

Complying with Davis-Bacon Requirements

Davis-Bacon and Related Acts (DBRA) require all contractors and subcontractors performing work on federal construction contracts or federally assisted contracts in excess of \$2,000 to pay their laborers and mechanics not less than the prevailing wage rates and fringe benefits for corresponding classes of laborers and mechanics employed on similar projects in the area. The prevailing wage rates and fringe benefits are determined by the Secretary of Labor for inclusion in covered contracts.

- [U.S. Department of Labor \(DOL\) Regional offices](#) can provide assistance recipients with help in determining how to apply Davis-Bacon to State Revolving Fund (SRF) projects.
- A list of DOL Wage and Hour Division (WHD) Regional offices with contact information may be found at: http://www.dol.gov/whd/whdkeyp.htm#regional_offices.
- Federal Davis-Bacon information, see <http://dol.gov/whd/programs/dbra/>.
- [beta.SAM.gov](#) provides the required wage rates and fringe benefit rates that must be met on federal procurement contracts for each labor category covered by the Davis-Bacon Act (DBA).
- Contract Provisions and Related Matters, see [DOL 29 CFR \(Code of Federal Regulations\) 5.5](#).

Contracts

Assistance recipients should inform prime contractors and sub-contractors of Davis-Bacon requirements. Recipients of federal funds must ensure that bid solicitations and resulting contracts contain Davis-Bacon labor standards and wage determinations. U.S. Environmental Protection Agency (EPA) requires that the following text (or a variation thereof) be included in all bid solicitations, contracts, and sub-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. Dept. of Labor Wage and Hour Division May 29, 2009 Guidance.

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

- U.S. Dept. of Labor (DOL) wage determinations for the project type and location
- Requirement for sub-contractors to apply the same wage determinations
- Requirement for the wage determinations and Davis-Bacon poster WH-1321 ([Appendix E](#)) to be posted at all times by the contractor and sub-contractors at the work site in a prominent and accessible place

Additionally, prime and sub-contractors must provide certifications with submitted bids agreeing to comply with Davis-Bacon requirements. If any portion of the construction contract is receiving funding subject to Davis-Bacon, the entire contract is subject to Davis-Bacon.

Wage Determinations

Prior to issuing a request for bids or proposals, the assistance recipient must obtain the wage determination for the locality where the SRF-funded project will take place. To find a wage determination for a project area, assistance recipient should access the Wage Determination On-Line website at <http://wdol.gov/dba.aspx#0>, and input the state and county where the project will occur, as well as the construction type. Most SRF projects will fall under the “Heavy” construction type, but assistance recipients should ask their consulting engineer if unsure. The website will generate a list of prevailing wages for the selected county, which should be printed and included in all bid solicitations.

Assistance recipients or their engineers should monitor <http://wdol.gov/dba.aspx#0> while the bid remains open to ensure that the wage determination hasn’t changed. If the wage determination changes more than 10 days before the bid opening date, the solicitation will need to be modified to reflect the new wage rate. The wage determination is valid for 90 days after bid opening. If the contract is not awarded within 90 days, the wage determination must be updated with any changes that have occurred during that period. If the contract is awarded within 90 days, the original wage determination becomes fixed for the life of the contract.

If a wage determination is not available for the county in which construction will take place, or for a labor category expected to apply to the project, contact the State Program Office (SPO) for guidance on the proper process for requesting a project-specific wage determination from DOL.

Assistance Recipient Responsibilities

- Obtain wage determinations
- Ensure all bid/contract documents contain applicable wage determination and labor provisions (prime and sub-contractors)
- Post the Davis-Bacon poster and applicable wage determination
- Ensure no contracts are awarded to ineligible contractors
- Ensure submission of certified payrolls
- Ensure sole source contracts contain wage determination and labor standards
- Conduct on-site interviews with laborers and mechanics if a contractor or sub-contractor is at risk for violating prevailing wage requirements
- Periodically review use of apprentices and trainees
- Report potential violations to EPA Davis-Bacon contact and DOL Wages and Hours District Office
- Maintain full documentation
- Maintain records 3 years after completion

Davis-Bacon Reporting

Assistance recipients must collect certified payrolls for all contractors and subcontractors every week. Contractors are responsible for coordinating the submission of sub-contractor payroll records.

Certified payroll forms must provide the following information:

- Name of contractor

- Name of sub-contractor
- Project location
- Project contract number
- Name of employee
- Employee identification number (such as the last four digits of the Social Security Number)
- Job classification (full/part time)
- Weekly number of hours worked
- Hourly rate of pay
- Deductions made
- Actual wages paid

Contractors and sub-contractors must submit a copy of certified payrolls to the assistance recipient weekly. Optional form WH-347 ([Appendix G](#) and [instructions](#)) may be used to collect and report all of the information necessary for payroll reporting. To verify that contractors and sub-contractors are paying appropriate wage rates, assistance recipients should spot-check a representative sample of weekly payroll data at least twice during the project. It is important that assistance recipients keep this information on file for at least three years in the event that the Office of Inspector General inspects the project.

For each payroll submitted to the assistance recipient, the contractor (or payment supervisor) must also submit a signed statement of compliance. The certification form on the back side of WH-347 is suggested ([Appendix G](#)).

Assistance recipients must periodically submit an assurance to the SPO certifying that Davis-Bacon has been satisfied for each week employees are paid.

Onsite Compliance Verification

Assistance recipients are encouraged to conduct interviews on a sample of employees on the project site to verify that contractors and sub-contractors are paying appropriate wage rates. Standard Form 1445 ([Appendix H](#); Labor Standards Interview, [GSA.gov](http://www.gsa.gov)) should be completed with every interview and kept on file. If the assistance recipient determines that there is a risk a contractor or sub-contractor is not complying with Davis-Bacon, the assistance recipient must conduct more frequent interviews until they are confident that the issue has been resolved. If any violations are discovered, the DOL Wage and Hour District Office should be contacted (see http://www.dol.gov/whd/WHD_district_offices.pdf).

While assistance recipients (or their designated representatives) are at the project site conducting Davis-Bacon interviews, they should take the opportunity to verify that contractors and sub-contractors have the proper registrations and certifications for apprentices and trainees working on the project. Contractors are required to maintain all relevant registrations and certifications on file, and should be able to show these to the assistance recipient easily.

Requesting Construction Costs from Environmental Improvement Fund (EIF)

When submitting a Request for Disbursement Form [8700-215](#), if construction costs are requested then page 8, the **Davis-Bacon and Related Acts Payroll Certification**, must be included. If the Certification is not included, the requested costs will be withheld until the Certification is received. Do not attach payroll or interview documents to the Certification.

Final Closeout of the EIF Loan

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

Small Loan Program

Davis-Bacon requirements do not apply to the Small Loan Program. Loans acquired from the Board of Commissioners of Public Lands (State Trust Fund) are funded with proceeds of state land trust funds and so are not subject to Davis-Bacon requirements. The funds for the annual subsidy payments to a municipality are funded with state general obligation bonds.

Force Account

Under most Davis-Bacon statutes, only employees of contractors and sub-contractors are subject to Davis-Bacon wage requirements. In some instances, rather than contracting or subcontracting out construction work, a municipality performs the construction in-house with its own “force account” employees. Such force account work is not subject to Davis-Bacon wage requirements under statutes that cover only employees of contractors and sub-contractors. 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 Section 5.2\(h\)](#)).

Owners of a Construction Company

Davis-Bacon requirements do not apply to the owner of a construction company as an owner is not considered a laborer or mechanic, but is an executive function. However, to be exempt, the owner must be a “business owner” who is actively engaged in the management of the company. If the owner is not involved in management, but predominantly does manual labor, then Davis-Bacon would apply. DOL focuses on the work performed by the person, not necessarily the title.

Truck Drivers

Delivery truck drivers, who come onto the site of the work to drop off construction materials, are not covered by Davis-Bacon even if they are employed by the contractor, because they are not employed directly on the site of work.

If the work involves hauling on the site of work or hauling from an adjacent or nearby property, then the truck drivers are subject to prevailing wage rates. If the work involves hauling from an off-site location, i.e., fabrication plant, tool yard, job headquarters, then the drivers are not covered by Davis-Bacon.

Debarment

Assistance recipients cannot knowingly award a SRF construction project to a contractor who has been debarred or suspended by the Federal government. During the bid evaluation period, assistance recipients should compare all bidders to the “Excluded Parties List” accessible at www.epls.gov. Assistance recipients should make a note in the contract file that the selected bidder has been checked against the Excluded Parties List, and has not been debarred or suspended by the Federal government. Contractors are responsible for verifying the eligibility of sub-contractors.

Definitions

“Business owner” – Actively engaged in management activities of the company.

“Laborers” and **“Mechanics”** – Anyone who is performing construction work (duties are manual or physical in nature) on the project including carpenters, plumbers, sheet metal workers, etc., including apprentices and trainees.

“Prevailing Wages” – The rate paid to a majority of people engaged in a particular craft, classification or type of work within a geographic area.

“Site of Work” – A physical place or places where the construction is called for in the contract and it will remain after work has been completed.