

Contract Docs



Projects that are subject to
Davis-Bacon...

**...must incorporate the appropriate federal
labor standards provisions, and the
applicable wage decision.**



Also required:

*Verify the
general
contractor is
not debarred.*

www.sam.gov

*Print the page
showing
negative
result and put
in project file.*

Davis-Bacon Contracts

HUD- 4010

CDBG and HOME Projects

HUD-5370

PHA's Contracts > \$100K

HUD-5370 EZ

PHA's Contracts \$2K - \$100K

Link to all forms:

http://portal.hud.gov/hudportal/HUD?src=/program_office/s/labor_standards_enforcement/olrform

Whatever form the contract takes, i.e., a formal contract, bid specifications, purchase order or other analogous instrument, it is the agency's responsibility to ensure the labor standards provisions and applicable wage decision are incorporated into the contract document.

A Davis-Bacon wage decision is simply a listing of classifications and corresponding hourly wage rates, to include fringe benefits (if applicable).

Davis-Bacon Wage Decisions

How to select the correct wage decision for your project.

What is the overall character of construction?

What is called for in the contract?

Generally, there is one primary contract for construction. What is being built, or renovated will determine your category of construction.

There are four primary categories of construction.

Heavy

- Projects which cannot be classified as Building, Residential, or Highway
- Dredging
- Water & sewer lines
- Parks and playgrounds
- Flood control

<http://www.dol.gov/whd/recovery/pwrb/Tab6.pdf>

Select Davis-Bacon wage decision at:

<https://beta.sam.gov/>

Residential, Building, Highway, and Heavy

Residential

- Single family houses, townhouses
- Apartment buildings 4 stories or less

Where a project includes construction items that in themselves would be classified differently with regard to type of construction, **multiple classification(s) as to type of construction may be justified if such items are a substantial part of the project.**

Building

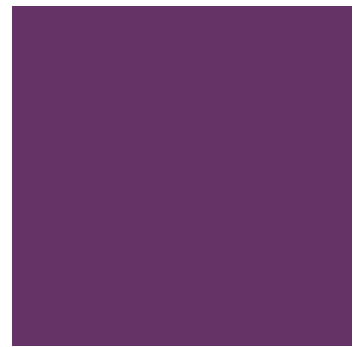
- Sheltered enclosures for the purpose of housing persons, machinery, equipment, etc.
- Apartment buildings greater than 4 stories
- Commercial buildings

The application of wage schedules/determinations for more than one type of construction is appropriate if such items that fall in a separate type of construction will comprise at least 20% of the total project cost and/or cost at least \$1 million. If both of these conditions are not met, the work is considered incidental.

Highway

- Roads
- Highways
- Sidewalks
- Parking areas
- Other paving work not incidental to other construction

Where multiple wage determinations are incorporated into the bid specifications or contract it is very important also to **provide instructions specifying the contract work to which each wage determination applies.**



Davis-Bacon Wage Decisions

Lock-In Dates

Lock in dates are dependent on the type of procurement that is utilized.

If an agency procures the construction, renovation or major repair work through a negotiated contract (RFP) the wage decision is locked-in at contract award (the construction contract) or construction start, whichever occurs first.

If an agency procures the construction through a competitively bidding process, **the wage decision is locked-in at bid opening, provided the contract is awarded within 90 days.**

If the contract is **awarded after the 90 days**, the agency is required to ensure the wage decision is still current. If the wage decision has been modified, you must incorporate the most current decision.

If the wage decision is modified prior to bid opening, the agency must use the most incorporate the most current decision.

However, if the wage decision is modified 10 days or less prior to bid opening, you are required to notify all bidders of the change in the wage decision. If you are unable to notify all bidders, you must document the file. Only if you are not able to notify all bidders of the new wage decision **and** you have documented your file appropriately, are you able to use the preceding wage decision.

Conformances

Additional
Classifications





CONFORMANCES: ADDITIONAL CLASSIFICATIONS

Davis Bacon Act (DBA) wage determinations/decisions (WDs) do not contain every craft needed for all DBA work performed on every contract. When this occurs DBA provisions contain a conformance procedure for the purpose of establishing a DBA-enforceable wage and benefit rate for missing job classifications. [CFR 29 Part 5.5\(a\)\(ii\)](#) sets the criteria that must be met to obtain a rate for an unlisted classification.

Department of Labor (DOL) Conformance Principles

If a classification of work is not listed on the wage decision that is applicable to your project, you must request an additional classification through DOL. Your request must be sent through NCDEQ/DWI, who will submit the request on behalf of the contractor/subcontractor and the grantee. DOL will make the final determination.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR 5.5 (a) (1) (ii))."

Process for "Conformance" Additional classifications:

- Contractors and subcontractors are responsible for determining the appropriate crafts necessary to perform the contract work. If a classification considered necessary for performance of the work is missing from the WD, the contractor must initiate a request for approval for a proposed wage and benefit rate.
- The requested classification is not already listed on the applicable wage decision;
- The classification is utilized in the area by the construction industry; and
- The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

How to Calculate an Additional Classification Rate?

- "The proposed wage rate, including any bona fide fringes benefits, bears a reasonable relationship to the wage rates contained in the wage determination to consider the entirety of the rates within the relevant category on the wage determination and to not generally use as a benchmark the lowest rate within that category."
- There are four general categories on Wage Determinations/Decision:
 - Skilled crafts;
 - Laborers;
 - Power equipment operators, and
 - Truck drivers.
 - To determine a "reasonable relationship," the requested additional classification is compared to the classifications on the applicable wage decision within the same category.



- The classification must be appropriate for the contract work, and must be a classification that is utilized in that locality by the construction industry.
- The contractor cannot propose a new classification by combining job duties from two or more existing classifications on the wage determination, or propose a new classification that performs only part of the duties of an existing classification.
- The proposed classification cannot be a "trainee". Generally, a proposed classification of "helper" will not be approved. Under DBA provisions, a "helper" will not be approved by DOL unless the contractor establishes that the criteria in the regulations at 29 C.F.R. Part 5 are met.
- Conformance requests should not be submitted for exempt classifications (project managers, full-time supervisors, professionals such as engineers), nor for classifications other than "laborers or mechanics" employed on the site of work, as covered by DBA.
- If the contractor has further questions about a conformance process, he/she may contact the nearest Regional Office of the U. S. Department of Labor, Wage and Hour Division

Steps for Submission of Request

1. Submit conformance request via email (PDF file) to the CDBG-I Unit Compliance Specialist, Division of Water Infrastructure. Request must include the following:
 - a) Completed HUD Form 4230-A
 - Reminder - Agency is the Local government/Responsible entity
 - Reminder - Signature is Labor Standard Representative (Same person that reviews certified payroll and submits semiannual labor reports)
 - b) Contractor and/or subcontractor request letter stating the classification needed, tools of the trade they will use, proposed hourly wage rate, and proposed fringe benefits (if applicable).
 - c) Wage Determination/Decisions applicable to the project.
 - d) Signed letter from Grantee to DOL regarding the request for additional classification(s).
 - e) Signed letter(s) from Contractor and/or Subcontractor requesting the additional classification(s). Make sure the letter provides details on the type of tools of the trade the requested classification will use.
 - The contractor must attach a brief job description to each classification request submitted for those that are not generally known and utilized in the construction industry in the locality. The contractor should include all pertinent documentation that supports his/her request for approval of an additional classification.
2. The CDBG-I Unit Compliance Specialist will review and submit the packaged request on behalf of Grantee to DOL and will cc the grant administrator and grantee representative.
3. Grantees shall inform the CDBG-I Unit Compliance Specialist via email once the response from the Department of Labor (DOL) is received. (DOL representative responses go to the email on the HUD form 4230-A only).



4. The contractor/subcontractor must pay the proposed wage and benefit rate pending response from DOL. Typical response time is 30 days from CDBG-I Submission to the DOL.
5. When DOL responds, the Grantee and/or Grant Administrator provides a copy of the response to the contractor/subcontractor with instructions to provide each employee a copy or to post it in the work area (with the applicable WD). The prime contractor must provide a copy of the determination to subcontractor(s), if any, that may employ workers in the conformed classification under the contract.
6. If DOL denies the request or responds with an approved rate that is higher than the rate proposed by the contractor, the contractor must pay the applicable rate retroactive to the start of performance of that craft. The local Labor Standards officer (typically Grant Administrator) should request written confirmation from the contractor that this liability has been paid in full.
7. If the Grantee has not received an answer from DOL after 30 days, please contact the CDBG-I Compliance Specialist.
8. Appeals of the approval or disapproval of a conformance request should initially be made with the Branch of Construction Wage Determinations in the National Office of WHD. If the requestor wishes to appeal the Branch decision, then a request for review and reconsideration may be made to the Wage and Hour Administrator (See CFR 29 Part 5.13 and Part 7). The Administrator's decision may be appealed to the ARB. All decisions by the ARB in such cases are final.

[Additional Classification Calculate Example:](#)

The Heavy Wage Determination/Decision for Tyrrell County needs an Electrician and a Paver Operator classification.

Electrician is under the skilled trade category and there are two trades for this category listed on the Heavy WD for the project:

- Carpenter: Basic Rate \$15.47 + Fringes \$1.50 = \$16.97
- Cement Mason/Concrete Finisher: Basic Rate \$13.10 + Fringes \$1.32 = \$14.42

Need to obtain average of those two skilled trades.

- Basic Rate average $\$15.47 + \$13.10/2 = \$14.28$
- Fringes $\$1.50 + \$1.32/2 = \$1.41$

The estimated amount for the Electrician additional classification request is: **Basic Rate \$14.28 + Fringes \$1.41 = \$15.60**

Paver Operator is under power equipment operators' category, and there is one trade for this category listed on the Heavy WD for the project:

- Operator: Backhoe/Excavator/Track hoe: Basic Rate \$ 14.50 + Fringes \$2.39 = \$16.89

Since there is only one trade, this rate should be used to estimate the paver operator rate.

The estimated amount for the Paver Operator additional classification request is: **Basic Rate \$ 14.50 + Fringes \$2.39 = \$16.89**