

Complying with Davis-Bacon Requirements

Learn about the Environmental Loans programs and find guidance at dnr.wi.gov/aid/eif.html

Davis-Bacon and Related Acts (DBRA) apply to projects funded by the U.S. Environmental Protection Agency (EPA) via the Clean Water and Drinking Water State Revolving Funds (SRFs). The DBRA require all contractors and sub-contractors performing on federally-funded construction contracts in excess of \$2,000 to pay their laborers and mechanics no less than the locally prevailing wage rates and fringe benefits for corresponding work on similar projects in the area as determined by the Secretary of Labor for inclusion in Davis-Bacon-covered contracts. See the U.S. Department of Labor (DOL) Wage and Hour Division (WHD) Government Contracts Compliance Assistance for information on [Davis-Bacon and Related Acts](#).

Municipal Responsibilities

- Obtain wage determination and monitor it through contract award.
- Ensure all bid, contract, and subcontract documents and sole source contracts contain the wage determination and Davis-Bacon labor standards clauses (prime contractor and sub-contractors).
- For prime contracts over \$100,000, comply with Contract Work Hours and Safety Standards Act (CWHSSA).
- Ensure no contracts are awarded to ineligible contractors.
- Ensure the Davis-Bacon poster and wage determination are posted at work site.
- Collect certified payroll reports and statements of Davis-Bacon compliance weekly.
- Spot-check payroll reports/related records.
- Conduct confidential, onsite interviews using Standard Form 1445, Labor Standards Interview.
- Periodically review use of apprentices and trainees.
- Report all alleged Davis-Bacon violations.
- Maintain full documentation of payrolls, certifications, interview forms, etc., for 3 years after project completion in the event the Office of Inspector General examines the project.

Contracts

Municipalities must ensure bids, contracts, and subcontracts contain the applicable wage determination and the Davis-Bacon labor standards clauses found in [29 CFR § 5.5](#) (Code of Federal Regulations), titled Contract Provisions and Related Matters. The labor standards describe contractor responsibilities and provide remedies for noncompliance. A wage determination (WD) is a set of wages, fringe benefits, and work rules that the DOL has ruled to be prevailing for a given labor category in a given locality. Note that if federal and state wage rates apply, contracts must contain both wage decisions/contract standards and employers must pay the higher of the two rates.

The EPA requires the following language (or a variation thereof) to be included in all bid solicitations and resulting contracts:

“The successful bidder will be required to conform to the wage requirements prescribed by the federal Davis-Bacon and Related Acts which requires that all laborers and mechanics employed by contractors and sub-contractors performing on contracts funded in whole or in part with federal funds in excess of \$2,000 pay their laborers and mechanics not less than the prevailing wage rates and fringe benefits, as determined by the Secretary of Labor, for corresponding classes of laborers and mechanics employed on similar projects in the area.” – U.S. Department of Labor Wage and Hour Division May 29, 2009, Guidance.

The following items must be included in the contract with the prime contractor:

- DOL Davis-Bacon wage determination for the project type and location.
- Requirement for sub-contractors to apply the same wage determination.



- Requirement for the wage determination and [Davis-Bacon Poster WH1321](#) to be posted in all relevant languages at all times by the contractor and sub-contractors at the project/work site in a prominent and accessible place for laborers and mechanics.

Additionally, prime contractors and sub-contractors must provide certifications with submitted bids agreeing to comply with Davis-Bacon requirements. **If Davis-Bacon language is included in the sub's contract and the sub signs the contract, this would cover the certification.** If any portion of the construction contract is receiving funding subject to Davis-Bacon, the entire contract is subject to Davis-Bacon. If the punchlist work is included in the construction contract and will be invoiced and paid thru the contractor, then Davis-Bacon applies.

Wage Determination (WD)

Prior to issuing a request for bids or proposals, the municipality must obtain the WD for the project area by accessing Wage Determinations at [SAM.gov/content/wage-determinations](#), then selecting the Davis-Bacon Act (DBA) option, the state and county where the work will be performed, and the DBA construction type. The municipality must include the generated WD document in all bid specifications and resulting contracts. If you are unsure about the funding source, a project can be bid with alternates—one including federal wage rates and one without. (Note: SAM.gov replaced WDOL.gov)

DBA construction types

The construction types are building, residential, highway, and heavy. Most SRF projects will fall under the "heavy" type. The "building" type is for sheltered enclosures, especially with windows, doors, and roofs, that house machinery and equipment, and will be occupied at times. Municipalities should ask their consulting engineer what type to use if they are unsure. A contract can contain more than one construction type. If over 80% of the project cost falls into one construction type, the municipality can use that type for the WD; this may be a benefit or a detriment depending on the project. Contact your [DNR Construction Management Engineer \(CME\)](#) with questions.

Monitor the WD

During the bid advertisement period, municipalities or their consulting engineers **must monitor SAM.gov** to ensure DOL has not changed the wage determination. If the WD changes more than 10 days before bid opening, the bid specifications must be amended with the new WD. Once the bids have been opened, the wage determination is valid for 90 days. If contract award is more than 90 days after bid opening, the WD must be updated. The Davis-Bacon WD included in the contract at the time of contract award stays in effect for the duration of the project.

Request additional classifications

If the WD is missing a wage rate needed for a specific work/job classification, construction type, and/or project location, contact your [DNR CME](#) for guidance on requesting a [conformance](#) using the Request for Authorization of Additional Classification and Rate Standard Form 1444. The municipality should incorporate the final conformance rate into the bid specifications and construction contracts, and copies of the conformance letter should be kept on file.

Ineligible Contractors

Municipalities cannot knowingly award an SRF construction project to a contractor who has been debarred or suspended by the Federal government. During the bid evaluation period, municipalities must look up all bidders at [SAM.gov/content/exclusions](#) to determine if they are ineligible contractors. Municipalities should make a note of verification in the contract file. Contractors are responsible for verifying the eligibility of sub-contractors. Note that SAM.gov replaced Excluded Parties List System (EPLS).

Payroll Reports

Municipalities must collect certified payroll reports and compliance statements from the prime contractor and sub-contractors for every week of contract work and keep them on file for at least three years after project completion. Prime contractors are responsible for preparing and submitting payroll reports for its own employees and submitting

payroll reports for all sub-contractor employees. Per 29 CFR 5.5(a)(3)(ii), payroll reports do **not** include full social security numbers and home addresses. The optional [Payroll Form WH-347](#) (see [instructions](#)) may be used to collect and report all of the necessary information.

A weekly payroll statement must provide the following information:

- Name of contractor or sub-contractor (indicate which)
- Project and location
- Project or contract number
- Name of employee
- Employee identification number (e.g., last four digits of social security number – Do not use full SSN)
- Work/Job classification
- Hourly rate of pay (straight and overtime)
- Daily and weekly number of hours worked
- Deductions made
- Actual wages paid

Along with each payroll report, the contractor (or payment supervisor) must submit to the municipality a signed statement of Davis-Bacon compliance, such as the one on the back of [Payroll Form WH-347](#).

Review Payroll Reports

To verify that contractors and sub-contractors are paying appropriate wage rates and fringe benefits, municipalities must spot-check a representative sample of weekly payroll reports for accuracy at least twice for each contract and subcontract during the project—a minimum of once within 2 weeks of initial payroll and once within 2 weeks of final payroll.

Note: The check boxes on page 1 of the Request for Disbursement Form 8700-215 replaced the DBRA Payroll Certification page. The check boxes serve the purpose of assurance from the municipality to DNR certifying that Davis-Bacon has been satisfied for each week employees are paid.

Interview Employees

Municipalities should periodically conduct confidential, onsite interviews with a sampling of the contractor and sub-contractors' employees to determine whether laborers, mechanics, apprentices, and trainees are being paid in accordance with Davis-Bacon requirements—a minimum of once within 2 weeks of initial payroll and once within 2 weeks of final payroll is suggested. The [Labor Standards Interview Standard Form 1445](#) must be completed with every interview and kept on file for at least three years after project completion.

Verify Apprentice and Trainee Registrations

While municipalities (or their designated representatives) are onsite conducting Davis-Bacon interviews, they should take the opportunity to review the apprentice and trainee registrations and certifications that the contractor should be able to easily provide upon request. Municipalities can use the relevant documents to confirm that the number of apprentices does not exceed the ratio to journeymen allowed by the apprenticeship program plan.

Report Violations

Additional interviews may be completed at the municipality's discretion and are required in the case of questionable payroll reports or employee complaints. [Report alleged violations](#) to the EPA Davis-Bacon Coordinator listed in the assistance agreement and to the [DOL WHD District Office](#).

Violations include:

- Misclassification of laborers and mechanics.
- Failure to pay full prevailing wage, including fringe benefits, for all hours worked (including overtime hours).

- Inadequate recordkeeping, such as not counting all hours worked by an individual in two or more classifications during a day.
- Failure to maintain a copy of bona fide apprenticeship program and individual registration documents for apprentices.
- Failure to submit certified weekly payrolls.
- Failure to post the Davis-Bacon poster and applicable wage determination.

Final Loan Closeout

When the SRF loan has reached 95% disbursement of the loan amount, DNR will send a final closeout letter to the municipality, including a Wage Rate Compliance Certification. The municipality must prepare the certification on municipal letterhead and submit it to DNR prior to receiving the final loan disbursement.

EPA Davis-Bacon Applicability

Site of work

Davis-Bacon applies only to laborers and mechanics employed “directly upon the site of the work.” The site of work is the physical place or places where the construction is called for in the contract or will remain after work has been completed, and any other site where a significant portion of the building or work is construction, provided that such site is established specifically for the contract. It may also include job headquarters, tool yards, batch plants, borrow pits, etc., provided the properties are located adjacent or virtually adjacent to the “site of work” and dedicated exclusively or nearly so to the performance of the contract or project.

Laborers and mechanics

Laborers and mechanics are employees who work with their hands, have manual or physical duties, or are in specific trades. They include carpenters, plumbers, sheet metal workers, etc., including apprentices and trainees. **The DOL focuses on the actual work being performed by the person, not necessarily their title.** As a general rule, an employee who spends the majority of time in a supervisory position onsite and who spends less than 20% of the work week engaged in skilled labor, is exempt from Davis-Bacon requirements for the percentage of time spent in that skilled time. Clerical staff (timekeepers), professionals (architects, engineers, inspectors), and certain utility installers are also exempt.

Force account employees

Davis-Bacon does not apply to “[force account](#)” work in which the municipality performs the construction in-house with its own “force account” employees rather than contracting out the construction work. Furthermore, the DOL does not consider a state or local government to be a contractor, even if it enters into a contract to perform construction work (see 29 CFR 5.2(h)).

Business owners

Davis-Bacon requirements do **not** apply to the owner of a construction company. However, to be exempt, the owner must be a “business owner” as defined under [29 CFR § 541.101](#) and be actively engaged in the management of their business. Davis-Bacon would **apply** if the owner were not engaged in management but predominantly performs manual or physical duties of construction work.

Truck drivers

Davis-Bacon does **not** apply to truck drivers employed by the contractor who come on the job site to deliver construction materials because they are not employed “directly upon the site of the work.” Davis-Bacon **does** apply to truck drivers employed by the contractor to move materials on the site of work or from a property located adjacent or virtually adjacent to it. Davis-Bacon does **not** apply to truck drivers employed by the contractor to move materials at any location that existed prior to bid opening (e.g., contractor’s headquarters).