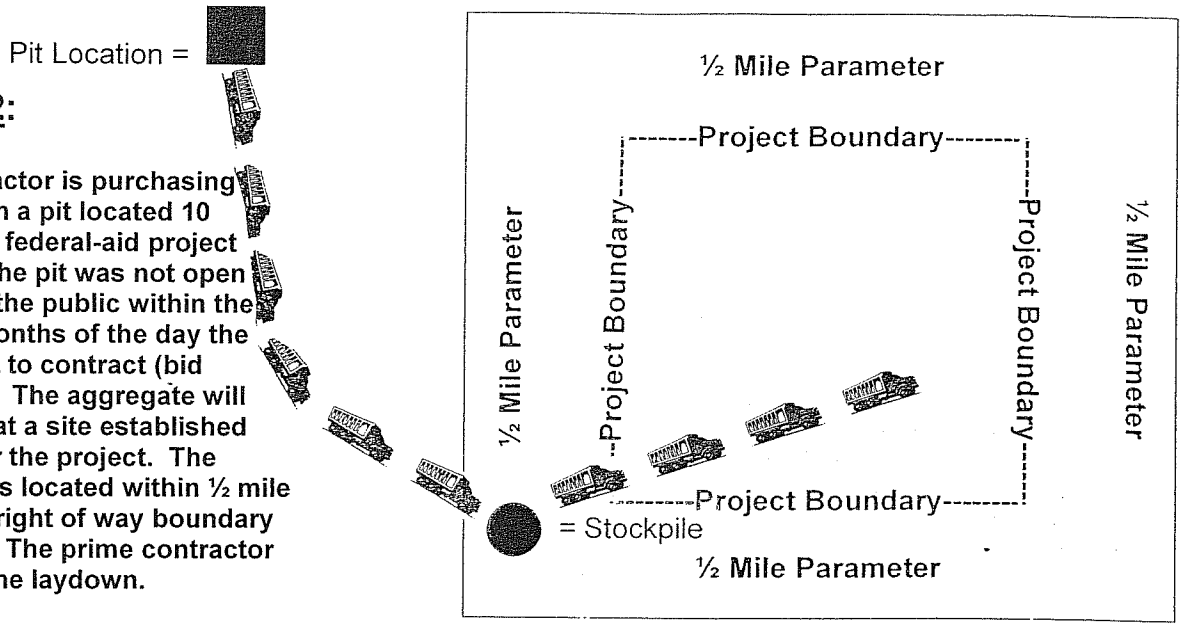
2. Yes. The pit was **not** open and selling to the public within the previous 12 months of the day the project was let to contract. Therefore, the pit was **not** established by a commercial supplier. Since the prime contractor is hiring the trucking firm to haul the aggregate from a facility established specifically for the project, a request to sublet and subcontract agreement between the prime contractor and the trucking firm is required.

3. Yes. The pit was **not** open and selling to the public within the previous 12 months of the day the project was let to contract. Therefore, the pit was **not** established by a commercial supplier. Since the subcontractor (aggregate supplier) is hiring the trucking firm to haul the aggregate from a facility established specifically for the project, a request to sublet and subcontract agreement between the subcontractor (aggregate supplier) and the trucking firm is required.

4. Although the pit was **not** open and selling to the public within the previous 12 months of the day the project was let to contract, it is located more than ½ mile from the closest right of way boundary to the project. Therefore, the pit is **not** considered a ***site of the work***. To be considered a ***site of the work***, the pit must be located adjacent, or virtually adjacent, to the project and be dedicated exclusively, or nearly so, to the performance of the contract. Consequently, the prime contractor's truck drivers, who haul the aggregate from the pit to the stockpile site, are due Davis-Bacon wages **only** for the amount of time they spend within the project boundaries that is ***more than de minimis***.

5. The trucking firm hired by the prime contractor to haul the aggregate from the pit to the stockpile site is required to pay its drivers Davis-Bacon wages **only** for the amount of time they spend within the project boundaries that is ***more than de minimis*** for the same reason as the prime contractor.

6. The truck drivers employed by either the subcontractor (aggregate supplier) or the trucking firm hired by the subcontractor (aggregate supplier), who haul the aggregate from the pit to the stockpile site, are due Davis-Bacon wages **only** for the amount of time they spend within the project boundaries that is ***more than de minimis*** for the same reason as the prime contractor.



Scenario 2:

A prime contractor is purchasing aggregate from a pit located 10 miles from the federal-aid project in question. The pit was not open and selling to the public within the previous 12 months of the day the project was let to contract (bid opening date). The aggregate will be stockpiled at a site established specifically for the project. The stockpile site is located within ½ mile of the closest right of way boundary to the project. The prime contractor will be doing the laydown.

1. If the aggregate described in the first scenario is delivered to a stockpile site established specifically for the project, and that stockpile site is located within ½ mile of the closest right of way boundary to the project, are the prime contractor's employees working at the stockpile site due Davis-Bacon wages?

   Answer: ☑ **Yes** ☐ **No**

2. Under what circumstances are the prime contractor's truck drivers, who haul the aggregate from the stockpile site to the project, due Davis-Bacon wages?

   Answer: **The truck drivers are due Davis-Bacon wages for all of the time they spend at the stockpile site, en route, and within the project boundaries.**

3. If the prime contractor uses a subcontractor to load and haul the aggregate from the stockpile site to the project, is a *Prime Contractor's Request to Sublet* and subcontract agreement between the prime contractor and the subcontractor required?

   Answer: ☑ **Yes** ☐ **No**

4. Are the subcontractor's employees working at the stockpile site due Davis-Bacon wages?

   Answer: ☑ **Yes** ☐ **No**

5. Under what circumstances are the subcontractor's truck drivers, who haul the aggregate from the stockpile site to the project, due Davis-Bacon wages?

   Answer: **The truck drivers are due Davis-Bacon wages for all of the time they spend at the stockpile site, en route, and within the project boundaries.**

6. If either the prime contractor or the subcontractor hires a trucking firm to help haul the aggregate from the stockpile site to the project, is a *Prime Contractor's Request to Sublet* and subcontract agreement between either the prime contractor or the subcontractor and the trucking firm required?

   Answer: ☑ **Yes** ☐ **No**

7. Under what circumstances is the trucking firm hired by either the prime contractor or the subcontractor to help haul the aggregate from the stockpile site to the project required to pay its drivers Davis-Bacon wages?

   Answer: **The truck drivers are due Davis-Bacon wages for all of the time they spend at the stockpile site, en route, and within the project boundaries.**

ANSWER KEY (Scenario 2):

NOTE: This is a continuation from the first scenario. The questions concerning whether or not requests to sublet, subcontract agreements, and Davis-Bacon wage rates apply when hauling from the pit location have already been answered. The questions in this scenario concern operations at the stockpile site and hauling from the stockpile site to the project.

1. Yes. Since the stockpile site is located within ½ mile of the closest right of way boundary to the project and the stockpile site was **not** open and selling to the public within the previous 12 months of the day the project was let to contract, it meets the criteria of being located adjacent, or virtually adjacent, to the project and being dedicated exclusively, or nearly so, to the performance of the contract. In other words, it is considered a ***site of the work***. Therefore, the prime contractor's employees working at the stockpile site are due Davis-Bacon wages.

2. The prime contractor's truck drivers, who haul the aggregate from the stockpile site to the project, are due Davis-Bacon wages for all of the time they spend at the stockpile site, en route, and within the project boundaries for the same reason as the prime contractor's employees working at the stockpile site.

3. Yes. The stockpile site was **not** open and selling to the public within the previous 12 months of the day the project was let to contract. Therefore, the stockpile site was **not** established by a commercial supplier. Since the prime contractor is using the subcontractor to load and haul the aggregate from a facility established specifically for the project, a request to sublet and subcontract agreement between the prime contractor and the subcontractor is required.

4. Yes. The subcontractor's employees working at the stockpile site are due Davis-Bacon wages for the same reason as the prime contractor's employees.

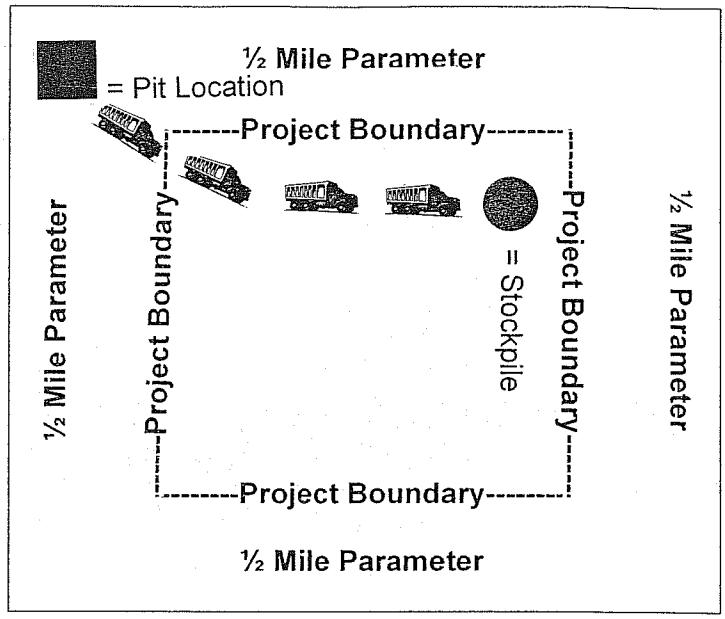
5. The subcontractor's truck drivers, who haul the aggregate from the stockpile site to the project, are due Davis-Bacon wages for all of the time they spend at the stockpile site, en route, and within the project boundaries for the same reason as the subcontractor's employees working at the stockpile site.

6. Yes. The stockpile site was **not** open and selling to the public within the previous 12 months of the day the project was let to contract. Therefore, the stockpile site was **not** established by a commercial supplier. Since either the prime contractor or the subcontractor is hiring the trucking firm to help haul the aggregate from a facility established specifically for the project, a request to sublet and subcontract agreement between either the prime contractor or the subcontractor and the trucking firm is required.

7. The trucking firm hired by either the prime contractor or the subcontractor to help haul the aggregate from the stockpile site to the project is required to pay its drivers Davis-Bacon wages for all of the time they spend at the stockpile site, en route, and within the project boundaries for the same reason as the prime contractor and the subcontractor.

Scenario 3:

A contractor (prime or sub) is purchasing gravel from a pit located within ½ mile of the closest right of way boundary to the federal-aid project in question. The pit has been open and selling to the public for several years. The gravel will be stockpiled on the project for laydown by the contractor.



1. Is a *Prime Contractor's Request to Sublet* and subcontract agreement between the contractor and the gravel supplier required?

   Answer: ☐ **Yes** ☑ **No**

2. If the contractor hires a trucking firm to haul the gravel from the pit to the stockpile site, under what circumstances is a *Prime Contractor's Request to Sublet* and subcontract agreement between the contractor and the trucking firm required?

   Answer: **Only if the trucking firm is a DBE that was used to meet the contract goal (including non-DBE match trucks).**

3. If the gravel supplier hires a trucking firm to deliver the gravel from the pit to the stockpile site, is a *Prime Contractor's Request to Sublet* and subcontract agreement between the gravel supplier and the trucking firm required?

   Answer: ☐ **Yes** ☑ **No**

4. Under what circumstances are the contractor's truck drivers, who haul the gravel from the pit to the stockpile site, due Davis-Bacon wages?

   Answer: **Only for the amount of time they spend within the project boundaries that is more than de minimis.**

5. Under what circumstances is the trucking firm hired by the contractor to haul the gravel from the pit to the stockpile site required to pay its drivers Davis-Bacon wages?

   Answer: **Only for the amount of time they spend within the project boundaries that is more than de minimis.**

6. Under what circumstances are the truck drivers employed by either the gravel supplier or the trucking firm hired by the gravel supplier, who deliver the gravel from the pit to the stockpile site, due Davis-Bacon wages?

   Answer: **None.**

ANSWER KEY (Scenario 3):

1. No. The pit has been open and selling to the public for several years. In other words, the pit was established by a commercial supplier. Therefore, **no** request to sublet and subcontract agreement between the contractor and the commercial supplier is required.

2. With one exception, if the contractor hires a trucking firm to haul the gravel from the pit to the stockpile site, **no** request to sublet and subcontract agreement between the contractor and the trucking firm is required for two reasons: 1) The pit has been open and selling to the public for several years; therefore, it was established by a commercial supplier. 2) The contractor is hiring the trucking firm to transport the gravel from a commercial supplier.

   The **only** exception concerns DBE firms used to meet contract goals. Requests to sublet and subcontract agreements between the contractor and the DBE firms are required. Requests to sublet and subcontract agreements between the DBE firms and any non-DBE firms providing match trucks are also required. The requests to sublet and subcontract agreements are required in order to track the DBE firms' participation and to apply the prompt payment and release of retainage procedures to the DBE firms.

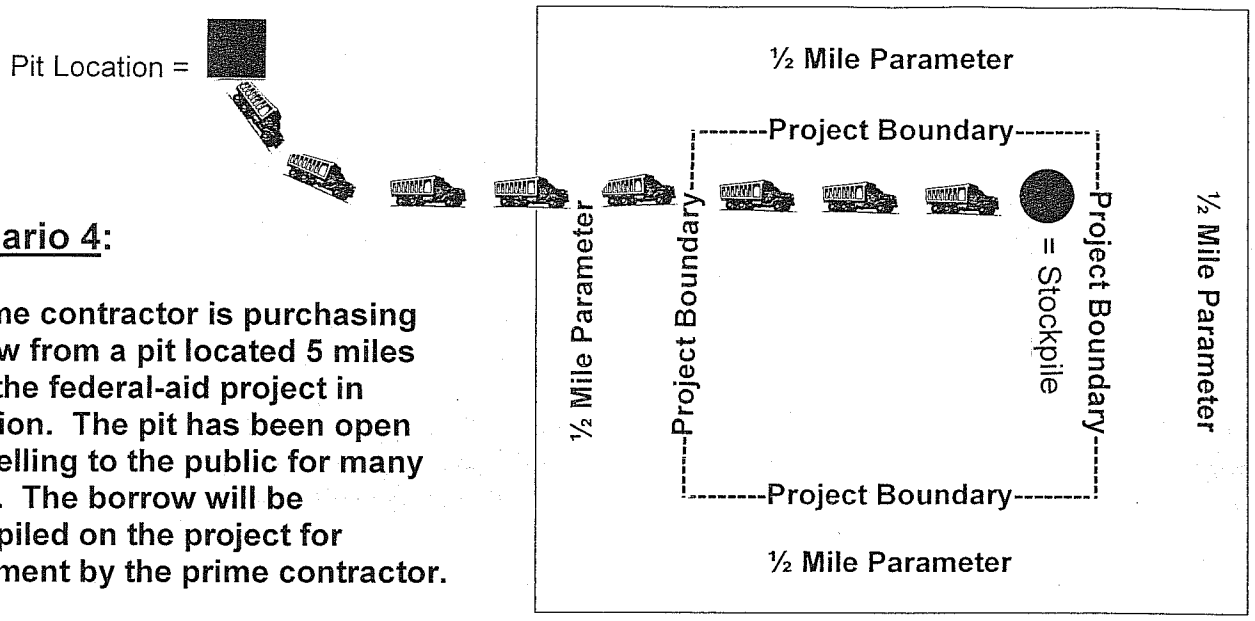
   NOTE: AGC of ND member contractors may be requiring requests to sublet and subcontract agreements between prime contractors, or subcontractors, and **all** trucking firms. However, this is **not** a department requirement.

3. No. The pit has been open and selling to the public for several years. In other words, the pit was established by a commercial supplier. Therefore, **no** request to sublet and subcontract agreement between the commercial supplier and the trucking firm is required.

4. Although the pit is located within ½ mile of the closest right of way boundary to the project, it has been open and selling to the public for several years. In other words, the pit was established by a commercial supplier and is **not** considered a ***site of the work***. To be considered a ***site of the work***, the pit must be located adjacent, or virtually adjacent, to the project and be dedicated exclusively, or nearly so, to the performance of the contract. Therefore, the contractor's truck drivers, who haul the gravel from the pit to the stockpile site, are due Davis-Bacon wages **only** for the amount of time they spend within the project boundaries that is ***more than de minimis***.

5. The trucking firm hired by the contractor to haul the gravel from the pit to the stockpile site is required to pay its drivers Davis-Bacon wages **only** for the amount of time they spend within the project boundaries that is ***more than de minimis*** for the same reason as the contractor. If the contractor did **not** enter into a subcontract agreement with the trucking firm, the prime contractor will be held ultimately responsible for the trucking firm's compliance with the Davis-Bacon and de minimis requirements.

6. The truck drivers employed by either the commercial supplier or the trucking firm hired by the commercial supplier, who deliver the gravel from the pit to the stockpile site, are **not** due Davis-Bacon wages at any time. Bona fide material suppliers are **not** subject to DBRA labor standards.



Scenario 4:

A prime contractor is purchasing borrow from a pit located 5 miles from the federal-aid project in question. The pit has been open and selling to the public for many years. The borrow will be stockpiled on the project for placement by the prime contractor.

1. Is a *Prime Contractor's Request to Sublet* and subcontract agreement between the prime contractor and the borrow supplier required?

   Answer: ☐ **Yes** ☑ **No**

2. Under what circumstances are the borrow supplier's truck drivers, who deliver the borrow from the pit to the stockpile site, due Davis-Bacon wages?

   Answer: **None.**

3. If the borrow supplier, in turn, hires the prime contractor to deliver the borrow from the pit to the stockpile site, is a *Prime Contractor's Request to Sublet* and subcontract agreement between the borrow supplier and the prime contractor required?

   Answer: ☐ **Yes** ☑ **No**

4. Under what circumstances is the prime contractor hired by the borrow supplier to deliver the borrow from the pit to the stockpile site required to pay its drivers Davis-Bacon wages?

   Answer: **None.**

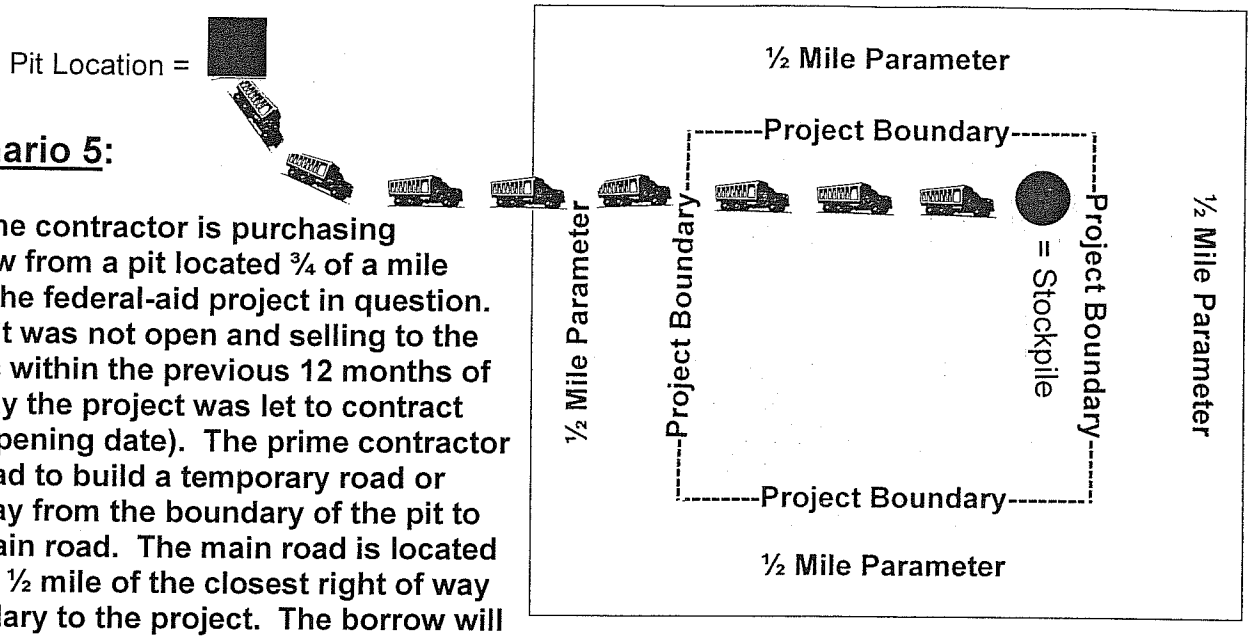
ANSWER KEY (Scenario 4):

1. No. The pit has been open and selling to the public for many years. In other words, the pit was established by a commercial supplier. Therefore, **no** request to sublet and subcontract agreement between the prime contractor and the commercial supplier is required.

2. The commercial supplier's truck drivers, who deliver the borrow from the pit to the stockpile site, are **not** due Davis-Bacon wages at any time. Bona fide material suppliers are **not** subject to DBRA labor standards.

3. No. The pit has been open and selling to the public for many years. In other words, the pit was established by a commercial supplier. Therefore, **no** request to sublet and subcontract agreement between the commercial supplier and the prime contractor is required.

4. Since the prime contractor was hired by the commercial supplier to deliver the borrow from the pit to the stockpile site, the prime contractor's truck drivers are **not** due Davis-Bacon wages at any time. Bona fide material suppliers are **not** subject to DBRA labor standards.



Scenario 5:

A prime contractor is purchasing borrow from a pit located ¾ of a mile from the federal-aid project in question. The pit was not open and selling to the public within the previous 12 months of the day the project was let to contract (bid opening date). The prime contractor has had to build a temporary road or cartway from the boundary of the pit to the main road. The main road is located within ½ mile of the closest right of way boundary to the project. The borrow will be stockpiled on the project for placement by the prime contractor.

1. Is a *Prime Contractor's Request to Sublet* and subcontract agreement between the prime contractor and the borrow supplier required?

   Answer: ☑ **Yes** ☐ **No**

2. Are the borrow supplier's employees working at the pit due Davis-Bacon wages?

   Answer: ☑ **Yes** ☐ **No**

3. Under what circumstances are the prime contractor's truck drivers, who haul the borrow from the pit to the stockpile site, due Davis-Bacon wages?

   Answer: **The truck drivers are due Davis-Bacon wages for all of the time they spend at the pit, en route, and within the project boundaries.**

4. Under what circumstances are the borrow supplier's truck drivers, who haul the borrow from the pit to the stockpile site, due Davis-Bacon wages?

   Answer: **The truck drivers are due Davis-Bacon wages for all of the time they spend at the pit, en route, and within the project boundaries.**

5. If either the prime contractor or the borrow supplier hires a trucking firm to haul the borrow from the pit to the stockpile site, is a *Prime Contractor's Request to Sublet* and subcontract agreement between either the prime contractor or the borrow supplier and the trucking firm required?

   Answer: ☑ **Yes** ☐ **No**

6. Under what circumstances is the trucking firm hired by either the prime contractor or the borrow supplier to haul the borrow from the pit to the stockpile site required to pay its drivers Davis-Bacon wages?

   Answer: **The truck drivers are due Davis-Bacon wages for all of the time they spend at the pit, en route, and within the project boundaries.**

ANSWER KEY (Scenario 5):

1. Yes. The pit was **not** open and selling to the public within the previous 12 months of the day the project was let to contract. Therefore, the pit was **not** established by a commercial supplier. Consequently, a request to sublet and subcontract agreement between the prime contractor and the borrow supplier is required.

2. Yes, for two reasons: 1) The temporary road or cartway is considered part of the pit; and therefore, brings the boundary of the pit within ½ mile of the closest right of way boundary to the project. 2) The pit was **not** open and selling to the public within the previous 12 months of the day the project was let to contract. Therefore, the pit meets the criteria of being located adjacent, or virtually adjacent, to the project and being dedicated exclusively, or nearly so, to the performance of the contract. In other words, it is considered a ***site of the work***. Consequently, the subcontractor's (borrow supplier's) employees working at the pit are due Davis-Bacon wages.

3. The prime contractor's truck drivers, who haul the borrow from the pit to the stockpile site, are due Davis-Bacon wages for all of the time they spend at the pit, en route, and within the project boundaries for the same reason as the subcontractor's (borrow supplier's) employees working at the pit.

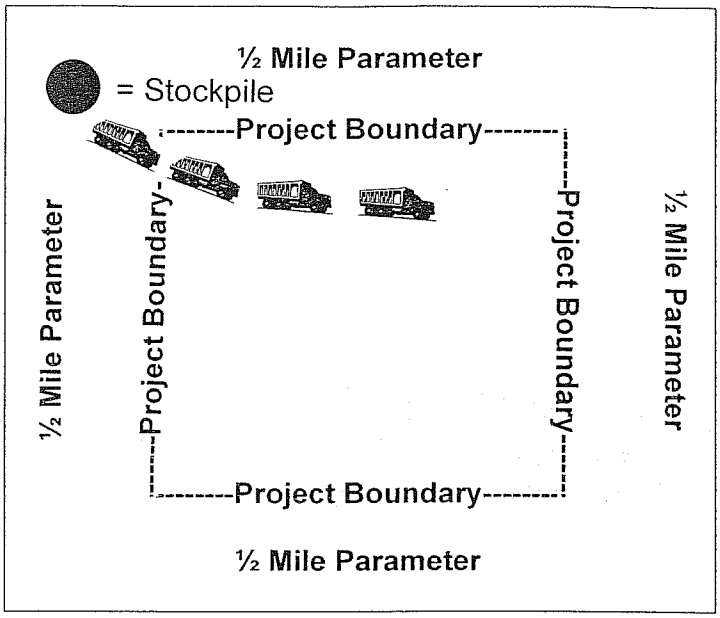
4. The subcontractor's (borrow supplier's) truck drivers, who haul the borrow from the pit to the stockpile site, are due Davis-Bacon wages for all of the time they spend at the pit, en route, and within the project boundaries for the same reason as the subcontractor's (borrow supplier's) employees working at the pit.

5. Yes. The pit was **not** open and selling to the public within the previous 12 months of the day the project was let to contract. Therefore, the pit was **not** established by a commercial supplier. Since either the prime contractor or the subcontractor (borrow supplier) is hiring the trucking firm to haul the borrow from a facility established specifically for the project, a request to sublet and subcontract agreement between the either the prime contractor or the subcontractor (borrow supplier) and the trucking firm is required.

6. The trucking firm hired by either the prime contractor or the subcontractor (borrow supplier) to haul the borrow from the pit to the stockpile site is required to pay its drivers Davis-Bacon wages for all of the time they spend at the pit, en route, and within the project boundaries for the same reason as the prime contractor and the subcontractor (borrow supplier).

Scenario 6:

A prime contractor stockpiled aggregate on leased land for use on a previous project only. The prime contractor will be using the leftover aggregate on the federal-aid project in question. The stockpile is located within ½ mile of the closest right of way boundary to the project in question. The prime contractor will be doing the laydown.



1. Are the prime contractor's employees working at the stockpile site due Davis-Bacon wages?

   Answer: ☑ **Yes** ☐ **No**

2. Under what circumstances are the prime contractor's truck drivers, who haul the aggregate from the stockpile site to the project, due Davis-Bacon wages?

   Answer: **The truck drivers are due Davis-Bacon wages for all of the time they spend at the stockpile site, en route, and within the project boundaries.**

3. If the prime contractor uses a subcontractor to load and haul the aggregate from the stockpile site to the project, is a *Prime Contractor's Request to Sublet* and subcontract agreement between the prime contractor and the subcontractor required?

   Answer: ☑ **Yes** ☐ **No**

4. Are the subcontractor's employees working at the stockpile site due Davis-Bacon wages?

   Answer: ☑ **Yes** ☐ **No**

5. Under what circumstances are the subcontractor's truck drivers, who haul the aggregate from the stockpile site to the project, due Davis-Bacon wages?

   Answer: **The truck drivers are due Davis-Bacon wages for all of the time they spend at the stockpile site, en route, and within the project boundaries.**

6. If either the prime contractor or the subcontractor hires a trucking firm to help haul the aggregate from the stockpile site to the project, is a *Prime Contractor's Request to Sublet* and subcontract agreement between either the prime contractor or the subcontractor and the trucking firm required?

   Answer: ☑ **Yes** ☐ **No**

7. Under what circumstances is the trucking firm hired by either the prime contractor or the subcontractor to help haul the aggregate from the stockpile site to the project required to pay its drivers Davis-Bacon wages?

   Answer: **The truck drivers are due Davis-Bacon wages for all of the time they spend at the stockpile site, en route, and within the project boundaries.**

ANSWER KEY (Scenario 6):

1. Yes. Since the stockpile site is located within ½ mile of the closest right of way boundary to the project and the stockpile site was **not** open and selling to the public within the previous 12 months of the day the project was let to contract, it meets the criteria of being located adjacent, or virtually adjacent, to the project and being dedicated exclusively, or nearly so, to the performance of the contract. In other words, it is considered a ***site of the work***. Therefore, the prime contractor's employees working at the stockpile site are due Davis-Bacon wages.

2. The prime contractor's truck drivers, who haul the aggregate from the stockpile site to the project, are due Davis-Bacon wages for all of the time they spend at the stockpile site, en route, and within the project boundaries for the same reason as the prime contractor's employees working at the stockpile site.

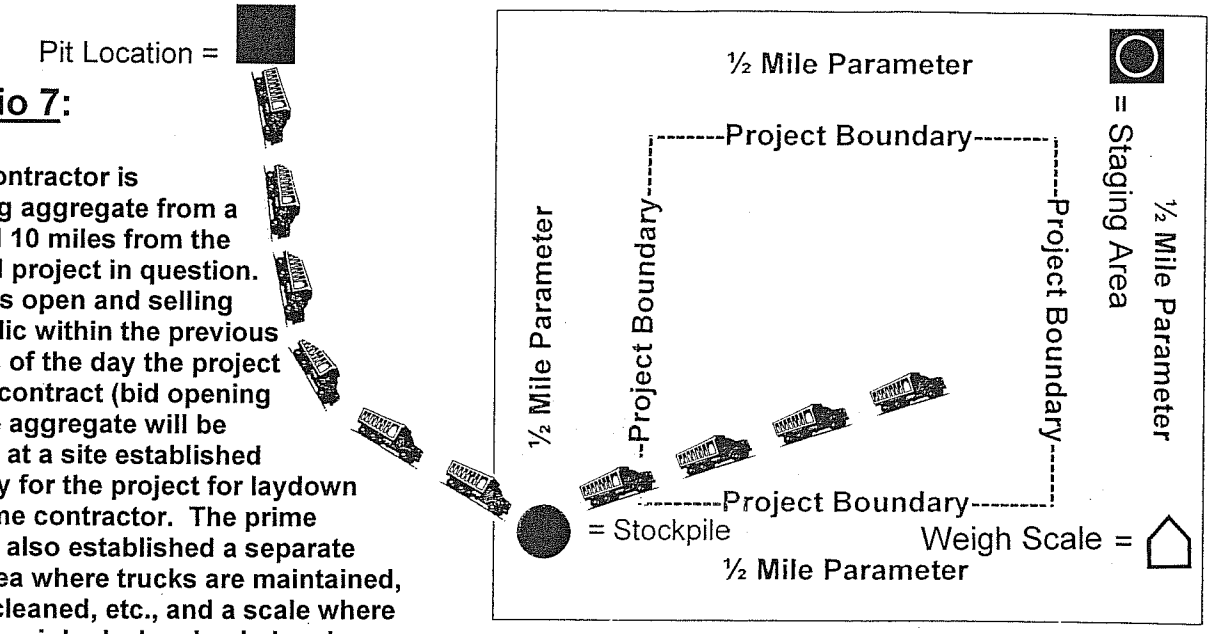
3. Yes. The stockpile was **not** open and selling to the public within the previous 12 months of the day the project was let to contract. Therefore, the stockpile site was **not** established by a commercial supplier. Since the prime contractor is using the subcontractor to load and haul the aggregate from a facility established specifically for the project, a request to sublet and subcontract agreement between the prime contractor and the subcontractor is required.

4. Yes. The subcontractor's employees working at the stockpile site are due Davis-Bacon wages for the same reason as the prime contractor's employees.

5. The subcontractor's truck drivers, who haul the aggregate from the stockpile site to the project, are due Davis-Bacon wages for all of the time they spend at the stockpile site, en route, and within the project boundaries for the same reason as the subcontractor's employees working at the stockpile site.

6. Yes. The stockpile was **not** open and selling to the public within the previous 12 months of the day the project was let to contract. Therefore, the stockpile site was **not** established by a commercial supplier. Since either the prime contractor or the subcontractor is hiring the trucking firm to help haul the aggregate from a facility established specifically for the project, a request to sublet and subcontract agreement between the either the prime contractor or the subcontractor and the trucking firm is required.

7. The trucking firm hired by either the prime contractor or the subcontractor to help haul the aggregate from the stockpile site to the project is required to pay its drivers Davis-Bacon wages for all of the time they spend at the stockpile site, en route, and within the project boundaries for the same reason as the prime contractor and the subcontractor.



Scenario 7:

A prime contractor is purchasing aggregate from a pit located 10 miles from the federal-aid project in question. The pit was open and selling to the public within the previous 12 months of the day the project was let to contract (bid opening date). The aggregate will be stockpiled at a site established specifically for the project for laydown by the prime contractor. The prime contractor also established a separate staging area where trucks are maintained, serviced, cleaned, etc., and a scale where trucks are weighed when loaded and unloaded. The stockpile site, staging area, and weigh scale are all located within ½ mile of the closest right of way boundary to the project.

1. Under what circumstances are the prime contractor's truck drivers, who haul the aggregate from the pit to the stockpile site, due Davis-Bacon wages?

   Answer: **Only for the amount of time they spend at the stockpile site, staging area, and weigh scale that is collectively more than de minimis.**

2. If the prime contractor hires a trucking firm to help haul the aggregate from the pit to the stockpile site, under what circumstances is a *Prime Contractor's Request to Sublet* and subcontract agreement between the prime contractor and the trucking firm required?

   Answer: **Only if the trucking firm is a DBE used to meet the contract goal (including non-DBE match trucks).**

3. Under what circumstances is the trucking firm hired by the prime contractor to help haul the aggregate from the pit to the stockpile site required to pay its drivers Davis-Bacon wages?

   Answer: **Only for the amount of time they spend at the stockpile site, staging area, and weigh scale that is collectively more than de minimis.**

4. Are the prime contractor's employees working at the stockpile site, staging area, and weigh scale due Davis-Bacon wages, where applicable?

   Answer: ☑ **Yes** ☐ **No**

5. Under what circumstances are the prime contractor's truck drivers, who haul the aggregate from the stockpile site to the project, due Davis-Bacon wages?

   Answer: **The truck drivers are due Davis-Bacon wages for all of the time they spend at the stockpile site, staging area, and weigh scale; en route; and within the project boundaries.**

ANSWER KEY (Scenario 7):

1. The pit is located more than ½ mile from the closest right of way boundary to the project and was open and selling to the public within the previous 12 months of the day the project was let to contract. In other words, the pit was established by a commercial supplier and is **not** considered a ***site of the work***. To be considered a ***site of the work***, the pit must be located adjacent, or virtually adjacent, to the project and be dedicated exclusively, or nearly so, to the performance of the contract. Therefore, the prime contractor's truck drivers, who haul the aggregate from the pit to the stockpile site, are due Davis-Bacon wages **only** for the amount of time they spend at the stockpile site, staging area, and weigh scale that is collectively ***more than de minimis***.

2. With one exception, if the prime contractor hires a trucking firm to help haul the aggregate from the pit to the stockpile site, **no** request to sublet and subcontract agreement between the prime contractor and the trucking firm is required for two reasons: 1) The pit has been open and selling to the public within the previous 12 months of the day the project was let to contract; therefore, it was established by a commercial supplier. 2) The prime contractor is hiring the trucking firm to help transport the aggregate from a commercial supplier.

   The **only** exception concerns DBE firms used to meet contract goals. Requests to sublet and subcontract agreements between the prime contractor and the DBE firms are required. Requests to sublet and subcontract agreements between the DBE firms and any non-DBE firms providing match trucks are also required. The requests to sublet and subcontract agreements are required in order to track the DBE firms' participation and to apply the prompt payment and release of retainage procedures to the DBE firms.

   NOTE: AGC of ND member contractors may be requiring requests to sublet and subcontract agreements between prime contractors, or subcontractors, and **all** trucking firms. However, this is **not** a department requirement.

3. The trucking firm hired by the prime contractor to help haul the aggregate from the pit to the stockpile site is required to pay its drivers Davis-Bacon wages **only** for the amount of time they spend at the stockpile site, staging area, and weigh scale that is collectively ***more than de minimis*** for the same reason as the prime contractor. If the prime contractor did **not** enter into a subcontract agreement with the trucking firm, the prime contractor will be held ultimately responsible for the trucking firm's compliance with the Davis-Bacon and de minimis requirements.

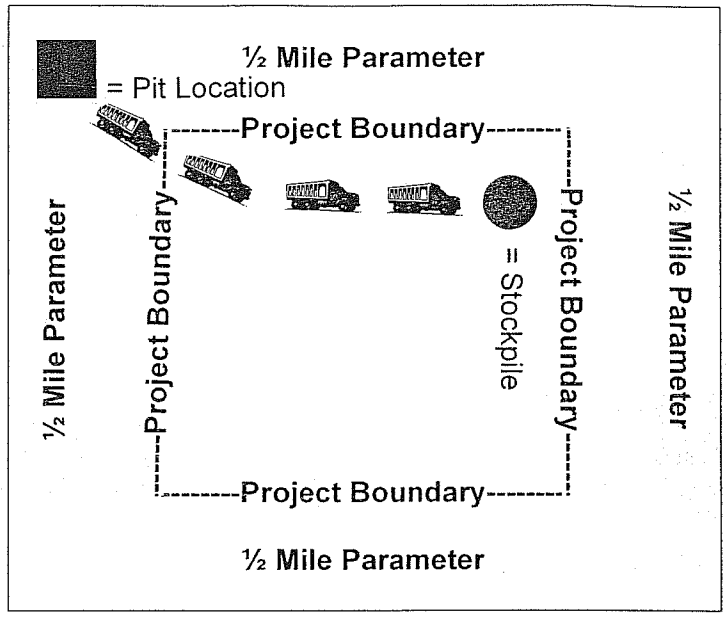
4. Yes, for two reasons: 1) The stockpile site, staging area, and weigh scale are located within ½ mile of the closest right of way boundary to the project. 2) The stockpile site was **not** open and selling to the public within the previous 12 months of the day the project was let to contract. Therefore, the stockpile site, staging area, and weigh scale meet the criteria of being located adjacent, or virtually adjacent, to the project and being dedicated exclusively, or nearly so, to the performance of the contract. In other words, they are considered a ***site of the work***. Consequently, the prime contractor's employees working at the stockpile site, staging area, and weigh scale are due Davis-Bacon wages, where applicable. For example, a mechanic working at the staging area is due Davis-Bacon wages for any mechanical or service work performed on trucks. However, a scale operator working at the weigh scale is **not** due Davis-Bacon wages due to the following exemption:

   > Contractor employees working in the capacity of ***Surveyors***, ***Gravel Testers***, ***Quality Control Technicians***, (testing and/or laboratory technicians), and ***Scale Operators*** (operating a scale and a computer) on a federal-aid highway construction project, or the ***site of the work***, are **NOT** laborers or mechanics within the definition of DBRA (one who performs manual labor) and are, therefore, **NOT** covered. They are **NOT** due Davis-Bacon wages and **DO NOT** have to appear on weekly certified payrolls. This includes ***Bituminous Mix Testers***, ***Bituminous Pavement Inspectors***, **Bituminous Mix Controllers**, and ***Aggregate Testers*** as defined in the *NDDOT Transportation Technician Qualification Program (TTQP)*. [See paragraph F,5 of Section V of the ECR Manual (page 168).]

5. Since the stockpile site is considered a ***site of the work***, the prime contractor's truck drivers, who haul the aggregate from the stockpile site to the project, are due Davis-Bacon wages for all of the time they spend at the stockpile site, staging area, and weigh scale; en route; and within the project boundaries for the same reason as the prime contractor's employees working at the stockpile site, staging area, and weigh scale.

Scenario 8:

A prime contractor is purchasing gravel from a pit located within ½ mile of the closest right of way boundary to the federal-aid project in question. The pit was not open and selling to the public within the previous 12 months of the day the project was let to contract (bid opening date). The gravel will be stockpiled on the project for laydown by the prime contractor. Prior to the prime contractor moving onto the project, however, the pit was opened and a sufficient quantity of sales was later made to the public.



1. Is a *Prime Contractor's Request to Sublet* and subcontract agreement between the prime contractor and the gravel supplier required?

   Answer: ☑ **Yes** ☐ **No**

2. Under what circumstances are the gravel supplier's employees working at the pit due Davis-Bacon wages?

   Answer: **The gravel supplier's employees are due Davis-Bacon wages only for the amount of time they spent working at the pit before a sufficient quantity of sales was made to the public. Once a sufficient quantity of sales is made to the public, the gravel supplier's employees are no longer due Davis-Bacon wages.**

3. Under what circumstances are the prime contractor's truck drivers, who haul the gravel from the pit to the stockpile site, due Davis-Bacon wages?

   Answer: **The prime contractor's truck drivers are due Davis-Bacon wages only for the amount of time they spent at the pit, en route, and within the project boundaries before a sufficient quantity of sales was made to the public. Once a sufficient quantity of sales is made to the public, the prime contractor's truck drivers are due Davis-Bacon wages only for the amount of time they spend within the project boundaries that is more than de minimis.**

4. Under what circumstances are the gravel supplier's truck drivers, who haul the gravel from the pit to the stockpile site, due Davis-Bacon wages?

   Answer: **The gravel supplier's truck drivers are due Davis-Bacon wages only for the amount of time they spent at the pit, en route, and within the project boundaries before a sufficient quantity of sales was made to the public. Once a sufficient quantity of sales is made to the public, the gravel supplier's truck drivers are no longer due Davis-Bacon wages.**

ANSWER KEY (Scenario 8):

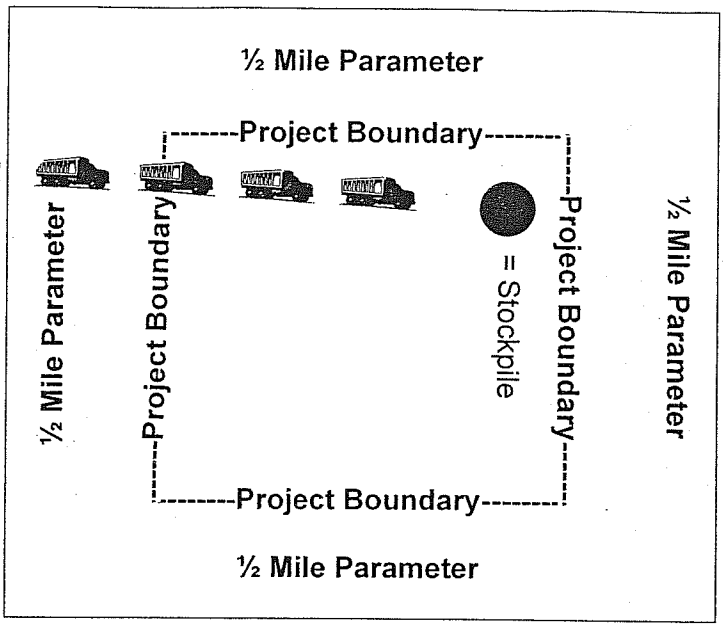
1. Yes. The pit was **not** open and selling to the public within the previous 12 months of the day the project was let to contract. Therefore, the pit was **not** established by a commercial supplier. Consequently, a request to sublet and subcontract agreement between the prime contractor and the gravel supplier is required.

2. Since the pit is located within ½ mile of the closest right of way boundary to the project and was initially **not** open and selling to the public within the previous 12 months of the day the project was let to contract, it met the criteria of being located adjacent, or virtually adjacent, to the project and being dedicated exclusively, or nearly so, to the performance of the contract. However, prior to the prime contractor moving onto the project, the pit underwent a change in its character to such an extent that it became the operation of a commercial supplier. Therefore, the subcontractor's (gravel supplier's) employees are due Davis-Bacon wages **only** for the amount of time they spent working at the pit before a sufficient quantity of sales was made to the public. Once a sufficient quantity of sales was made to the public, the pit became the operation of a commercial supplier and is no longer subject to DBRA labor standards.

3. The prime contractor's truck drivers, who haul the gravel from the pit to the stockpile site, are due Davis-Bacon wages for all of the time they spent at the pit, en route, and within the project boundaries before a sufficient quantity of sales was made to the public for the same reason as the subcontractor's (gravel supplier's) employees working at the pit. Once a sufficient quantity of sales was made to the public, the pit became the operation of a commercial supplier. The prime contractor's truck drivers are subsequently due Davis-Bacon wages **only** for the amount of time they spend within the project boundaries that is ***more than de minimis***.

4. The subcontractor's (pit owner's) truck drivers, who haul the gravel from the pit to the stockpile site, are due Davis-Bacon wages **only** for the amount of time they spent at the pit, en route, and within the project boundaries before a sufficient quantity of sales was made to the public for the same reason as the subcontractor's (gravel supplier's) employees working at the pit. Once a sufficient quantity of sales was made to the public, the pit became the operation of a commercial supplier and is no longer subject to DBRA labor standards.

Non-Commercial Supply Source = ■



Scenario 9:

A prime contractor is purchasing rock from a local farmer for use as riprap. The rock will be loaded and delivered from a pasture located 5 miles northwest of the federal-aid project in question. The rock will be stockpiled on the project, and the prime contractor will be placing the riprap.

1. Are the prime contractor's employees working in the pasture to load the rock due Davis-Bacon wages?

   Answer: ☐ **Yes** ☑ **No**

2. Under what circumstances are the prime contractor's truck drivers, who haul the rock from the pasture to the stockpile site, due Davis-Bacon wages?

   Answer: **Only for the amount of time they spend within the project boundaries that is more than de minimis.**

3. If the prime contractor uses a subcontractor to load and haul the rock from the pasture to the stockpile site, is a *Prime Contractor's Request to Sublet* and subcontract agreement between the prime contractor and the subcontractor required?

   Answer: ☑ **Yes** ☐ **No**

4. Are the subcontractor's employees working in the pasture to load the rock due Davis-Bacon wages?

   Answer: ☐ **Yes** ☑ **No**

5. Under what circumstances are the subcontractor's truck drivers, who haul the rock from the pasture to the stockpile site, due Davis-Bacon wages?

   Answer: **Only for the amount of time they spend within the project boundaries that is more than de minimis.**

6. If either the prime contractor or the subcontractor hires a trucking firm to help haul the rock from the pasture to the stockpile site, is a *Prime Contractor's Request to Sublet* and subcontract agreement between either the prime contractor or the subcontractor and the trucking firm required?

   Answer: ☑ **Yes** ☐ **No**

7. Under what circumstances is the trucking firm hired by either the prime contractor or the subcontractor to help haul the rock from the pasture to the stockpile site required to pay its drivers Davis-Bacon wages?

   Answer: **Only for the amount of time they spend within the project boundaries that is more than de minimis.**

ANSWER KEY (Scenario 9):

1. No. Although the prime contractor is purchasing the rock from a local farmer, **not** a commercial supplier, the pasture is located more than ½ mile from the closest right of way boundary to the project. Therefore, the pasture is **not** considered a ***site of the work***. To be considered a ***site of the work***, the pasture must be located adjacent, or virtually adjacent, to the project and be dedicated exclusively, or nearly so, to the performance of the contract. Consequently, the prime contractor's employees working in the pasture to load the rock are **not** due Davis-Bacon wages.

2. The prime contractor's truck drivers, who haul the rock from the pasture to the stockpile site, are due Davis-Bacon wages **only** for the amount of time they spend within the project boundaries that is ***more than de minimis*** for the same reason as the prime contractor's employees working in the pasture to load the rock.

3. Yes. Although the pasture is located more than ½ mile from the closest right of way boundary to the project, the prime contractor is purchasing the rock from a local farmer, **not** a commercial supplier. Since the prime contractor is using the subcontractor to load and haul the rock from a non-commercial source, a request to sublet and subcontract agreement between the prime contractor and the subcontractor is required.

4. No. The subcontractor's employees working in the pasture to load the rock are **not** due Davis-Bacon wages for the same reason as the prime contractor's employees.

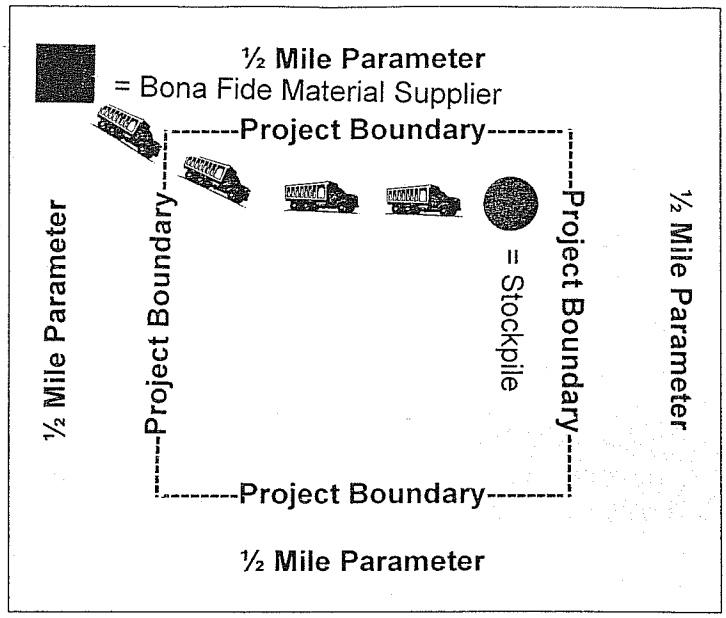
5. The subcontractor's truck drivers, who haul the rock from the pasture to the stockpile site, are due Davis-Bacon wages **only** for the amount of time they spend within the project boundaries that is ***more than de minimis*** for the same reason as the subcontractor's employees working in the pasture to load the rock.

6. Yes. Although the pasture is located more than ½ mile from the closest right of way boundary to the project, the prime contractor is purchasing the rock from a local farmer, **not** a commercial supplier. Since either the prime contractor or the subcontractor is hiring the trucking firm to help haul the rock from a non-commercial source, a request to sublet and subcontract agreement between either the prime contractor or the subcontractor and the trucking firm is required.

7. The trucking firm hired by either the prime contractor or the subcontractor to help haul the rock from the pasture to the stockpile site is required to pay its drivers Davis-Bacon wages **only** for the amount of time they spend within the project boundaries that is ***more than de minimis*** for the same reason as the prime contractor and the subcontractor.

Scenario 10:

A prime contractor is purchasing riprap from a company that finds and buys rock piles from local farmers for resale to the public. The company is located within ½ mile of the closest right of way boundary to the federal-aid project in question. The company has been in business for several years. The riprap will be stockpiled on the project for placement by the prime contractor.



1. Is a *Prime Contractor's Request to Sublet* and subcontract agreement between the prime contractor and the company selling the riprap required?

   Answer: ☐ **Yes** ☑ **No**

2. If the prime contractor hires a trucking firm to haul the riprap from either the company location or the rock pile to the stockpile site, under what circumstances is a *Prime Contractor's Request to Sublet* and subcontract agreement between the prime contractor and the trucking firm required?

   Answer: **Only if the trucking firm is a DBE that was used to meet the contract goal (including non-DBE match trucks).**

3. If the company selling the riprap hires a trucking firm to deliver the riprap from either the company location or the rock pile, is a *Prime Contractor's Request to Sublet* and subcontract agreement between the company selling the riprap and the trucking firm required?

   Answer: ☐ **Yes** ☑ **No**

4. Under what circumstances are the prime contractor's truck drivers, who haul the riprap from either the company location or the rock pile to the stockpile site, due Davis-Bacon wages?

   Answer: **Only for the amount of time they spend within the project boundaries that is more than de minimis.**

5. Under what circumstances is the trucking firm hired by the prime contractor to haul the riprap from either the company location or the rock pile to the stockpile site required to pay its drivers Davis-Bacon wages?

   Answer: **Only for the amount of time they spend within the project boundaries that is more than de minimis.**

6. Under what circumstances is the trucking firm hired by the company selling the riprap to deliver the riprap from either the company location or the rock pile to the stockpile site required to pay its drivers Davis-Bacon wages?

   Answer: **None.**

ANSWER KEY (Scenario 10):

1. No. The company has been in business for several years. In other words, the company is considered a commercial supplier. Therefore, **no** request to sublet and subcontract agreement between the prime contractor and the commercial supplier is required.

2. With one exception, if the prime contractor hires a trucking firm to haul the riprap from either the company location or the rock pile to the stockpile site, **no** request to sublet and subcontract agreement between the prime contractor and the trucking firm is required for two reasons: 1) The company has been in business for several years; therefore, it is considered a commercial supplier. 2) The prime contractor is hiring the trucking firm to transport the riprap from a commercial supplier.

   The **only** exception concerns DBE firms used to meet contract goals. Requests to sublet and subcontract agreements between the prime contractor and the DBE firms are required. Requests to sublet and subcontract agreements between the DBE firms and any non-DBE firms providing match trucks are also required. The requests to sublet and subcontract agreements are required in order to track the DBE firms' participation and to apply the prompt payment and release of retainage procedures to the DBE firms.

   NOTE: AGC of ND member contractors may be requiring requests to sublet and subcontract agreements between prime contractors, or subcontractors, and **all** trucking firms. However, this is **not** a department requirement.

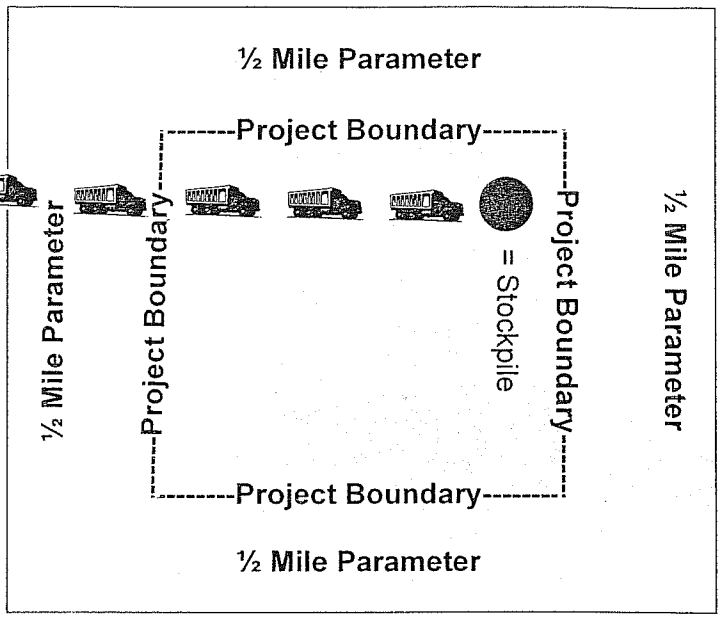
3. No. The company has been in business for several years. In other words, the company is considered a commercial supplier. Therefore, **no** request to sublet and subcontract agreement between the commercial supplier and the trucking firm is required.

4. Although the company is located within ½ mile of the closest right of way boundary to the project, it has been in business for several years. Therefore, the company location is **not** considered a ***site of the work***. To be considered a ***site of the work***, the company must be located adjacent, or virtually adjacent, to the project and be dedicated exclusively, or nearly so, to the performance of the contract. Consequently, the contractor's truck drivers are due Davis-Bacon wages **only** for the amount of time they spend within the project boundaries that is ***more than de minimis***.

5. The trucking firm hired by the prime contractor to haul the riprap from either the company location or the rock pile to the stockpile site is required to pay its drivers Davis-Bacon wages **only** for the amount of time they spend within the project boundaries that is ***more than de minimis*** for the same reason as the prime contractor. If the prime contractor did **not** enter into a subcontract agreement with the trucking firm, the prime contractor will be held ultimately responsible for the trucking firm's compliance with the Davis-Bacon and de minimis requirements.

6. The truck drivers employed by either the commercial supplier or the trucking firm hired by the commercial supplier, who deliver the riprap from either the company location or the rock pile to the stockpile site, are **not** due Davis-Bacon wages at any time. Bona fide material suppliers are **not** subject to DBRA labor standards.

Crushing Plant = ■



Scenario 11:

A prime contractor is using another company to do the base laydown on a federal-aid project. The other company also has a crushing plant located 6 miles from the project in question. The crushing plant has been open and selling to the public for many years. The prime contractor will be purchasing the base material from that crushing plant. The base material will be stockpiled on the project.

1. Is a *Prime Contractor's Request to Sublet* and subcontract agreement between the prime contractor and the other company for the base laydown required?

   Answer: ☑ **Yes** ☐ **No**

2. Is a *Prime Contractor's Request to Sublet* and subcontract agreement between the prime contractor and the other company for the purchase of the base material required?

   Answer: ☐ **Yes** ☑ **No**

3. Under what circumstances are the prime contractor's truck drivers, who haul the base material from the crushing plant to the stockpile site, due Davis-Bacon wages?

   Answer: **Only for the amount of time they spend within the project boundaries that is more than de minimis.**

4. Under what circumstances are the truck drivers employed by the other company, who deliver the base material from the crushing plant to the stockpile site, due Davis-Bacon wages?

   Answer: **None.**

5. If the base material is delivered directly onto the roadway rather than stockpiled, under what circumstances are the truck drivers employed by the other company due Davis-Bacon wages?

   Answer: **Any individual truck driver who spends more than 20% of his or her time in a workweek within the project boundaries is due Davis-Bacon wages for all of the time he or she spends within the project boundaries during that workweek.**

ANSWER KEY (Scenario 11):

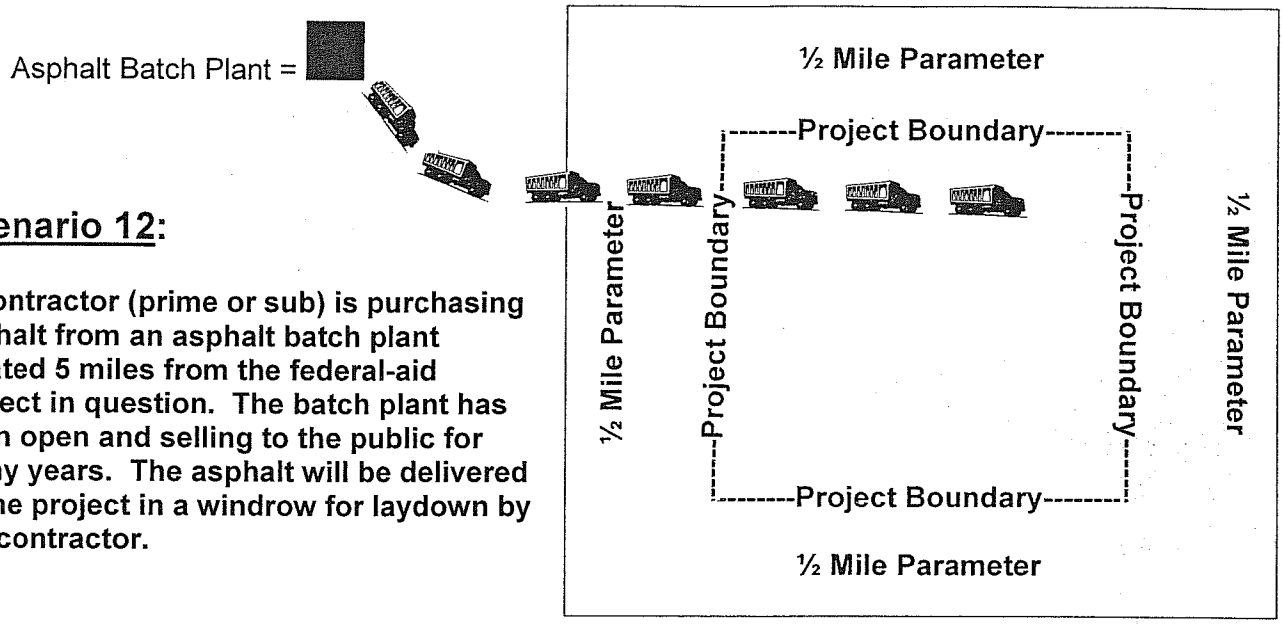
1. Yes. The other company is performing a part of the actual construction (i.e., base laydown) and is considered a subcontractor in this instance.

2. No. Although the crushing plant is owned by the other company being used to do the base laydown, it has been open and selling to the public for many years. In other words, the crushing plant was established by a commercial supplier. Therefore, **no** request to sublet and subcontract agreement between the prime contractor and the commercial supplier is required.

3. Although the crushing plant is owned by the other company being used to do the base laydown, the crushing plant is located more than ½ mile from the closest right of way boundary to the project and has been open and selling to the public for many years. In other words, the crushing plant was established by a commercial supplier and is **not** considered a ***site of the work***. To be considered a ***site of the work***, the crushing plant must be located adjacent, or virtually adjacent, to the project and be dedicated exclusively, or nearly so, to the performance of the contract. Therefore, the prime contractor's truck drivers, who haul the base material from the crushing plant to the stockpile site, are due Davis-Bacon wages **only** for the amount of time they spend within the project boundaries that is ***more than de minimis***.

4. The other company's (commercial supplier's) truck drivers, who deliver the base material from the crushing plant to the stockpile site, are **not** due Davis-Bacon wages at any time. Bona fide material suppliers are **not** subject to DBRA labor standards.

5. The other company's (commercial supplier's) truck drivers, who deliver the base material directly onto the roadway, are part of the actual laydown operation. Therefore, any individual truck driver who spends more than 20% of his or her time in a workweek within the project boundaries is due Davis-Bacon wages for all of the time he or she spends within the project boundaries during that workweek. If the prime contractor did **not** enter into a subcontract agreement with other company (commercial supplier), the prime contractor will be held ultimately responsible for the other company's (commercial supplier's) compliance with the Davis-Bacon and 20% requirements.



Scenario 12:

A contractor (prime or sub) is purchasing asphalt from an asphalt batch plant located 5 miles from the federal-aid project in question. The batch plant has been open and selling to the public for many years. The asphalt will be delivered to the project in a windrow for laydown by the contractor.

1. Is a *Prime Contractor's Request to Sublet* and subcontract agreement between the contractor and the asphalt supplier required?

   Answer: ☐ **Yes** ☑ **No**

2. If the contractor hires a trucking firm to deliver the asphalt from the batch plant to the project in a windrow, under what circumstances is a *Prime Contractor's Request to Sublet* and subcontract agreement between the contractor and the trucking firm required?

   Answer: **Only if the trucking firm is a DBE that was used to meet the contract goal (including non-DBE match trucks).**

3. If the asphalt supplier hires a trucking firm to deliver the asphalt from the batch plant to the project in a windrow, is a *Prime Contractor's Request to Sublet* and subcontract agreement between the asphalt supplier and the trucking firm required?

   Answer: ☐ **Yes** ☑ **No**

4. Under what circumstances are the contractor's truck drivers, who deliver the asphalt from the batch plant to the project in a windrow, due Davis-Bacon wages?

   Answer: **Only for the amount of time they spend within the project boundaries that is more than de minimis.**

5. Under what circumstances are the asphalt supplier's truck drivers, who deliver the asphalt from the batch plant to the project in a windrow, due Davis-Bacon wages?

   Answer: **None.**

6. Under what circumstances is the trucking firm hired by the contractor to deliver the asphalt from the batch plant to the project in a windrow required to pay its drivers Davis-Bacon wages?

   Answer: **Only for the amount of time they spend within the project boundaries that is more than de minimis.**

7. Under what circumstances is the trucking firm hired by the asphalt supplier to deliver the asphalt from the batch plant to the project in a windrow required to pay its drivers Davis-Bacon wages?

   Answer: **None.**

ANSWER KEY (Scenario 12):

1. No. The asphalt batch plant has been open and selling to the public for many years. In other words, the asphalt batch plant was established by a commercial supplier. Therefore, **no** request to sublet and subcontract agreement between the contractor and the asphalt supplier is required.

2. With one exception, if the contractor hires a trucking firm to deliver the asphalt from the batch plant to the project in a windrow, **no** request to sublet and subcontract agreement between the contractor and the trucking firm is required for two reasons: 1) The asphalt batch plant has been open and selling to the public for many years; therefore, it was established by a commercial supplier. 2) The contractor is hiring the trucking firm to transport the asphalt from a commercial supplier.

   The **only** exception concerns DBE firms used to meet contract goals. Requests to sublet and subcontract agreements between the contractor and the DBE firms are required. Requests to sublet and subcontract agreements between the DBE firms and any non-DBE firms providing match trucks are also required. The requests to sublet and subcontract agreements are required in order to track the DBE firms' participation and to apply the prompt payment and release of retainage procedures to the DBE firms.

   NOTE: AGC of ND member contractors may be requiring requests to sublet and subcontract agreements between prime contractors, or subcontractors, and **all** trucking firms. However, this is **not** a department requirement.

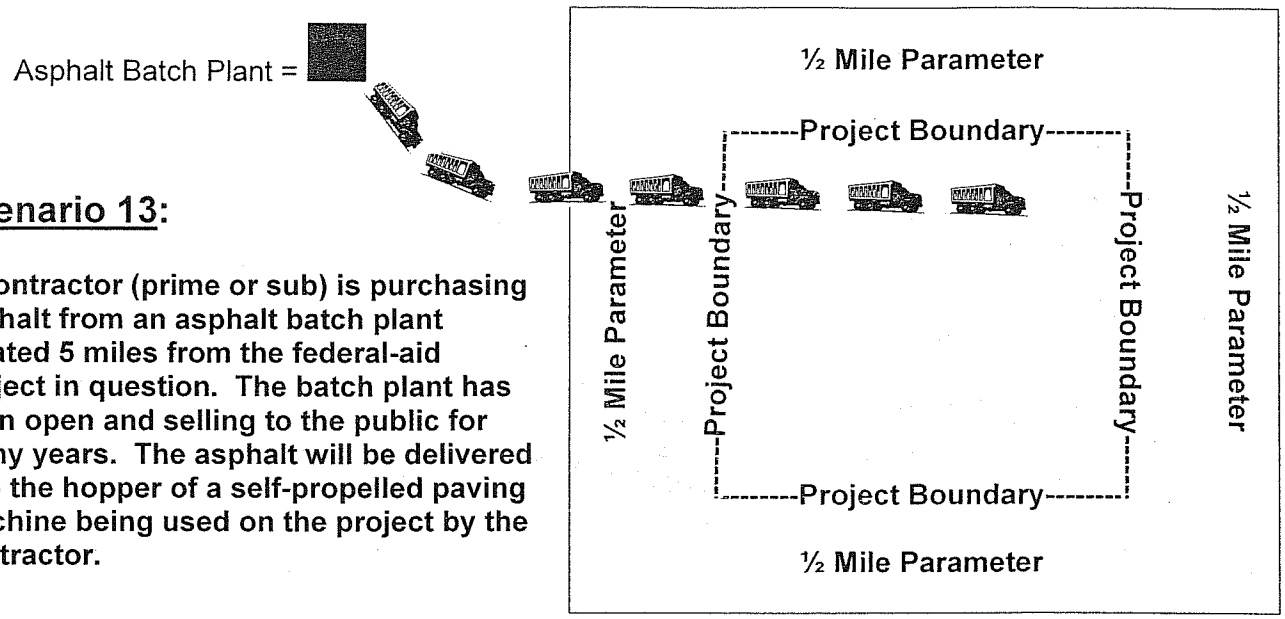
3. No. The asphalt batch plant has been open and selling to the public for many years. In other words, the asphalt batch plant was established by a commercial supplier. Therefore, **no** request to sublet and subcontract agreement between the asphalt supplier and the trucking firm is required.

4. The asphalt batch plant is located more than ½ mile from the closest right of way boundary to the project and has been open and selling to the public for many years. In other words, the asphalt batch plant was established by a commercial supplier and is **not** considered a ***site of the work***. To be considered a ***site of the work***, the asphalt batch plant must be located adjacent, or virtually adjacent, to the project and be dedicated exclusively, or nearly so, to the performance of the contract. Therefore, the contractor's truck drivers, who deliver the asphalt from the batch plant to the project in a windrow, are due Davis-Bacon wages **only** for the amount of time they spend within the project boundaries that is ***more than de minimis***.

5. The asphalt supplier's truck drivers, who deliver the asphalt from the batch plant to the project in a windrow, are **not** due Davis-Bacon wages at any time. Bona fide material suppliers are **not** subject to DBRA labor standards.

6. The trucking firm hired by the contractor to deliver the asphalt from the batch plant to the project in a windrow is required to pay its drivers Davis-Bacon wages **only** for the amount of time they spend within the project boundaries that is ***more than de minimis*** for the same reason as the contractor. If the contractor did **not** enter into a subcontract agreement with the trucking firm, the prime contractor will be held ultimately responsible for the trucking firm's compliance with the Davis-Bacon and de minimis requirements.

7. The trucking firm hired by the asphalt supplier to deliver the asphalt from the batch plant to the project in a windrow is **not** required to pay its drivers Davis-Bacon wages at any time. Bona fide material suppliers are **not** subject to DBRA labor standards.



Scenario 13:

A contractor (prime or sub) is purchasing asphalt from an asphalt batch plant located 5 miles from the federal-aid project in question. The batch plant has been open and selling to the public for many years. The asphalt will be delivered into the hopper of a self-propelled paving machine being used on the project by the contractor.

1. Is a *Prime Contractor's Request to Sublet* and subcontract agreement between the contractor and the asphalt supplier required?

   Answer: ☐ **Yes** ☑ **No**

2. If the contractor hires a trucking firm to deliver the asphalt from the batch plant into the hopper of the self-propelled paving machine, under what circumstances is a *Prime Contractor's Request to Sublet* and subcontract agreement between the contractor and the trucking firm required?

   Answer: **Only if the trucking firm is a DBE that was used to meet the contract goal (including non-DBE match trucks).**

3. If the asphalt supplier hires a trucking firm to deliver the asphalt from the batch plant into the hopper of the self-propelled paving machine, is a *Prime Contractor's Request to Sublet* and subcontract agreement between the asphalt supplier and the trucking firm required?

   Answer: ☐ **Yes** ☑ **No**

4. Under what circumstances are the contractor's truck drivers, who deliver the asphalt from the batch plant into the hopper of the self-propelled paving machine, due Davis-Bacon wages?

   Answer: **Only for the amount of time they spend within the project boundaries that is more than de minimis.**

5. Under what circumstances is the trucking firm hired by the contractor to deliver the asphalt from the batch plant into the hopper of the self-propelled paving machine required to pay its drivers Davis-Bacon wages?

   Answer: **Only for the amount of time they spend within the project boundaries that is more than de minimis.**

6. Under what circumstances are the truck drivers employed by either the asphalt supplier or the trucking firm hired by the asphalt supplier, who deliver the asphalt from the batch plant into the hopper of the self-propelled paving machine, due Davis-Bacon wages?

   Answer: **None.**

ANSWER KEY (Scenario 13):

1. No. The asphalt batch plant has been open and selling to the public for many years. In other words, the asphalt batch plant was established by a commercial supplier. Therefore, **no** request to sublet and subcontract agreement between the contractor and the asphalt supplier is required.

2. With one exception, if the contractor hires a trucking firm to deliver the asphalt from the batch plant into the hopper of a self-propelled paving machine, **no** request to sublet and subcontract agreement between the contractor and the trucking firm is required for two reasons: 1) The asphalt batch plant has been open and selling to the public for many years; therefore, it was established by a commercial supplier. 2) The contractor is hiring the trucking firm to transport the asphalt from a commercial supplier.

   The **only** exception concerns DBE firms used to meet contract goals. Requests to sublet and subcontract agreements between the contractor and the DBE firms are required. Requests to sublet and subcontract agreements between the DBE firms and any non-DBE firms providing match trucks are also required. The requests to sublet and subcontract agreements are required in order to track the DBE firms' participation and to apply the prompt payment and release of retainage procedures to the DBE firms.

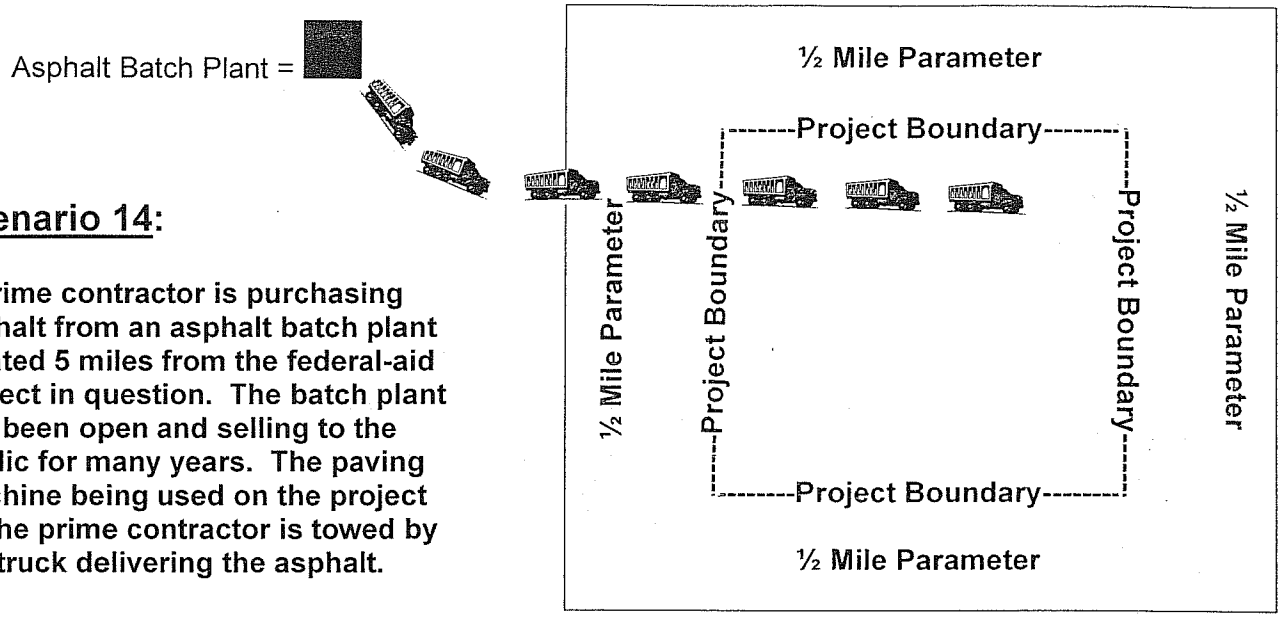
   NOTE: AGC of ND member contractors may be requiring requests to sublet and subcontract agreements between prime contractors, or subcontractors, and **all** trucking firms. However, this is **not** a department requirement.

3. No. The asphalt batch plant has been open and selling to the public for many years. In other words, the asphalt batch plant was established by a commercial supplier. Therefore, **no** request to sublet and subcontract agreement between the asphalt supplier and the trucking firm is required.

4. The asphalt batch plant is located more than ½ mile from the closest right of way boundary to the project and has been open and selling to the public for many years. In other words, the asphalt batch plant was established by a commercial supplier and is **not** considered a ***site of the work***. To be considered a ***site of the work***, the asphalt batch plant must be located adjacent, or virtually adjacent, to the project and be dedicated exclusively, or nearly so, to the performance of the contract. Therefore, the contractor's truck drivers, who deliver the asphalt from the batch plant into the hopper of a self-propelled paving machine, are due Davis-Bacon wages **only** for the amount of time they spend within the project boundaries that is ***more than de minimis***.

5. The trucking firm hired by the contractor to deliver the asphalt from the batch plant into the hopper of a self-propelled paving machine is required to pay its drivers Davis-Bacon wages **only** for the amount of time they spend within the project boundaries that is ***more than de minimis*** for the same reason as the contractor. If the contractor did **not** enter into a subcontract agreement with the trucking firm, the prime contractor will be held ultimately responsible for the trucking firm's compliance with the Davis-Bacon and de minimis requirements.

6. The truck drivers employed by either the asphalt supplier or the trucking firm hired by the asphalt supplier, who deliver the asphalt from the batch plant into the hopper of a self-propelled paving machine, are **not** due Davis-Bacon wages at any time. Bona fide material suppliers are **not** subject to DBRA labor standards.



Scenario 14:

A prime contractor is purchasing asphalt from an asphalt batch plant located 5 miles from the federal-aid project in question. The batch plant has been open and selling to the public for many years. The paving machine being used on the project by the prime contractor is towed by the truck delivering the asphalt.

1. Is a *Prime Contractor's Request to Sublet* and subcontract agreement between the prime contractor and the asphalt supplier required?

   Answer: ☐ Yes ☑ No

2. If the asphalt supplier hires a trucking firm to deliver the asphalt from the batch plant to the project, is a *Prime Contractor's Request to Sublet* and subcontract agreement between the asphalt supplier and the trucking firm required?

   Answer: ☐ Yes ☑ No

3. If the prime contractor hires a trucking firm to deliver the asphalt from the batch plant to the project, under what circumstances is a *Prime Contractor's Request to Sublet* and subcontract agreement between the prime contractor and the trucking firm required?

   Answer: **Only if the trucking firm is a DBE that was used to meet the contract goal (including non-DBE match trucks).**

4. Under what circumstances are the prime contractor's truck drivers, who deliver the asphalt from the batch plant to the project, due Davis-Bacon wages?

   Answer: **Only for the amount of time they spend within the project boundaries that is more than de minimis.**

5. Under what circumstances is the trucking firm hired by the prime contractor to deliver the asphalt from the batch plant to the project required to pay its drivers Davis-Bacon wages?

   Answer: **Only for the amount of time they spend within the project boundaries that is more than de minimis.**

6. Under what circumstances are the truck drivers employed by either the asphalt supplier or the trucking firm hired by the asphalt supplier, who deliver the asphalt from the batch plant to the project, due Davis-Bacon wages?

   Answer: **Any individual truck driver who spends more than 20% of his or her time in a workweek within the project boundaries is due Davis-Bacon wages for all of the time he or she spends within the project boundaries during that workweek.**

ANSWER KEY (Scenario 14):

1. No. The asphalt batch plant has been open and selling to the public for many years. In other words, the asphalt batch plant was established by a commercial supplier. Therefore, **no** request to sublet and subcontract agreement between the contractor and the asphalt supplier is required.

2. No. The asphalt batch plant has been open and selling to the public for many years. In other words, the asphalt batch plant was established by a commercial supplier. Therefore, **no** request to sublet and subcontract agreement between the asphalt supplier and the trucking firm is required.

3. With one exception, if the prime contractor hires a trucking firm to deliver the asphalt from the batch plant to the project, **no** request to sublet and subcontract agreement between the prime contractor and the trucking firm is required for two reasons: 1) The asphalt batch plant has been open and selling to the public for many years; therefore, it was established by a commercial supplier. 2) The prime contractor is hiring the trucking firm to transport the asphalt from a commercial supplier.

   The **only** exception concerns DBE firms used to meet contract goals. Requests to sublet and subcontract agreements between the contractor and the DBE firms are required. Requests to sublet and subcontract agreements between the DBE firms and any non-DBE firms providing match trucks are also required. The requests to sublet and subcontract agreements are required in order to track the DBE firms' participation and to apply the prompt payment and release of retainage procedures to the DBE firms.

   NOTE: AGC of ND member contractors may be requiring requests to sublet and subcontract agreements between prime contractors, or subcontractors, and **all** trucking firms. However, this is **not** a department requirement.

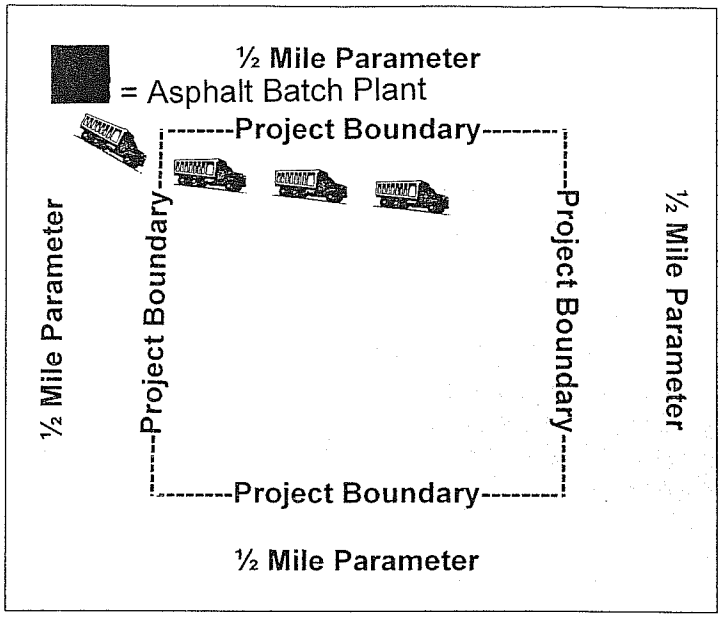
4. The asphalt batch plant is located more than ½ mile from the closest right of way boundary to the project and has been open and selling to the public for many years; therefore, it is **not** considered a ***site of the work***. To be considered a ***site of the work***, the asphalt batch plant must be located adjacent, or virtually adjacent, to the project and be dedicated exclusively, or nearly so, to the performance of the contract. Therefore, the prime contractor's truck drivers, who deliver the asphalt from the batch plant to the project, are due Davis-Bacon wages **only** for the amount of time they spend within the project boundaries that is ***more than de minimis***.

5. The trucking firm hired by the prime contractor to deliver the asphalt from the batch plant to the project is required to pay its drivers Davis-Bacon wages **only** for the amount of time they spend within the project boundaries that is ***more than de minimis*** for the same reason as the prime contractor. If the prime contractor did **not** enter into a subcontract agreement with the trucking firm, the prime contractor will be held ultimately responsible for the trucking firm's compliance with the Davis-Bacon and de minimis requirements.

6. The truck drivers employed by either the asphalt supplier or the trucking firm hired by the asphalt supplier, who deliver the asphalt from the batch plant to the project, are part of the actual laydown operation. Therefore, any individual truck driver who spends more than 20% of his or her time in a workweek within the project boundaries is due Davis-Bacon wages for all of the time he or she spends within the project boundaries during that workweek. If the prime contractor did **not** enter into a subcontract agreement with either the asphalt supplier or the trucking firm hired by the asphalt supplier, the prime contractor will be held ultimately responsible for the asphalt supplier's or trucking firm's compliance with the Davis-Bacon and 20% requirements.

Scenario 15:

A prime contractor is purchasing asphalt from an asphalt batch plant located within ½ mile of the closest right of way boundary to the federal-aid project in question. The batch plant was established specifically for the project and has made no other sales to the public. The asphalt will be delivered to the project in a windrow for laydown by the prime contractor.



1. Is a *Prime Contractor's Request to Sublet* and subcontract agreement between the prime contractor and the asphalt supplier required?

   Answer: ☑ **Yes** ☐ **No**

2. Are the employees of the asphalt supplier, who are working at the batch plant, due Davis-Bacon wages?

   Answer: ☑ **Yes** ☐ **No**

3. Under what circumstances are the prime contractor's truck drivers, who deliver the asphalt from the batch plant to the project in a windrow, due Davis-Bacon wages?

   Answer: **The truck drivers are due Davis-Bacon wages for all of the time they spend at the asphalt batch plant, en route, and within the project boundaries.**

4. Under what circumstances are the truck drivers employed by the asphalt supplier, who deliver the asphalt from the batch plant to the project in a windrow, due Davis-Bacon wages?

   Answer: **The truck drivers are due Davis-Bacon wages for all of the time they spend at the asphalt batch plant, en route, and within the project boundaries.**

5. If either the prime contractor or the asphalt supplier hires a trucking firm to deliver the asphalt from the batch plant to the project in a windrow, is a *Prime Contractor's Request to Sublet* and subcontract agreement between either the prime contractor or asphalt supplier and the trucking firm required?

   Answer: ☑ **Yes** ☐ **No**

6. Under what circumstances is the trucking firm hired by either the prime contractor or the asphalt supplier to deliver the asphalt from the batch plant to the project in a windrow required to pay its drivers Davis-Bacon wages?

   Answer: **The truck drivers are due Davis-Bacon wages for all of the time they spend at the asphalt batch plant, en route, and within the project boundaries.**

ANSWER KEY (Scenario 15):

1. Yes. The asphalt batch plant was **not** open and selling to the public within the previous 12 months of the day the project was let to contract. Therefore, the asphalt batch plant was **not** established by a commercial supplier. Consequently, a request to sublet and subcontract agreement between the prime contractor and the asphalt supplier is required.

2. Yes. Since the asphalt batch plant is located within ½ mile of the closest right of way boundary to the project and was **not** open and selling to the public within the previous 12 months of the day the project was let to contract, it meets the criteria of being located adjacent, or virtually adjacent, to the project and being dedicated exclusively, or nearly so, to the performance of the contract. In other words, the asphalt batch plant is considered a ***site of the work***. Therefore, the subcontractor's (asphalt supplier's) employees working at the batch plant are due Davis-Bacon wages.

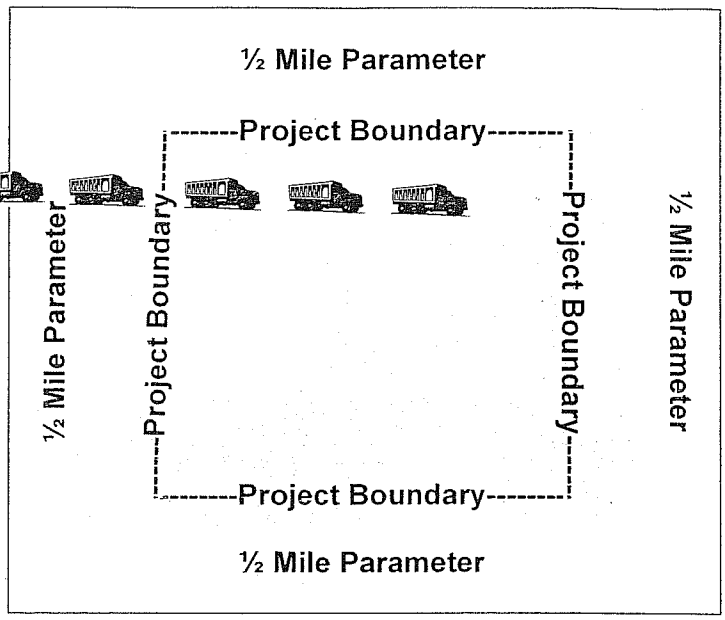
3. The prime contractor's truck drivers, who deliver the asphalt from the batch plant to the project in a windrow, are due Davis-Bacon wages for all of the time they spend at the batch plant, en route, and within the project boundaries for the same reason as the subcontractor's (asphalt supplier's) employees working at the batch plant.

4. The truck drivers employed by the subcontractor (asphalt supplier), who deliver the asphalt from the batch plant to the project in a windrow, are due Davis-Bacon wages for all of the time they spend at the batch plant, en route, and within the project boundaries for the same reason as the subcontractor's (asphalt supplier's) employees working at the batch plant.

5. Yes. The asphalt batch plant was **not** open and selling to the public within the previous 12 months of the day the project was let to contract. Therefore, the asphalt batch plant was **not** established by a commercial supplier. Since either the prime contractor or the subcontractor (asphalt supplier) is hiring the trucking firm to deliver the asphalt from a facility established specifically for the project, a request to sublet and subcontract agreement between either the prime contractor or the subcontractor (asphalt supplier) and the trucking firm is required.

6. The trucking firm hired by either the prime contractor or the subcontractor (asphalt supplier) to deliver the asphalt from the batch plant to the project in a windrow is required to pay its drivers Davis-Bacon wages for all of the time they spend at the batch plant, en route, and within the project boundaries for the same reason as the subcontractor's (asphalt supplier's) employees working at the batch plant.

Mobile Asphalt Batch Plant =



Scenario 16:

A contractor (prime or sub) has a mobile asphalt batch plant located 5 miles from the federal-aid project in question. The batch plant was established specifically for the project, and the contractor has made no sales to the public from the batch plant. The asphalt will be delivered to the project in a windrow for laydown by the contractor.

1. Are the contractor's employees working at the mobile asphalt batch plant due Davis-Bacon wages?

   Answer: ☐ **Yes** ☑ **No**

2. Under what circumstances are the contractor's truck drivers, who deliver the asphalt from the mobile batch plant to the project in a windrow, due Davis-Bacon wages?

   Answer: **Only for the amount of time they spend within the project boundaries that is more than de minimis.**

3. If the contractor hires a trucking firm to deliver the asphalt from the mobile batch plant to the project in a windrow, is a *Prime Contractor's Request to Sublet* and subcontract agreement between the contractor and the trucking firm required?

   Answer: ☑ **Yes** ☐ **No**

4. Under what circumstances is the trucking firm hired by the contractor to deliver the asphalt from the mobile batch plant to the project in a windrow required to pay its drivers Davis-Bacon wages?

   Answer: **Only for the amount of time they spend within the project boundaries that is more than de minimis.**

5. If the asphalt is delivered from the mobile batch plant into the hopper of a self-propelled paving machine being used on the project rather than a windrow, under what circumstances are the truck drivers employed by either the contractor or the trucking firm hired by the contractor due Davis-Bacon wages?

   Answer: **Only for the amount of time they spend within the project boundaries that is more than de minimis.**

6. If the paving machine being used on the project is towed by the truck delivering the asphalt from the mobile batch plant, under what circumstances are the truck drivers employed by either the contractor or the trucking firm hired by the contractor due Davis-Bacon wages?

   Answer: **Only for the amount of time they spend within the project boundaries that is more than de minimis.**

ANSWER KEY (Scenario 16):

1. No, although the mobile asphalt batch plant is owned by the contractor and the mobile asphalt batch plant was **not** open and selling to the public within the previous 12 months of the day the project was let to contract, it is located more than ½ mile from the closest right of way boundary to the project. Therefore, the mobile asphalt batch plant is **not** considered a ***site of the work***. To be considered a ***site of the work***, the mobile asphalt batch plant must be located adjacent, or virtually adjacent, to the project and be dedicated exclusively, or nearly so, to the performance of the contract. Consequently, the contractor's employees working at the mobile asphalt batch plant are **not** due Davis-Bacon wages.

2. The contractor's truck drivers, who deliver the asphalt from the mobile batch plant to the project in a windrow, are due Davis-Bacon wages **only** for the amount of time they spend within the project boundaries that is ***more than de minimis*** for the same reason as the contractor's employees working at the mobile asphalt batch plant.

3. Yes. The mobile asphalt batch plant was **not** open and selling to the public within the previous 12 months of the day the project was let to contract. Therefore, the mobile asphalt batch plant was **not** established by a commercial supplier. Since the contractor is hiring the trucking firm to deliver the asphalt from a facility established specifically for the project, a request to sublet and subcontract agreement between the contractor and the trucking firm is required.

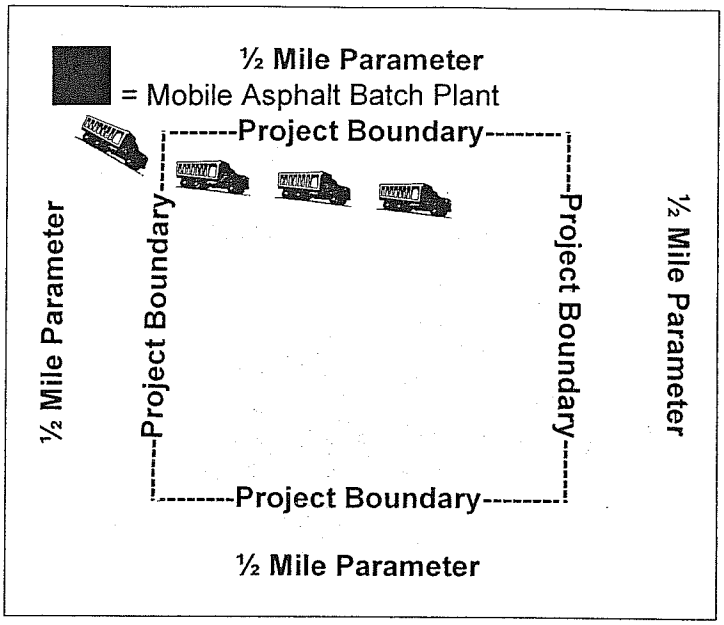
4. The trucking firm hired by the prime contractor to deliver the asphalt from the mobile batch plant to the project in a windrow is required to pay its drivers Davis-Bacon wages **only** for the amount of time they spend within the project boundaries that is ***more than de minimis*** for the same reason as the contractor's employees working at the mobile asphalt batch plant.

5. If the asphalt is delivered from the mobile batch plant into the hopper of a self-propelled paving machine being used on the project rather than a windrow, the truck drivers employed by either the contractor or the trucking firm hired by the contractor are due Davis-Bacon wages **only** for the amount of time they spend within the project boundaries that is ***more than de minimis*** for the same reason as the contractor's employees working at the mobile asphalt batch plant.

6. If the paving machine being used on the project is towed by the truck delivering the asphalt from the mobile batch plant, the truck drivers employed by either the contractor or the trucking firm hired by the contractor are due Davis-Bacon wages **only** for the amount of time they spend within the project boundaries that is ***more than de minimis*** for the same reason as the contractor's employees working at the mobile asphalt batch plant.

Scenario 17:

A contractor (prime or sub) has a mobile asphalt batch plant located within ½ mile of the closest right of way boundary to the federal-aid project in question. The batch plant was established specifically for the project, and the contractor has made no sales to the public from the batch plant. The asphalt will be delivered to the project in a windrow for laydown by the contractor.



1. Are the contractor's employees working at the mobile asphalt batch plant due Davis-Bacon wages?

   Answer: ☑ **Yes** ☐ **No**

2. Under what circumstances are the contractor's truck drivers, who deliver the asphalt from the mobile batch plant to the project in a windrow, due Davis-Bacon wages?

   Answer: **The truck drivers are due Davis-Bacon wages for all of the time they spend at the mobile asphalt batch plant, en route, and within the project boundaries.**

3. If the contractor hires a trucking firm to deliver the asphalt from the mobile batch plant to the project in a windrow, is a *Prime Contractor's Request to Sublet* and subcontract agreement between the contractor and the trucking firm required?

   Answer: ☑ **Yes** ☐ **No**

4. Under what circumstances is the trucking firm hired by the contractor to deliver the asphalt from the mobile batch plant to the project in a windrow required to pay its drivers Davis-Bacon wages?

   Answer: **The truck drivers are due Davis-Bacon wages for all of the time they spend at the mobile asphalt batch plant, en route, and within the project boundaries.**

5. If the asphalt is delivered from the mobile batch plant into the hopper of a self-propelled paving machine being used on the project rather than a windrow, under what circumstances are the truck drivers employed by either the contractor or the trucking firm hired by the contractor due Davis-Bacon wages?

   Answer: **The truck drivers are due Davis-Bacon wages for all of the time they spend at the mobile asphalt batch plant, en route, and within the project boundaries.**

6. If the paving machine being used on the project is towed by the truck delivering the asphalt from the mobile batch plant, under what circumstances are the truck drivers employed by either the contractor or the trucking firm hired by the contractor due Davis-Bacon wages?

   Answer: **The truck drivers are due Davis-Bacon wages for all of the time they spend at the mobile asphalt batch plant, en route, and within the project boundaries.**

ANSWER KEY (Scenario 17):

1. Yes. Since the mobile asphalt batch plant is located within ½ mile of the closest right of way boundary to the project and was **not** open and selling to the public within the previous 12 months of the day the project was let to contract, it meets the criteria of being located adjacent, or virtually adjacent, to the project and being dedicated exclusively, or nearly so, to the performance of the contract. In other words, the mobile asphalt batch plant is considered a ***site of the work***. Therefore, the contractor's employees working at the mobile asphalt batch plant are due Davis-Bacon wages.

2. The contractor's truck drivers, who deliver the asphalt from the mobile batch plant to the project in a windrow, are due Davis-Bacon wages for all of the time they spend at the mobile asphalt batch plant, en route, and within the project boundaries for the same reason as the contractor's employees working at the mobile asphalt batch plant.

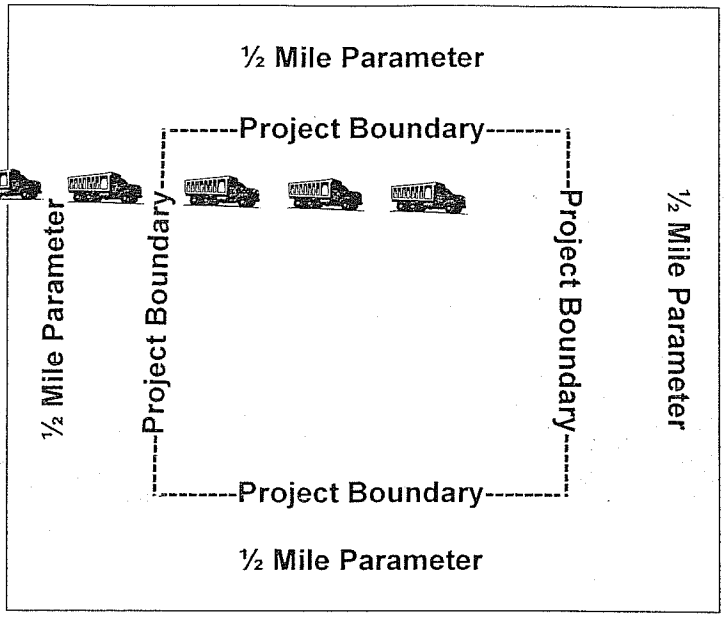
3. Yes. The mobile asphalt batch plant was **not** open and making sales to the public within the previous 12 months of the day the project was let to contract. Therefore, the mobile asphalt batch plant was **not** established by a commercial supplier. Since the contractor is hiring the trucking firm to deliver the asphalt from a facility established specifically for the project, a request to sublet and subcontract agreement between the contractor and the trucking firm is required.

4. The trucking firm hired by the contractor to deliver the asphalt from the mobile batch plant to the project in a windrow is required to pay its drivers Davis-Bacon wages for all of the time they spend at the mobile asphalt batch plant, en route, and within the project boundaries for the same reason as the contractor's employees working at the mobile asphalt batch plant.

5. If the asphalt is delivered from the mobile batch plant into the hopper of a self-propelled paving machine being used on the project rather than a windrow, the truck drivers employed by either the contractor or the trucking firm hired by the contractor are due Davis-Bacon wages for all of the time they spend at the mobile asphalt batch plant, en route, and within the project boundaries for the same reason as the contractor's employees working at the mobile asphalt batch plant.

6. If the paving machine being used on the project is towed by the truck delivering the asphalt from the mobile batch plant, the truck drivers employed by either the contractor or the trucking firm hired by the contractor are due Davis-Bacon wages for all of the time they spend at the mobile asphalt batch plant, en route, and within the project boundaries for the same reason as the contractor's employees working at the mobile asphalt batch plant.

Asphalt Batch Plant = ■



Scenario 18:

A prime contractor has an asphalt batch plant located 5 miles from the federal-aid project in question. The batch plant has been open and selling to the public for many years. The asphalt for the project will be supplied by the prime contractor from that batch plant and delivered to the project in a windrow for laydown by the prime contractor.

1. Are the prime contractor's employees working at the asphalt batch plant due Davis-Bacon wages?

   Answer: ☐ **Yes** ☑ **No**

2. Under what circumstances are the prime contractor's truck drivers, who deliver the asphalt from the batch plant to the project in a windrow, due Davis-Bacon wages?

   Answer: **None.**

3. If the prime contractor hires a trucking firm to deliver the asphalt from the batch plant to the project in a windrow, is a *Prime Contractor's Request to Sublet* and subcontract agreement between the prime contractor and the trucking firm required?

   Answer: ☐ **Yes** ☑ **No**

4. Under what circumstances is the trucking firm hired by the prime contractor to deliver the asphalt from the batch plant to the project in a windrow required to pay its drivers Davis-Bacon wages?

   Answer: **None.**

5. If the asphalt is delivered from the batch plant into the hopper of a self-propelled paving machine being used on the project rather than a windrow, under what circumstances are the truck drivers employed by either the prime contractor or the trucking firm hired by the prime contractor due Davis-Bacon wages?

   Answer: **None.**

6. If the paving machine being used on the project is towed by the truck delivering the asphalt from the batch plant, under what circumstances are the truck drivers employed by either the prime contractor or the trucking firm hired by the prime contractor due Davis-Bacon wages?

   Answer: **Any individual truck driver who spends more than 20% of his or her time in a workweek within the project boundaries is due Davis-Bacon wages for all of the time he or she spends within the project boundaries during that workweek.**

ANSWER KEY (Scenario 18):

1. No. Although the asphalt batch plant is owned by the prime contractor, it is located more than ½ mile from the closest right of way boundary to the project and has been open and selling to the public for many years. In other words, the asphalt batch plant was established by a commercial supplier and is **not** considered a ***site of the work***. In order to be considered a ***site of the work***, the asphalt batch plant must be located adjacent, or virtually adjacent, to the project and be dedicated exclusively, or nearly so, to the performance of the contract. Consequently, the prime contractor's (commercial supplier's) employees working at the asphalt batch plant are **not** due Davis-Bacon wages.

2. The prime contractor's (commercial supplier's) truck drivers, who deliver the asphalt from the batch plant to the project in a windrow, are **not** due Davis-Bacon wages at any time. Bona fide material suppliers are **not** subject to DBRA labor standards.

3. No. Although the asphalt batch plant is owned by the prime contractor, it has been open and selling to the public for many years. In other words, the asphalt batch plant was established by a commercial supplier. Therefore, **no** request to sublet and subcontract agreement between the prime contractor (commercial supplier) and the trucking firm is required.

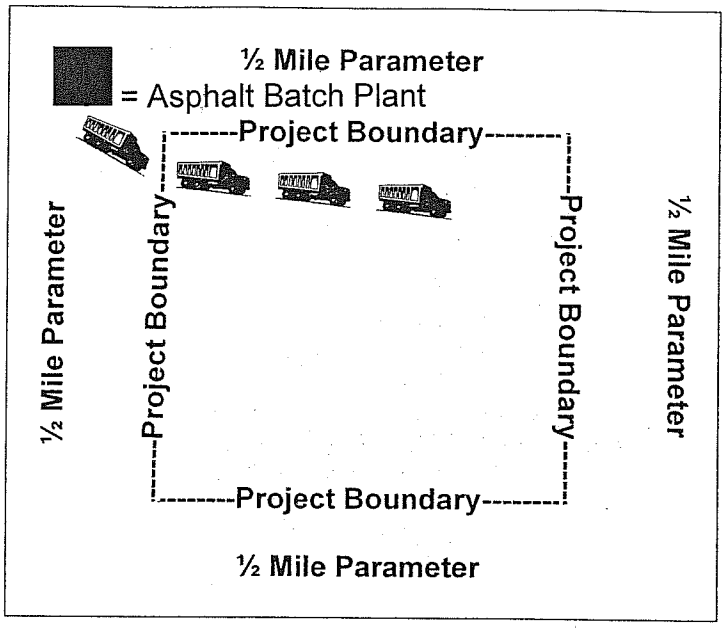
4. The trucking firm hired by the prime contractor (commercial supplier) to deliver the asphalt from the batch plant to the project in a windrow is **not** required to pay its drivers Davis-Bacon wages at any time. Bona fide material suppliers are **not** subject to DBRA labor standards.

5. If the asphalt is delivered from the batch plant into the hopper of a self-propelled paving machine being used on the project rather than a windrow, the truck drivers employed by either the prime contractor (commercial supplier) or the trucking firm hired by the prime contractor (commercial supplier) are **not** due Davis-Bacon wages at any time. Bona fide material suppliers are **not** subject to DBRA labor standards.

6. If the paving machine being used on the project is towed by the truck delivering the asphalt from the batch plant, the truck drivers employed by either the prime contractor (commercial supplier) or the trucking firm hired by the prime contractor (commercial supplier) would be part of the actual laydown operation. Therefore, any individual truck driver who spends more than 20% of his or her time in a workweek within the project boundaries is due Davis-Bacon wages for all of the time he or she spends within the project boundaries during that workweek. If the prime contractor (commercial supplier) did **not** enter into a subcontract agreement with the trucking firm, the prime contractor will be held ultimately responsible for the trucking firm's compliance with the Davis-Bacon and 20% requirements.

Scenario 19:

A prime contractor has an asphalt batch plant located within ½ mile of the closest right of way boundary to the federal-aid project in question. The batch plant has been open and selling to the public for many years. The asphalt for the project will be supplied by the prime contractor from that batch plant and delivered to the project in a windrow for laydown by the prime contractor.



1. Are the prime contractor's employees working at the asphalt batch plant due Davis-Bacon wages?

   Answer: ☐ **Yes** ☑ **No**

2. Under what circumstances are the prime contractor's truck drivers, who deliver the asphalt from the batch plant to the project in a windrow, due Davis-Bacon wages?

   Answer: **None.**

3. If the prime contractor hires a trucking firm to deliver the asphalt from the batch plant to the project in a windrow, is a *Prime Contractor's Request to Sublet* and subcontract agreement between the prime contractor and the trucking firm required?

   Answer: ☐ **Yes** ☑ **No**

4. Under what circumstances is the trucking firm hired by the prime contractor to deliver the asphalt from the batch plant to the project in a windrow required to pay its drivers Davis-Bacon wages?

   Answer: **None.**

5. If the asphalt is delivered from the batch plant into the hopper of a self-propelled paving machine being used on the project rather than a windrow, under what circumstances are the truck drivers employed by either the prime contractor or the trucking firm hired by the prime contractor due Davis-Bacon wages?

   Answer: **None.**

6. If the paving machine being used on the project is towed by the truck delivering the asphalt from the batch plant, under what circumstances are the truck drivers employed by either the prime contractor or the trucking firm hired by the prime contractor due Davis-Bacon wages?

   Answer: **Any individual truck driver who spends more than 20% of his or her time in a workweek within the project boundaries is due Davis-Bacon wages for all of the time he or she spends within the project boundaries during that workweek.**

ANSWER KEY (Scenario 19):

1. No. Although the asphalt batch plant is owned by the prime contractor and the asphalt batch plant is located within ½ mile of the closest right of way boundary to the project, it has been open and selling to the public for many years. In other words, the asphalt batch plant was established by a commercial supplier and is **not** considered a ***site of the work***. In order to be considered a ***site of the work***, the asphalt batch plant must be located adjacent, or virtually adjacent, to the project and be dedicated exclusively, or nearly so, to the performance of the contract. Consequently, the prime contractor's (commercial supplier's) employees working at the asphalt batch plant are **not** due Davis-Bacon wages.

2. The prime contractor's (commercial supplier's) truck drivers, who deliver the asphalt from the batch plant to the project in a windrow, are **not** due Davis-Bacon wages at any time. Bona fide material suppliers are **not** subject to DBRA labor standards.

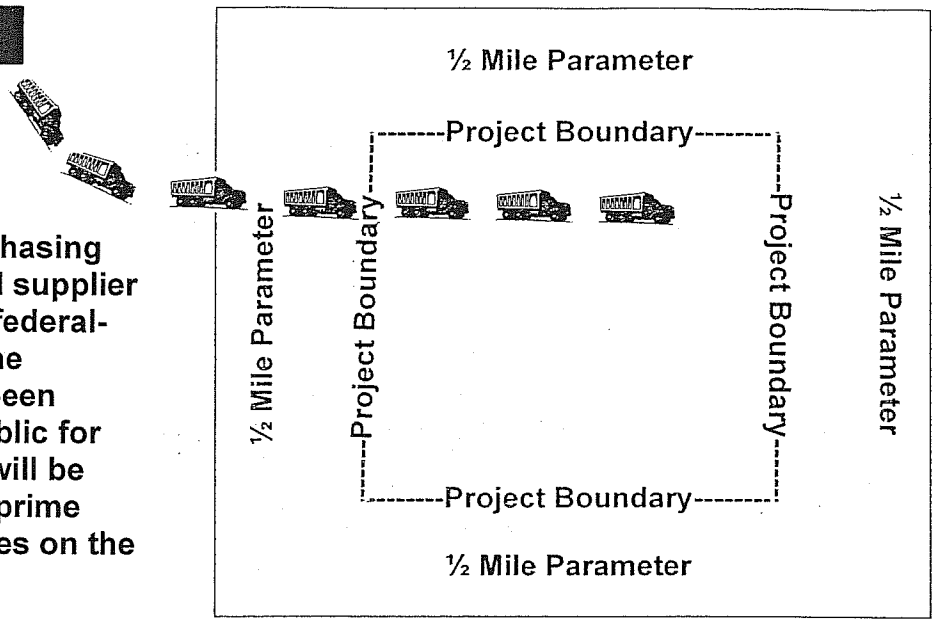
3. No. Although the asphalt batch plant is owned by the prime contractor and the asphalt batch plant is located within ½ mile of the closest right of way boundary to the project, it has been open and selling to the public for many years. In other words, the asphalt batch plant was established by a commercial supplier. Therefore, **no** request to sublet and subcontract agreement between the prime contractor (commercial supplier) and the trucking firm is required.

4. The trucking firm hired by the prime contractor (commercial supplier) to deliver the asphalt from the batch plant to the project in a windrow is **not** required to pay its drivers Davis-Bacon wages at any time. Bona fide material suppliers are **not** subject to DBRA labor standards.

5. If the asphalt is delivered from the batch plant into the hopper of a self-propelled paving machine being used on the project rather than a windrow, the truck drivers employed by either the prime contractor (commercial supplier) or the trucking firm hired by the prime contractor (commercial supplier) are **not** due Davis-Bacon wages at any time. Bona fide material suppliers are **not** subject to DBRA labor standards.

6. If the paving machine being used on the project is towed by the truck delivering the asphalt from the batch plant, the truck drivers employed by either the prime contractor (commercial supplier) or the trucking firm hired by the prime contractor (commercial supplier) would be part of the actual laydown operation. Therefore, any individual truck driver who spends more than 20% of his or her time in a workweek within the project boundaries is due Davis-Bacon wages for all of the time he or she spends within the project boundaries during that workweek. If the prime contractor (commercial supplier) did **not** enter into a subcontract agreement with the trucking firm, the prime contractor will be held ultimately responsible for the trucking firm's compliance with the Davis-Bacon and 20% requirements.

Bona Fide Material Supplier = [redacted]



Scenario 20:

A prime contractor is purchasing cement from a commercial supplier located 10 miles from the federal-aid project in question. The commercial supplier has been open and selling to the public for many years. The cement will be delivered directly into the prime contractor's mixing facilities on the project.

1. Is a *Prime Contractor's Request to Sublet* and subcontract agreement between the prime contractor and the cement supplier required?

   Answer: ☐ **Yes** ☑ **No**

2. Under what circumstances are the truck drivers employed by the cement supplier, who deliver the cement directly into the prime contractor's mixing facilities on the project, due Davis-Bacon wages?

   None.

3. Under what circumstances are the prime contractor's truck drivers, who deliver the cement from the supplier directly into the prime contractor's mixing facilities on the project, due Davis Bacon wages?

   Answer: **Only for the amount of time they spend within the project boundaries that is more than de minimis.**

4. If the prime contractor hires a trucking firm to deliver the cement from the supplier directly into the prime contractor's mixing facilities on the project, under what circumstances is a *Prime Contractor's Request to Sublet* and subcontract agreement between the prime contractor and the trucking firm required?

   Answer: **Only if the trucking firm is a DBE that was used to meet the contract goal (including non-DBE match trucks).**

5. Under what circumstances is the trucking firm hired by the prime contractor to deliver the cement from the supplier directly into the prime contractor's mixing facilities on the project required to pay its drivers Davis-Bacon wages?

   Answer: **Only for the amount of time they spend within the project boundaries that is more than de minimis.**

ANSWER KEY (Scenario 20):

1. No. The cement supplier has been open and selling to the public for many years. In other words, the cement supplier is considered a commercial supplier. Therefore, **no** request to sublet and subcontract agreement between the prime contractor and the commercial supplier is required.

2. The truck drivers employed by the commercial supplier, who deliver the cement directly into the prime contractor's mixing facilities on the project, are **not** due Davis-Bacon wages at any time. Bona fide material suppliers are **not** subject to DBRA labor standards.

3. The commercial supplier is located more than ½ mile from the closest right of way boundary to the project and has been open and selling to the public for many years. Therefore, the commercial supplier's location is **not** considered a ***site of the work***. To be considered a ***site of the work***, the commercial supplier must be located adjacent, or virtually adjacent, to the project and be dedicated exclusive, or nearly so, to the performance of the contract. Consequently, the prime contractor's truck drivers, who deliver the cement directly into the prime contractor's mixing facilities on the project, are due Davis-Bacon wages **only** for the amount of time they spend within the project boundaries that is ***more than de minimis***.

4. With one exception, if the prime contractor hires a trucking firm to deliver the cement from the commercial supplier directly into the prime contractor's mixing facilities on the project, **no** request to sublet and subcontract agreement between the prime contractor and the trucking firm is required for two reasons: 1) The cement supplier has been open and selling to the public for many years; therefore, it is considered a commercial supplier. 2) The prime contractor is hiring the trucking firm to deliver the cement from a commercial supplier.

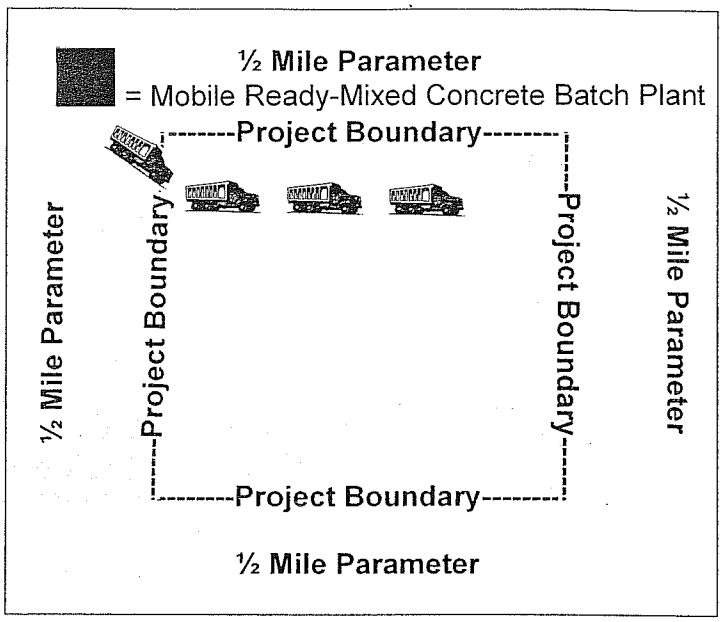
   The **only** exception concerns DBE firms used to meet contract goals. Requests to sublet and subcontract agreements between the prime contractor and the DBE firms are required. Requests to sublet and subcontract agreements between the DBE firms and any non-DBE firms providing match trucks are also required. The requests to sublet and subcontract agreements are required in order to track the DBE firms' participation and to apply the prompt payment and release of retainage procedures to the DBE firms.

   NOTE: AGC of ND member contractors may be requiring requests to sublet and subcontract agreements between prime contractors, or subcontractors, and **all** trucking firms. However, this is **not** a department requirement.

5. The trucking firm hired by the prime contractor to deliver the cement from the commercial supplier directly into the prime contractor's mixing facilities on the project is required to pay its drivers Davis-Bacon wages **only** for the amount of time they spend within the project boundaries that is ***more than de minimis*** for the same reason as the prime contractor. If the prime contractor did **not** enter into a subcontract agreement with the trucking firm, the prime contractor will be held ultimately responsible for the trucking firm's compliance with the Davis-Bacon and de minimis requirements.

Scenario 21:

A prime contractor is purchasing concrete from a mobile ready-mixed concrete batch plant located within ½ mile of the closest right of way boundary to the federal-aid project in question. The mobile ready-mixed concrete batch plant has been open and selling to the public for several years. The ready-mixed concrete will be delivered into the prime contractor's paving machine being used on the project.



1. Is a *Prime Contractor's Request to Sublet* and subcontract agreement between the prime contractor and the ready-mixed concrete supplier required?

   Answer: ☐ **Yes** ☑ **No**

2. Under what circumstances are the ready-mixed concrete supplier's truck drivers, who deliver the ready-mixed concrete from the mobile batch plant into the prime contractor's paving machine, due Davis-Bacon wages?

   Answer: **None.**

3. Under what circumstances are the prime contractor's truck drivers, who deliver the ready-mixed concrete from the mobile batch plant into the prime contractor's paving machine, due Davis-Bacon wages?

   Answer: **Only for the amount of time they spend within the project boundaries that is more than de minimis.**

4. If the prime contractor hires a trucking firm to deliver the ready-mixed concrete from the mobile batch plant into the prime contractor's paving machine, under what circumstances is a *Prime Contractor's Request to Sublet* and subcontract agreement between the prime contractor and the trucking firm required?

   Answer: **Only if the trucking firm is a DBE that was used to meet the contract goal (including non-DBE match trucks).**

5. Under what circumstances is the trucking firm hired by the prime contractor to deliver the ready-mixed concrete from the mobile batch plant into the prime contractor's paving machine required to pay its drivers Davis-Bacon wages?

   Answer: **Only for the amount of time they spend within the project boundaries that is more than de minimis.**

ANSWER KEY (Scenario 21):

1. No. The mobile ready-mixed concrete batch plant has been open and selling to the public for several years. In other words, the mobile ready-mixed concrete batch plant was established by a commercial supplier. Therefore, **no** request to sublet and subcontract agreement between the contractor and the ready-mixed concrete supplier is required.

2. The commercial supplier's truck drivers, who deliver the ready-mixed concrete from the mobile batch plant into the prime contractor's paving machine, are **not** due Davis-Bacon wages at any time. Bona fide material suppliers are **not** subject to DBRA labor standards.

3. Although the mobile ready-mixed concrete batch plant is located within ½ mile of the closest right of way boundary to the project, it has been open and selling to the public for several years. In other words, the mobile ready-mixed concrete batch plant was established by a commercial supplier and is **not** considered a ***site of the work***. To be considered a **site of the work**, the mobile ready-mixed concrete batch plant must be located adjacent, or virtually adjacent, to the project and be dedicated exclusively, or nearly so, to the performance of the contract. Consequently, the prime contractor's truck drivers, who deliver the ready-mixed concrete from the mobile batch plant into the prime contractor's paving machine, are due Davis-Bacon wages **only** for the amount of time they spend within the project boundaries that is ***more than de minimis***.

4. With one exception, if the prime contractor hires a trucking firm to deliver the ready-mixed concrete from the mobile batch plant into the prime contractor's paving machine, **no** request to sublet and subcontract agreement between the prime contractor and the trucking firm is required for two reasons: 1) The mobile ready-mixed concrete batch plant has been open and selling to the public for several years; therefore, it was established by a commercial supplier. 2) The prime contractor is hiring the trucking firm to deliver the ready-mixed concrete from a commercial supplier.

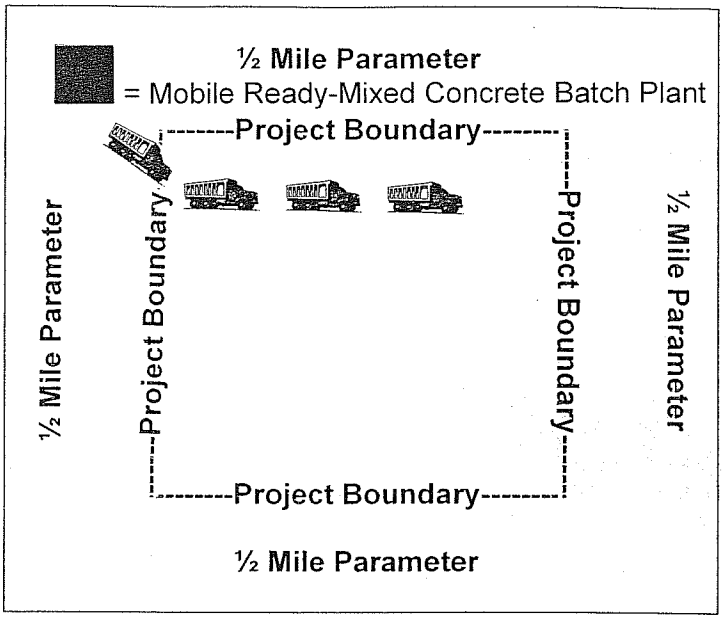
   The **only** exception concerns DBE firms used to meet contract goals. Requests to sublet and subcontract agreements between the contractor and the DBE firms are required. Requests to sublet and subcontract agreements between the DBE firms and any non-DBE firms providing match trucks are also required. The requests to sublet and subcontract agreements are required in order to track the DBE firms' participation and to apply the prompt payment and release of retainage procedures to the DBE firms.

   NOTE: AGC of ND member contractors may be requiring requests to sublet and subcontract agreements between prime contractors, or subcontractors, and **all** trucking firms. However, this is **not** a department requirement.

5. The trucking firm hired by the prime contractor to deliver the ready-mixed concrete from the mobile batch plant into the prime contractor's paving machine is required to pay its drivers Davis-Bacon wages **only** for the amount of time they spend within the project boundaries that is ***more than de minimis*** for the same reason as the prime contractor. If the prime contractor did **not** enter into a subcontract agreement with the trucking firm, the prime contractor will be held ultimately responsible for the trucking firm's compliance with the Davis-Bacon and de minimis requirements.

Scenario 22:

A prime contractor has a mobile ready-mixed concrete batch plant located within ½ mile of the closest right of way boundary to the federal-aid project in question. The mobile batch plant was established specifically for the project, and the prime contractor has made no sales to the public from the mobile batch plant. The ready-mixed concrete will be delivered into the prime contractor's paving machine being used on the project.



1. Are the prime contractor's employees working at the mobile ready-mixed concrete batch plant due Davis-Bacon wages?

   Answer: ☑ **Yes** ☐ **No**

2. Under what circumstances are the prime contractor's truck drivers, who deliver the ready-mixed concrete from the mobile batch plant into the prime contractor's paving machine, due Davis-Bacon wages?

   Answer: **The truck drivers are due Davis-Bacon wages for all of the time they spend at the mobile ready-mixed concrete batch plant, en route, and within the project boundaries.**

3. If the prime contractor hires a trucking firm to deliver the ready-mixed concrete from the mobile batch plant into the prime contractor's paving machine, is a *Prime Contractor's Request to Sublet* and subcontract agreement between the prime contractor and the trucking firm required?

   Answer: ☑ **Yes** ☐ **No**

4. Under what circumstances is the trucking firm hired by the prime contractor to deliver the ready-mixed concrete from the mobile batch plant into the prime contractor's paving machine required to pay its drivers Davis-Bacon wages?

   Answer: **The truck drivers are due Davis-Bacon wages for all of the time they spend at the mobile ready-mixed concrete batch plant, en route, and within the project boundaries.**

ANSWER KEY (Scenario 22):

1. Yes. Since the mobile ready-mixed concrete batch plant is located within ½ mile of the closest right of way boundary to the project and the mobile ready-mixed concrete batch plant was **not** open and selling to the public within the previous 12 months of the day the project was let to contract, it meets the criteria of being located adjacent, or virtually adjacent, to the project and being dedicated exclusively, or nearly so, to the performance of the contract. In other words, it is considered a ***site of the work***. Therefore, the prime contractor's employees working at the mobile ready-mixed concrete batch plant are due Davis-Bacon wages.

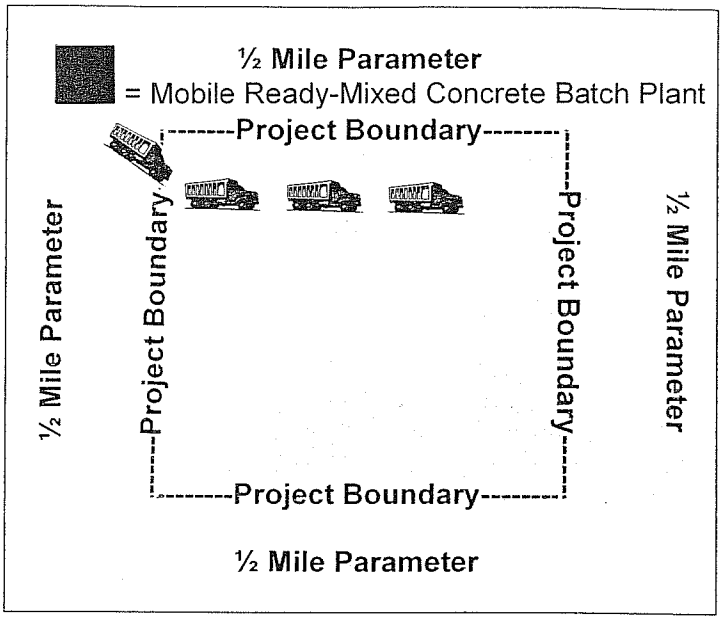
2. The prime contractor's truck drivers, who deliver the ready-mixed concrete from the mobile batch plant into the prime contractor's paving machine, are due Davis-Bacon wages for all of the time they spend at the mobile ready-mixed concrete batch plant, en route, and within the project boundaries for the same reason as the prime contractor's employees working at the mobile ready-mixed concrete batch plant.

3. The mobile ready-mixed concrete batch plant was **not** open and selling to the public within the previous 12 months of the day the project was let to contract. Therefore, the mobile ready-mixed concrete batch plant was **not** established by a commercial supplier. Since the prime contractor is hiring the trucking firm to deliver the ready-mixed concrete from a facility established specifically for the project, a request to sublet and subcontract agreement between the prime contractor and the trucking firm is required.

4. The trucking firm hired by the prime contractor to deliver the ready-mixed concrete from the mobile batch plant into the prime contractor's paving machine is required to pay its drivers Davis-Bacon wages for all of the time they spend at the mobile ready-mixed concrete batch plant, en route, and within the project boundaries for the same reason as the prime contractor's employees working at the mobile ready-mixed concrete batch plant.

Scenario 23:

A prime contractor has a mobile ready-mixed concrete batch plant located within ½ mile of the closest right of way boundary to the federal-aid project in question. The mobile ready-mixed concrete batch plant has been open and selling to the public for several years. The ready-mixed concrete will be delivered into the prime contractor's paving machine being used on the project.



1. Are the prime contractor's employees working at the mobile ready-mixed concrete batch plant due Davis-Bacon wages?

   Answer: ☐ **Yes** ☑ **No**

2. Under what circumstances are the prime contractor's truck drivers, who deliver the ready-mixed concrete from the mobile batch plant into the prime contractor's paving machine, due Davis-Bacon wages?

   Answer: **None.**

3. If the prime contractor hires a trucking firm to deliver the ready-mixed concrete from the mobile batch plant into the prime contractor's paving machine, is a *Prime Contractor's Request to Sublet* and subcontract agreement between the prime contractor and the trucking firm required?

   Answer: ☐ **Yes** ☑ **No**

4. Under what circumstances is the trucking firm hired by the prime contractor to deliver the ready-mixed concrete from the mobile batch plant into the prime contractor's paving machine required to pay its drivers Davis-Bacon wages?

   Answer: **None.**

ANSWER KEY (Scenario 23):

1. No. Although the mobile ready-mixed concrete batch plant is owned by the prime contractor and the mobile ready-mixed concrete batch plant is located within ½ mile of the closest right of way boundary to the project, it has been open and selling to the public for several years. In other words, the mobile ready-mixed concrete batch plant was established by a commercial supplier and is **not** considered a ***site of the work***. To be considered a ***site of the work***, the mobile ready-mixed concrete batch plant must be located adjacent, or virtually adjacent, to the project and be dedicated exclusively, or nearly so, to the performance of the contract. Therefore, the prime contractor's (commercial supplier's) employees working at the mobile ready-mixed concrete batch plant are **not** due Davis-Bacon wages.

2. The prime contractor's (commercial supplier's) truck drivers, who deliver the ready-mixed concrete from the mobile batch plant into the prime contractor's paving machine, are **not** due Davis-Bacon wages at any time. Bona fide material suppliers are **not** subject to DBRA labor standards.

3. Although the mobile ready-mixed concrete batch plant is owned by the prime contractor and the mobile ready-mixed concrete batch plant is located within ½ mile of the closest right of way boundary to the project, it has been open and selling to the public for several years. In other words, the mobile ready-mixed concrete batch plant was established by a commercial supplier. Therefore, **no** request to sublet and subcontract agreement between the prime contractor (commercial supplier) and the trucking firm is required.

4. The trucking firm hired by the prime contractor (commercial supplier) to deliver the ready-mixed concrete from the mobile batch plant into the prime contractor's paving machine is **not** required to pay its drivers Davis-Bacon wages at any time. Bona fide material suppliers are **not** subject to DBRA labor standards.