Davis-Bacon and Related Acts and the CHIPS and Science Act: Frequently Asked Questions

The Chips Program Office (CPO) provides the following questions and answers applicable to the CHIPS Incentives Programs and the Davis-Bacon Act (DBA). For general inquires, email askchips@chips.gov. CPO will update FAQs regularly and incorporate answers to new questions we receive. Additional guidance, fact sheets, and information is provided by the Department of Labor's Wage and Hour Division.

I. General information on Davis-Bacon and Related Acts

All information below originates from the Department of Labor's Wage and Hour Division.

Relevant Statutes and Regulations

- Davis-Bacon Act – statute establishing the requirement for paying the local prevailing wages on public works projects for laborers and mechanics and directs DOL to determine the applicable prevailing wage rates for Davis-Bacon projects.
- Contract Work Hours Safety Standards Act – statute requiring payment of additional half-time for hours worked over forty on contracts subject to Davis-Bacon labor standards.
- 29 CFR Part 1 – regulations setting forth the procedures for determining prevailing wage rates and how the resulting wage determinations must be included in Davis-Bacon contracts.
- 29 CFR Part 3 – regulations implementing the certified payroll requirements and the restrictions on deductions from Davis-Bacon wage payments.
- 29 CFR Part 5 – regulations implementing the administration and enforcement of the Davis-Bacon prevailing wage requirements, including the required contract labor standards clauses.

Resources on Wage Determinations and Conformances

- Davis-Bacon and Related Acts (DBRA) Frequently Asked Questions (Wage Determinations) – answers to frequently asked questions on obtaining and applying Davis-Bacon wage determinations.
- Fact Sheet 66D – Application of General Wage Determinations to Davis-Bacon and Related Act Projects – overview of how and when general wage determinations should be incorporated into Davis-Bacon contracts.
- All Agency Memoranda 130 and 131 – guidance on applying the four categories of construction (building, residential, highway, and heavy) for which general wage determinations are issued; guidance on when wage determinations from multiple categories of construction are applicable to a contract.
- All Agency Memorandum 213 – explanation of DOL's conformance process and criteria.

Information on Davis-Bacon Compliance Principles and Enforcement

- Field Operations Handbook, Chapter 15 – compilation of current laws, regulations, and policies relating to enforcement of the Davis-Bacon and Related Acts (DBRA).
- Prevailing Wage Resource Book – Reference book for DBRA and Service contract Act compliance and enforcement principles, summarizing the information provided during prevailing wage seminars.
- Fact Sheet 66: Davis-Bacon and the Related Acts – general overview of the Davis-Bacon requirements.
- Fact Sheet 66C: Davis Bacon and Related Acts Labor standards Clauses and Subcontract Agreements – Overview of the requirements relating to the incorporation of Davis-Bacon labor standards clauses into the prime contract and the flow-down of these clauses into subcontracts.
- Fact Sheet 66E: Davis-Bacon and Related Acts Compliance with Fringe Benefit Requirements – general information regarding compliance with the fringe benefit requirements of the Davis-Bacon and Related Acts.

Posters and Forms

- Optional Certified Payroll Form WH-347 – optional form showing all of the information that must be submitted in certified payroll and the Statement of Compliance that must accompany all certified payroll.
- Davis-Bacon Poster WH-1321 (Government Construction) – Davis-Bacon worker rights poster that must be prominently displayed (along with the applicable wage determination(s) and any conformances) at every Davis-Bacon site of work.

Training Videos and Seminars

- Prevailing Wage Seminar recorded topic videos – recorded outreach sessions on a variety of topics, including DBRA coverage, wage determinations and conformances, compliance principles, and certified payroll requirements.
- Prevailing Wage Seminar webpage – information on upcoming prevailing wage seminar sessions.

II. CHIPS and Davis-Bacon and Related Acts: FAQ

Davis-Bacon Wage Determinations

Q: What is the specific wage determination to be followed for a project in a given location?

A: In most instances, a general wage determination, available from sam.gov, will apply to a project subject to the Davis-Bacon labor standards. Three factors apply when selecting the appropriate wage determination for a project from sam.gov: location of the project, type(s) of construction applicable to the project, and the date of the wage determination revision. **CPO will provide the recipient with the applicable wage determination for their project(s).**

Q: What construction type are CHIPS projects characterized as?

A: While each characterization will depend on the specific scope of any proposed project, many CHIPS projects are likely to be characterized as Building Construction. Building Construction includes the construction, alteration, or repair of sheltered enclosures with walk-in access for the purpose of housing persons, machinery, equipment, or supplies and the associated installation of utilities and equipment (including tool installation), as well as incidental grading and paving. Installation of machinery or equipment does not generally change the project's character from Building Construction to another type.

Q: Is it possible for more than one wage determination to apply to a particular contract?

A: Yes. Construction projects are generally classified as either Building, Heavy, Highway or Residential for purposes of issuing wage determinations. Wage determinations for one or more of these construction categories may have application to construction items contained in a proposed construction project. Guidelines for the selection of proper wage determinations based on the type(s) of construction involved in a project are set forth in All Agency Memoranda No. 130 (March 17, 1978) and No. 131 (July 14, 1978). All Agency Memoranda No. 236 which was published on December 14, 2020, updated the threshold for incorporating multiple Davis-Bacon wage determinations, and should be reviewed as well when determining the applicability of multiple wage determinations. For any questions regarding the application of these guidelines to a particular project, or any disputes regarding the application of the wage determinations issued for the various types of construction, please email askchips@chips.gov.

Q: Will all aspects of the project follow the same wage determination?

A: The final rule states that solicitations and contracts must incorporate the applicable wage determination for each type of construction involved that is anticipated to be substantial. Substantial work is a threshold that will be generally met when the cost of work in another category of construction, such as heavy or building, exceeds either $2.5 million or 20% of the total project costs. This threshold may be periodically adjusted for inflation, and any such adjustments will be issued in an All Agency Memorandum published on sam.gov.

Q: What rate should be paid to a worker if that worker's classification is not listed on the applicable wage determination?

A: For each project or designated site of work, the wage determination(s) should be reviewed to determine whether any labor classifications that will be needed for the project are missing from the applicable wage determination. If one or more classifications are missing, the **Recipient must submit a conformance request to CPO** to determine and/or validate prevailing wages for each labor classification. Conformance requests should be submitted using form SF-1444**. Each Recipient will be provided with a partially pre-filled SF-1444 specific to each project.** If you do not have this, please email conformance@chips.gov. **Completed SF-1444s should be emailed to conformance@chips.gov.** The CPO Davis Bacon compliance manager will review, sign, and submit the form directly to DOL WHD for approval. Approvals typically take around 30 days. A conformance request will be approved when the following criteria are met:

- The type of work to be performed is not performed by a labor classification already listed on the applicable wage determination;
- The requested labor classification is one actually used in the area by the construction industry; and
- The recommended wage rate bears a "reasonable relationship" to other wage rates in the wage determination, specifically those from the same category of classifications and sector of industry as the proposed classification. (See AAM 213 for further guidance on the "reasonable relationship" analysis).

Prevailing Wage Rates

Q: Do projects require annual prevailing wage updates, or does a prevailing wage at the time of award govern throughout the term of the project?

A: Generally, the wage determination applies for the life of the project unless the contract is modified to include additional, substantial construction, alteration, and/or repair work not within the scope of work of the original contract or order, or to require the contractor to perform work for an additional time period not originally obligated, including where an option to extend the term of a contract is exercised. If the funding recipient enters into a covered indefinite delivery – indefinite quantity (IDIQ) contract or a long-term maintenance and operations contract where repairs and alterations are performed as needed, wage determinations would need to be updated annually.

Q: What is the end point for prevailing wage obligations and the transition to operations?

A: The end point for prevailing wage obligations will depend upon how the funding is structured and the purpose of the funding provided. For example, if Davis-Bacon funding is provided for the purpose of constructing a new building or work or renovating an existing building or work, the obligations would end when the construction was completed and the building or work was accepted as ready for operations.

Q: Do wage determinations ever have to be updated once they have been correctly incorporated into the contract?

A wage determination, once incorporated into a contract, generally applies for the life of the contract, with three limited exceptions. See 29 CFR 1.6(a) and (c). The three exceptions are where there is new out-of-scope construction, where there is an additional time period not previously obligated, or where the contract is an indefinite-delivery-indefinite-quantity (IDIQ) or similar long-term contract.