

Interim Davis Bacon Act Guidance

This guidance is intended to supplement Department of Labor (DOL) regulations and the Davis Bacon (DB) Terms and Conditions of EPA assistance agreements. In the event of a conflict between the guidance and DOL regulations or the Terms and Conditions of an EPA assistance agreement, the conflicting provision of the Guidance is not binding on DOL or EPA.

I. Introduction

The Davis Bacon Act requires that all contractors and subcontractors performing construction, alteration and repair (including painting and decorating) work under federal or District of Columbia contracts in excess of \$2,000, pay their laborers and mechanics not less than the prevailing wage and fringe benefits for the geographic location. Davis Bacon requirements may be extended to federal financial assistance programs by the terms of other statutes (collectively referred to in this guidance as Davis Bacon and Related Acts (DBRA)) establishing or funding the programs. [[Compliance Assistance By Law - The Davis-Bacon and Related Acts \(DBRA\)](#)]. Examples of DBRA at EPA include section 104(g) of CERCLA (Superfund) and Division A, Title XVI, section 1606 of the American Recovery and Reinvestment Act of 2009 (Recovery Act).

EPA assistance agreements subject to DBRA include Terms and Conditions that identify the responsibilities of a recipient for complying with DBRA.

EPA, under regulations in 29 CFR 5.5 [[Electronic Code of Federal Regulations:](#)] must ensure that its grant recipients and sub-recipients otherwise subject to the Davis-Bacon provisions must comply with the following:

- A. Insert in full in any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a public building or public work, or building or work financed in whole, or in part, from federal funds or in accordance with guarantees of a federal agency or financed from funds obtained by pledge of any contract of a federal agency to make a loan, grant or annual contribution, contract clauses pertaining to minimum wages.
 - 1) *Minimum wages.* All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account, the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor at the following web site [Wage Determinations Online \(www.wdol.gov/dba.aspx\)](http://www.wdol.gov/dba.aspx), regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

A “wage determination” is the listing of wage and fringe benefit for each *classification* of laborers and mechanics which the Administrator of the Wage and Hour Division of the U.S. Department of Labor has determined to be prevailing in a given area for a particular type of construction (e.g., building, heavy, highway, or residential).

The wage determination (including any additional classification and wage rates) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

<http://www.dol.gov/esa/whd/regs/compliance/posters/fedprojc.pdf>

2) *Withholding.* In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the regulations, the loan or grant recipient may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

3) *Payrolls and basic records.* Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. The contractor shall submit weekly for each week in which any contract work is performed, a copy of all payrolls to the recipient, sponsor, or owner. The required weekly payroll information may be submitted in any form desired. A contractor may use Form WH-347 which is available from the Wage and Hour Division web site at: <http://www.dol.gov/esa/whd/forms/wh347.pdf>

4) *Subcontracts.* The prime contractor is responsible for the compliance by any subcontractor or lower tier subcontractor with the requirements above, the requirements identified in the Davis Bacon Terms and Conditions of the EPA assistance agreement, and the contract clauses in 29 CFR 5.5.

B. Contract Work Hours and Safety Standards Act. In any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act, the following clauses shall apply:

1) *Overtime requirements.* No contractor or subcontractor for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek. The overtime rate of time and one half does not apply to fringe payments. For work in excess of forty hours, fringe payments should continue to be paid on a per hour worked basis.

2) *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the clause set forth in paragraph (B) (1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States government, for liquidated damages.

3) *Withholding for unpaid wages and liquidated damages.* The recipient shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (B) (2) of this section.

4) *Subcontracts.* The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (B) (1) through (4) of this section.

C. In any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR 5.1, the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract.

D. In any contract subject to the Super Fund Program, the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of ten years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. If however, there is litigation, claims, negotiations, audits, cost recovery or other action involving the records, then the contractor or subcontractor must retain the records until the issue related to the records is resolved (which may be longer than ten years).

II. Applicability to EPA Programs

A. Brownfields Direct Cleanup and Revolving Loan Fund Grants.

1) *Sites contaminated with hazardous substances.* All construction, alteration and repair activity involving the remediation of hazardous substances, including excavation and removal of hazardous substances, construction of caps, barriers, structures which house treatment equipment, and abatement of contamination in buildings, is subject to DBRA.

2) *Sites contaminated with Petroleum.* DBRA prevailing wage requirement apply when the project includes:

- a) Installing piping to connect households or businesses to public water systems or replacing public water system supply well(s) and associated piping due to groundwater contamination;
- b) Soil excavation/replacement when undertaken in conjunction with the installation of public water lines/wells described above; or
- c) Soil excavation/replacement, tank removal, and restoring the area by paving or pouring concrete when the soil excavation/replacement occurs in conjunction with both tank removal and paving or concrete replacement.

Other cleanup activities at Brownfields sites contaminated by petroleum such as in situ remediation, and soil excavation/replacement and tank removal when not in conjunction with paving or concrete replacement, will normally not trigger DBRA requirements. Unique situations at a site (e.g. unusually extensive excavation or construction of permanent facilities to house pumps and treatment equipment) may trigger DBRA requirements.

B. Leaking Underground Storage Tank (LUST) Program Grants to States.

DBRA applies to LUST agreements when construction contracts are issued by states for: a) Installing piping to connect households or businesses to public water systems or replacing public water system supply well(s) and associated piping due to groundwater contamination, b) Soil excavation/replacement when undertaken in conjunction with the installation of public water lines/wells described above, or c) Soil excavation/replacement, tank removal, and restoring the area by paving or pouring concrete when the soil excavation/replacement occurs in conjunction with both tank removal and paving or concrete replacement.

DBRA may also apply in unique circumstances such as LUST sites that require unusually extensive excavation or construction of permanent facilities to house pump and treatment equipment to remove groundwater contamination.

C. DBRA may apply to Superfund Cooperative agreements made to states, political subdivisions, and tribes. Superfund projects may involve construction contracts; work with OGC/ORC to define specific applications.

D. EPA awards Diesel Emission Reduction Act Grants to eligible entities for projects that may involve construction.

Recipients, sub grantees, and borrowers using DERA funding for the projects listed above must comply with the Davis Bacon prevailing wage requirements. Most other DERA funded activities, such as other retrofit, repower, and replacement projects do not trigger DBA requirements. If the recipient encounters a unique situation at a site that

presents uncertainties regarding DB applicability, the recipient must discuss the situation with EPA before authorizing work on that site.

- E. EPA awards (CWSRF and DWSRF) capitalization grants to states, which provides loans to municipalities and other eligible entities for eligible projects, including wastewater/drinking water infrastructure projects, estuary projects, and non-point source projects. Under the ARRA, states may also provide grants to eligible entities for these purposes.

EPA has determined that Davis-Bacon prevailing wage requirements apply to the construction, alteration, and repair activity of infrastructure, including all construction, alteration and repair activity involving waste water or drinking water treatment plants that are funded in part or in whole by ARRA funds. All other construction, alteration, and repair activity of infrastructure that is funded through the SRFs ARRA funds, including “Green” projects, non-point source projects, and estuary projects are also subject to DB. If a sub-recipient encounters a unique situation at a site that presents uncertainties regarding DB applicability, the sub-recipient must discuss the situation with the recipient state before authorizing work on that site.

For sub-recipients that are not governmental entities receiving ARRA assistance under the SRF programs, Davis-Bacon prevailing wage requirements apply to the construction, alteration, and repair activity of infrastructure, including all construction, alteration and repair activity involving waste water or drinking water treatment plants. All other construction, alteration, and repair activity of infrastructure that is funded through the SRFs ARRA funds, including “Green” projects, non-point source projects, and estuary projects are also subject to DB. If a sub-recipient encounters a unique situation at a site that presents uncertainties regarding DB applicability, the sub-recipient must discuss the situation with the recipient state before authorizing work on that site.

III. Davis Bacon Compliance Procedures

- A. Before Contract Award - Once it is determined that Davis Bacon wage rates will apply to a construction contract, the recipient’s contracting organization must state in the solicitation that Davis Bacon Prevailing wage rates are applicable, and bid packages must include the current Davis Bacon general wage determination for the area where construction will occur.

To select the prevailing wage rate determination for a specific locality, go to website <http://www.wdol.gov/>



Then select, “Selecting DBA WDs”

CAUTION: Users should note that the only WDs applicable to a particular solicitation or contract are those that have been incorporated by the contracting officer in that contract action.

Selecting DBA Wage Decisions

Select DBA WD by number:

(Enter WD number in the following format: two letter abbreviation for the state and the number of the WD. For e.g. NOT VA030003 or MD150 NOT MD030150.)

OR

By Selection criteria beginning with:

State:

County:

Construction Type: (Types of Construction Under DBA)

WD Number:

- All Construction Types
- BUILDING
- HEAVY
- HIGHWAY
- RESIDENTIAL

[Back](#)

Browse by [state/territory](#).
 View the latest [modifications and additions](#) to the Davis-Bacon Database.
 View the [modifications or additions](#) to Davis-Bacon Wage Determinations due to and published on WDOL.gov.
 View [Archived Wage Determinations](#)

- 1) Input the State and County where the construction site is located. Also input the type of construction for the project as Building, Heavy, Highway or Residential.

a) For Brownfields Petroleum cleanup and Leaking Underground Storage Tank (LUST) projects, EPA has determined that when soliciting competitive contracts, awarding new contracts or issuing task orders; work assignments or similar instruments to existing contractors (ordering instruments) for installing piping to connect households or businesses to public water systems or replacing public water system supply well(s) and associated piping; including soil excavation/replacement, the recipients shall use the “Heavy Construction” classification.

When soliciting competitive contracts; awarding new contracts or issuing ordering instruments for soil excavation/replacement; tank removal; and restoring the area by paving or pouring concrete when the soil excavation/replacement occurs in conjunction with both tank removal and paving or concrete replacement at current or former service station sites; hospitals; fire stations; industrial or freight terminal facilities; or other sites that are associated with a facility that is not used solely for the underground storage of fuel or other contaminant, the recipient shall use the “Building Construction” classification.

When soliciting competitive contracts; awarding new contracts or issuing ordering instruments for soil excavation/replacement; tank removal and restoring the area by paving or pouring concrete when the soil excavation/replacement occurs in conjunction with both tank removal and paving or concrete replacement at a facility that is used solely for the underground storage of fuel or other contaminant, the recipient shall use the “Heavy Construction” classification.

Recipients must discuss unique situations that may not be covered by the General Wage Determinations described above with EPA. If, based on discussions with a recipient, EPA determines that DB applies to a unique situation (e.g. unusually extensive excavation), the Agency will advise the recipient which General Wage Determination to use based on the nature of the construction activity at the site.

b) For Brownfield Hazardous Waste Cleanup projects, EPA has determined that when soliciting competitive contracts or issuing ordering instruments to existing contractors for, the excavation and removal of hazardous substances and/or the construction of caps or barriers, recipient shall use the “Heavy Construction” classification.

When soliciting competitive contracts or issuing ordering instruments for the construction of structures which house treatment equipment and abatement of contamination in buildings (other than residential structures less than 4 stories in height), recipient shall use “Building Construction” classification.

When soliciting competitive contracts or issuing ordering instruments for the abatement of contamination in residential structures less than 4 stories in height, the recipient shall use “Residential Construction” classification.

Recipients must discuss unique situations that may not be covered by the General Wage Classifications described above with EPA. If, based on discussions with a Recipient, EPA determines that DB applies to a unique situation the Agency will advise the recipient which General Wage Classification to use based on the nature of the construction activity at the site.

Note: Depending on the particular EPA program, the Davis Bacon Terms and Conditions may already categorize the construction type that applies.

- c) The Terms and Conditions for Brownfields, Recovery Act LUST and Superfund grants contain EPA determinations of construction classification types. Generally, SRF funded construction of wastewater treatment plants is classified as “Heavy Construction” although certain Section 319 (Nonpoint Source Management) and Section 320 (National Estuary Program) projects may have different construction types.
 - i. Building Construction. Includes construction of sheltered enclosures with walk-in access for the purpose of housing persons, machinery, equipment or supplies; all construction of such structures; the installation of utilities and of equipment, both above and below grade levels; as well as incidental grading, utilities and paving. Such structures need not be “habitable” to be building construction. Also, the installation of heavy machinery and/or equipment does not generally change the project’s character as a building.
 - ii. Highway Construction. Includes construction, alteration or repair of roads, streets, highways, runways, taxiways, alleys, trails, paths, parking areas, and other similar projects not incidental to building or heavy construction.
 - iii. Residential Construction. Includes the construction, alteration or repair of single-family houses, apartment buildings of no more than four stories in height. This includes all incidental items such as site work, parking areas, utilities, streets, and sidewalks.
 - iv. Heavy Construction. Includes those projects that are not properly classified as either “building,” “highway,” or “residential.” Unlike these classifications, heavy construction is not a homogenous classification. Because of this catch-all nature, projects within the heavy classification may sometimes be distinguished on the basis of their particular project characteristics, and separate schedules may be issued for dredging projects, water and sewer line projects, dams, major bridges, and flood control projects.

Some contracts or projects may require more than one general schedule to be included depending on the nature and extent of the work. This is described in more detail in the DOL All Agency Memos No. 130 and 131.

Also refer to DOL memoranda AAM 130 and 131, if additional guidance is needed in selecting the Construction Type or if multiple types apply.

<http://www.dol.gov/esa/whd/programs/dbra/docs/memo-131.pdf>

- 2) Once the State, County and Construction Type are input, the appropriate general wage determination or General Wage Decision for your project will be provided.

Let's assume a construction project for a Brownfields project where excavation and cleanup of hazardous waste is being advertised. The project site is Berks County, Pennsylvania and per the T&Cs is considered "Heavy Construction".

In this particular case four "heavy" general decisions are provided; PA14 for heavy and highway, PA22 for heavy TV/grout sewer clean, PA40 for heavy sewer/water treating plant and PA50 for heavy dredging. Since the decisions related to sewer or dredging don't apply, the PA14 heavy and highway decision would apply. General Decision Number: PA080014 08/28/2009 PA14 in its entirety would be enclosed in the bid documents.

General wage determinations are in effect nationwide for most counties for each general type of construction (building, residential, highway, heavy)

(the following example of a general wage decision has been edited for brevity)

General Decision Number: PA080014 08/28/2009 PA14

Superseded General Decision Number: PA20070014

State: Pennsylvania

Construction Types: Heavy and Highway

Counties: Adams, Berks, Bradford, Carbon, Columbia, Cumberland, Dauphin, Juniata, Lackawanna, Lancaster, Lebanon, Lehigh, Luzerne, Lycoming, Monroe, Montour, Northampton, Northumberland, Perry, Pike, Schuylkill, Snyder, Sullivan, Susquehanna, Tioga, Union, Wayne, Wyoming and York Counties in Pennsylvania.

HEAVY AND HIGHWAY CONSTRUCTION PROJECTS (Excluding Sewer Grouting Projects and Excluding Sewage and Water Treatment Plant Projects)

Modification Number	Publication Date
19	06/26/2009
20	07/03/2009
21	07/10/2009

22 07/24/2009
 23 08/28/2009

	Rates	Fringes
BOILERMAKER	\$38.81	25.26
BOIL0013-003 09/30/2008		

CARP0076-011 05/01/2008
 COLUMBIA, MONTOUR, NORTHUMBERLAND, SCHUYLKILL, SNYDER, UNION,
 the lower part of Luzerne county, Carbon County, Banks, Lusanna, Lehigh, Packer, Kidder townships,
 and part of Penn Forest

	Rates	Fringes
MILLWRIGHT	\$26.56	13.02
ELEC0126-001 06/01/2008		

Line Construction:
 (ADAMS, CUMBERLAND, DAUPHIN, LANCASTER, LEBANON, JUNIATA, PERRY AND YORK
 COUNTIES)

Groundman	\$19.63	26%+\$5.55
Lineman	\$34.65	26%+\$5.55
Truck Operator	\$21.36	26%+\$5.55
Winch Truck Operator	\$23.10	26%+\$5.55

Line Construction:
 (BERKS AND LEHIGH NORTHAMPTON COUNTIES)

Groundman	\$19.99	26%+5.55
Lineman	\$35.28	26%+5.55
Truck Driver	\$21.76	26%+5.55
Winch Truck Operator	\$23.52	26%+5.55

 * ENGI0542-004 05/01/2009

	Rates	Fringes
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Power equipment operators:
 (HIGHWAY CONSTRUCTION AND WATER LINES CONSTRUCTION (OFF PLANT
 SITE))

GROUP 1	\$27.45	16.30
GROUP 1a	\$29.70	16.98
GROUP 2	\$26.27	15.96

POWER EQUIPMENT OPERATORS CLASSIFICATIONS

GROUP 1 - Pile drivers, all types of cranes, all types of backhoes, draglines, keystones, all types
 of shovels. Ironworkers:

Projects Over 25 Million Dollars	\$ 33.55	22.42
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Projects Under 25 Million Dollars	\$33.05	22.42
	Rates	Fringes
Laborers:		
GROUP 1	\$16.22	11.03
GROUP 2.	\$22.84	11.03

LABORERS CLASSIFICATIONS

GROUP 1: Flag person

GROUP 2: Hazardous/Toxic/Asbestos Waste Handler, Lead Paint Handler

PAIN0021-026 05/01/2009

ADAMS, CUMBERLAND, DAUPHIN, LANCASTER, PERRY, AND YORK COUNTIES

	Rates	Fringes
Painters:		
Bridge.	\$28.05	8.90
Brush	\$24.05	8.90
Spray, Sandblast	\$25.05	8.90

END OF GENERAL DECISION

- 3) Sub-recipients and borrowers should refer to their agreement with the prime Recipient or State for any notification or approvals that may be required by their Grantor regarding the selection of wage rate determinations.

For recipients who are non-governmental entities that are receiving grants directly from EPA, the recipient is required to obtain EPA concurrence of the wage determination selected before including the determination in the contract solicitation. In these instances, the EPA Regional Davis Bacon Coordinator (Regional Coordinator) will obtain the necessary construction contract information listed in Appendix A from the Recipient to review and provide Agency concurrence via email.

For recipients who are non-governmental entities that are receiving grants from States (e.g. SRF Programs), the recipient is required to obtain State concurrence of the wage determination selected before including the determination in the contract solicitation.

In the event a recipient requires assistance regarding wage determinations, they may contact the EPA Davis Bacon Regional Coordinator identified in the grant award for direction or assistance.

- 4) Before bid opening, the wage determination website should be continually monitored by the contracting organization for modifications. Generally, the most current published wage determination at the time of contract

award must be incorporated into the contract. A wage determination update issued less than 10 days before bid opening shall be in effect unless there is not a reasonable time to notify all prospective bidders. In these cases the relevant facts should be documented in the contract file

A convenient way to monitor potential wage determination modifications is to sign up for the alert service as shown below.

CAUTION: Users should note that the only WDs applicable to a particular solicitation or contract are those that have been incorporated by the contracting officer in that contract action.

Selecting DBA Wage Decisions

The Wage Determination you have requested is below.

Please scroll down to review the WD carefully to ensure that it is appropriate for the specific contract action.

State: New Jersey

Construction Type: Heavy

County: Union County in New Jersey.

HEAVY CONSTRUCTION PROJECTS

Modification Number	Publication Date
0	04/24/2009
1	06/05/2009
2	07/03/2009
3	07/24/2009

CARP0006-009 05/01/2009

[Printer Friendly Version](#)

CAUTION: Users should note that the only WDs applicable to a particular solicitation or contract are those that have been incorporated by the contracting officer in that contract action.

Selecting DBA Wage Decisions

CAUTION: The Alert Service does not relieve the contracting officers of the obligation under DBA and its regulations to use timely received new or revised DBA WDs in contract actions.

Alert Service:

If you wish to be notified of revisions made to this WD, please provide the following information:

Email address:

Alert identifier:(enter contract/solicitation number or create your own):

To set the duration of your Alert Service, please enter a specific date (MM/DD/YYYY):

OR

Select a specific period of time:

Use Above Date

120 days

90 days

45 days

- B. After Contract Award - After solicitation, bid opening and contractor selection by the recipient contracting organization, the prevailing wage determination is included in the final construction contract between the recipient, subrecipient or borrower and its contractor.
- 1) In the event the construction contract is not awarded within 90 days of the bid opening date, any modification to the prevailing wage determination published prior to award of the contract shall be effective and should be included in the award documents, or by modification to the contract documents.
 - 2) In these situations, the contracting organization may request an extension of the 90-day period from the DOL –WHD Administrator. Such request shall be supported by a written finding, which shall include a brief statement of the factual support, that the extension is necessary and proper in the public interest to prevent injustice or undue hardship or to avoid serious impairment in the conduct of government business. The DOL – WHD Administrator will either grant or deny the request for an extension after consideration of all the circumstances.

For non profit contracting organizations receiving grants directly from EPA, the contracting organization shall provide the completed request to the EPA Regional Coordinator. The Regional Coordinator will then send the completed extension request via cover memorandum to the U. S. Department of Labor for processing. (Reference 29 CFR Part 1, section 1.6 for further direction)

For non profit contracting organizations receiving grants directly from States (e.g. SRF Programs), the contracting organization shall provide the completed request to the State. The State will then send the completed extension request via cover memorandum to the U. S. Department of Labor for processing. (Reference 29 CFR Part 1, section 1.6 for further direction)

- 3) The DOL-WHD may issue a wage determination after contract award or after the beginning of construction if the contracting organization has failed to incorporate a wage determination in a contract required to contain prevailing wage rates, or has used a wage determination which by its terms or the provisions of Department of Labor regulations clearly does not apply to the contract. The DOL-WHD Administrator may issue a wage determination which shall be applicable to a contract after contract award or after the beginning of construction when it is found that the wrong wage determination has been incorporated in the contract because of an inaccurate description of the project or its location in the request for the wage determination.

Under any of the above circumstances, the organization entering into the contract shall either terminate and re-solicit the contract with the valid wage determination, or incorporate the valid wage determination

retroactive to the beginning of construction through supplemental agreement or through change order, *Provided* That the contractor is compensated for any increases in wages resulting from such change. The method of incorporation of the valid wage determination, and adjustment in contract price, where appropriate, should be in accordance with applicable procurement law.

- 4) The organization responsible for awarding and administering the contract shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The organization shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:
 - a) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
 - b) the classification is utilized in the area by the construction industry; and
 - c) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
 - d) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the recipient (the contracting organization) agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the recipient to the DOL on a completed Conformance Request SF 1444: (<http://www.wdol.gov/docs/sf1444.pdf>)

Recipients should complete the SF 1444 and forward the completed form along with the applicable wage determination, by email to Ms. Beverly Mitchell at mitchell.beverly@dol.gov. A Carbon Copy should be sent to Ms. Vanessa Shaw-Jennings, Branch Chief, DOL Branch of Construction Wage Determination at shaw-jennings.vanessa@dol.gov. Concurrently, the recipient should forward a copy of the entire request package by email to the EPA DB Coordinator. Prior to submitting an SF 1444 for an additional wage rate, the recipient should confer with their local DOL WHD office to see if it is actually necessary to do so.

DOL will accept SF 1444's for processing via fax, or hard copy.

The DOL-WHD Administrator, or an authorized representative, will approve, modify, or disapprove each additional classification action within 21 days of receipt and so advise the recipient. Upon receipt of the DOL action, the recipient will send a copy of the DOL determination to the EPA DB Coordinator.

Additional assistance can be obtained from DOL offices listed at the following website.

<http://www.dol.gov/esa/contacts/whd/america2.htm>

- 5) In the event a labor classification is not addressed during the construction contract period, the construction contractor, the laborers and mechanics to be employed in the classification (if known), or their representatives, and the recipient (the contracting organization) must complete a Conformance Request SF 1444 that lists the classification and proposed wage rate along with the applicable wage determination and submit the complete package to DOL. <http://www.wdol.gov/docs/sf1444.pdf>

The procedures described in III.B.4.above should then be followed for processing the SF 1444.

In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the recipient do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the parties will complete the SF 1444, indicate their disagreement at the bottom and forward the form along with the applicable wage determination to DOL.

The procedures described in III.B.4.above should then be followed for processing the SF 1444.

- 6) The contractor and all subcontractors are responsible for posting the prevailing wage determination at the site of work (which includes all SF 1444 conformances) for the construction project along with the DOL Davis Bacon poster. The poster shall be placed at the site of the work in a prominent and accessible place where it may be easily seen by employees. <http://www.dol.gov/esa/whd/programs/dbra/wh1321.htm>
- 7) The contractor is required to pay the prevailing wage rates on a weekly basis to laborers and mechanics in accordance with the requirements of 29 CFR 5.5, which are incorporated into the actual construction contract.
 - a) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting organization. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a) (3) (i).

The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division web site at <http://www.dol.gov/esa/whd/forms/wh347.pdf> or its successor site. The WH-347 form is particularly suited for this purpose since the

reverse side has a statement of compliance where the contractor can sign. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

- 8) The contracting organization is responsible for receiving and maintaining weekly certified payrolls from the contractor that laborers, mechanics, trades, apprentices and trainees identified in the Davis Bacon wage determination are paid the prevailing wage rate. Periodically the contracting organization is responsible for reviewing certified payrolls to ensure that the prevailing wages and fringe benefits being paid are consistent with the applicable wage determination.

It is highly recommended that emphasis be placed on receiving and reviewing certified payrolls by the contracting organization during the first weeks of construction activity. Doing so will help ensure contractor's compliance with paying at least the required Davis Bacon wage rates to laborers and mechanics.

- 9) The contracting organization is also responsible to perform periodic employee interviews in confidence to validate the accuracy of certified payrolls for laborers, mechanics, trades, apprentices and trainees.

EPA Award Terms and Conditions require that employee interviews be conducted within the first two weeks of the initial payroll and within two weeks of the final payroll for the project. Notwithstanding, EPA may authorize an exception to these requirements on a case by case basis when extenuating circumstances justify. (See III.B.11) below)

Labor interviews can be documented using an SF 1445 interview form that can be found at the following website.

<http://www.gsa.gov/Portal/gsa/ep/formslibrary.do?formId=12BF5D0E2DC4484685256CBC0062F375&viewType=DETAIL>

- 10) Recipients must immediately report violations of the DB prevailing wage requirements to the EPA DB Coordinator listed in the assistance agreement and to the appropriate DOL WHD Office listed at <http://www.dol.gov/esa/contacts/whd/america2.htm>.

Typical violations are: 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 and failure to post the Davis-Bacon poster and applicable wage determination.

The resolution of violations of the DB prevailing wage requirements should be attempted at the lowest possible level by the recipient and contractor. Unresolved or persistent violations should be reported to the Davis Bacon Coordinator and the DOL for further action.

Resolution of potential Davis Bacon violations should be conducted in accordance with DOL memorandum 182. <http://www.wdol.gov/aam/AAM182.pdf>

- 11) Certified payroll records and labor interviews are required to be retained by the contracting organization and contractor for three years after completion of the construction project.

- 12) Additions and exceptions to EPA grant awards.

In accordance with 40 CFR 31.6 (Additions and Exceptions) and 40 CFR 30.4 (Deviations), the Director, Grants Administration Division, is authorized to grant the exceptions and the EPA Director is also authorized to approve exceptions, on a class or an individual case basis, to EPA program specific assistance regulations other than those which implement statutory and executive order requirements. EPA may apply less restrictive requirements when awarding small awards, except for those requirements which are statutory. Exceptions on a case-by-case basis may also be made by EPA.

IV. Davis Bacon – Additional Resources

- A. Some additional sources of information regarding the requirements and complying with Davis Bacon and Related Acts are:

- 1) DBRA FAQ's <http://www.dol.gov/esa/whd/programs/dbra/faqs.htm>
- 2) DOL Wage & Hour Division <http://www.dol.gov/esa/WHD/>
- 3) DOL Davis Bacon Fact Sheet
<http://www.dol.gov/esa/whd/regs/compliance/whdfs66.pdf>
- 4) General Davis Bacon Act requirements and applicability [Compliance Assistance By Law - The Davis-Bacon and Related Acts \(DBRA\)](#)
- 5) Wage determinations on line <http://www.wdol.gov/>
- 6) Selecting the appropriate construction type (see section 4b)
<http://www.wdol.gov/usrguide/sectionc.aspx#c4b>
<http://www.dol.gov/esa/whd/programs/dbra/docs/memo-131.pdf>
- 7) Selecting a wage determination <http://www.wdol.gov/dba.aspx#0>
- 8) Wage rate posting requirements
<http://www.dol.gov/esa/whd/programs/dbra/wh1321.htm>

- 9) Performing a review of certified payrolls
<http://www.dol.gov/esa/whd/forms/wh347.pdf>
- 10) Conducting labor interviews
[http://contacts.gsa.gov/webforms.nsf/0/12BF5D0E2DC4484685256CBC0062F375/\\$file/sf1445.pdf](http://contacts.gsa.gov/webforms.nsf/0/12BF5D0E2DC4484685256CBC0062F375/$file/sf1445.pdf)
- 11) Recommendations for resolving wage rate violations.
DOL employment law guide
<http://www.dol.gov/compliance/guide/dbra.htm>
- 12) Davis Bacon Reference Material
<http://www.gpo.gov/davisbacon/referencemat.html>
- 13) Prevailing Wage Resource Book
<http://www.dol.gov/esa/whd/recovery/pwrb/toc.htm>
- 14) DOL wage and hour division offices [U.S. Department of Labor — Employment Standards Administration \(ESA\) — Wage and Hour Division \(WHD\) — District Office Locations](#)
- 15) DOL wage and Hour Division ARRA website
<http://www.dol.gov/esa/whd/recovery/>

B. Davis Bacon Non-Governmental Wage Determination Questionnaire

- 1) Recipient Name
- 2) Recipient street address, city, state and zip code
- 3) Recipient telephone and fax
- 4) Recipient point of contact
- 5) Recipient point of contact telephone and fax number
- 6) Recipient point of contact email address
- 7) EPA Grant Number
- 8) EPA program
 - a) Hazardous Waste Cleanup construction projects involving the onsite remediation of hazardous substances
 - b) Brownfields Petroleum construction projects involving the onsite cleanup of petroleum
 - c) contamination
 - d) Diesel Emissions Reduction Act construction activities involving the installation of emissions technology by construction laborers and mechanics on site when part of a construction contract
- 9) Construction Project Title
- 10) Project Solicitation or Contract Number
- 11) Request for Proposal or Construction Contract Solicitation date
- 12) Scheduled Bid Opening date

- 13) Anticipated Construction Contract Execution date
- 14) Estimated Construction Contract price or cost range.
- 15) Scheduled Construction Contract start date
- 16) Construction Contract time duration
- 17) Street, County and State of construction contract site
- 18) Construction Type (provided by Recipient)
 - a) Building
 - b) Heavy
 - c) Highway
 - d) Residential

19) Recipient selected General Wage Determination Decision and modification number?

Yes No EPA Davis Bacon Coordinator - concurs with wage determination selected by recipient

20) Corrected Wage determination and modification number from EPA Davis Bacon Coordinator