

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 inquiries, 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 Memorandum 130 – guidance on applying the four categories of construction (building, residential, highway, and heavy) for which general wage determinations are issued.
- All Agency Memoranda 131 and 236 – guidance on when wage determinations from multiple categories of construction are applicable to a contract.
- Conformance Guide – information on when and how conformance requests should be submitted.
- 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.
- Conformance Request Form SF -1444 – Form used to request a conformed rate if a required classification is not included on the wage determination applicable to a Davis-Bacon contract.

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.

Information on the Davis-Bacon Final Rule

- [Wage and Hour Division Final Rule Frequently Asked Questions](#) – answers to frequently asked questions on the provisions of the recent DBRA final rule.
- [Department of Labor DBRA Regulations Comparison Charts](#) – charts comparing the provisions of the prior DBRA regulations with the provisions of the recent final rule.
- All Agency Memorandum 244 – overview of the Davis-Bacon final rule provisions.

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.

To select the correct general wage determination, the funding recipient would first identify the state and locality (generally, but not always, the county) where the construction is taking place. In some cases, a project may involve construction in more than one locality. In such cases, the taxpayer would incorporate the applicable wage determinations for each locality where work is to be performed under the contract or request a multi-county supplemental wage determination from the Department of Labor.

From the general wage determinations applicable to that locality, the taxpayer would then select the wage determination for the type(s) of construction applicable to the project: building, residential, highway, or heavy. A description of each of these types of construction, including examples of projects in each category, can be found in All Agency Memorandum 130. Wage determinations from multiple categories may apply when a project in one category of construction also has a substantial amount of work in another category of construction. Work in another category of construction will generally be considered substantial if it exceeds \$2.5 million or 20% of total project costs. Application of multiple wage determinations is discussed further in All Agency Memoranda 131 and 236.

General wage determinations are revised from time to time to keep them current, so after the taxpayer has determined the location and category of construction to select the applicable wage determination, they would then select the most up-to-date modification of that wage determination available on sam.gov when the construction, alteration, or repair of the facility begins.

If the general wage determination for the relevant locality and type of construction for the facility not available on sam.gov, the funding recipient should request a project wage determination from the Department of Labor. Supplemental wage determinations may also be requested when the construction of the facility involves work by covered laborers and mechanics that spans more than one contiguous geographic areas.

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, and some work may be characterized as Heavy Construction or Highway Construction. Primary and secondary characterizations may be applicable to one project. For assistance in determining the type of characterization applicable to your project, please email dgceinquiries@dol.gov or collins.natalie@dol.gov of the United States Department of Labor’s Wage and Hour Division’s Government Contracts Enforcement Team.

Descriptions of each relevant construction types are listed below.

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, as well as incidental grading and paving.

- Construction, alteration, or repair of sheltered enclosures with walk-in access for the purpose of housing persons, machinery, equipment, or supplies.
- Includes all construction of such structures, the installation of utilities, and the installation of equipment both above and below grade.

- Structures need not be “habitable” to be building construction.
- Installation of machinery or equipment does not generally change the project’s character from building.

Heavy Construction includes projects that cannot be classified as Building, Residential, or Highway. Heavy construction is often further distinguished on the basis of the characteristic of particular projects, such as dredging, water and sewer lines, dams, major bridges, and flood control projects.

Highway Construction includes the construction, alteration, or repair of roads, streets, highways, runways, parking areas and most other paving work not incidental to building, residential, or heavy construction.

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. 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, must be referred to the Wage and Hour Division, together with relevant information, including a complete description of the project and area practice.

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 contractor must submit conformance request to WHD to determine and/or validate prevailing wages for each labor classification. Conformance requests should be submitted using form SF-1444, which can be found on sam.gov or the Wage and Hour Division’s Conformance Guide webpage. Completed SF-1444s should be emailed to DBAConformance@dol.gov. 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?

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. However, if Davis-Bacon funding is provided over a period of time, the prevailing wage obligation would continue to apply during that time period, even if the building or work has already been put into operation. For example, if the building or work received annual Davis-Bacon funding for operations and management, prevailing wage requirements would apply to any renovations, alterations, or repairs performed during that time.

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

The final rule reflects that 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:

- **New out-of-scope construction:** The final rule codifies the Department’s longstanding position that the most recent revision of any applicable wage determination(s) must be incorporated when a contract is modified to include substantial additional construction not within the scope of work of the original contract. See 29 CFR 1.6(c)(2)(iii)(A). See also, e.g., U.S. Army, ARB No. 96-133, 1997 WL 399373, at *6 (July 17, 1997).

- Additional time period not obligated: The final rule codifies WHD’s longstanding position that the most recent revision of any applicable wage determination(s) must be incorporated when a contract is changed to require the contractor to perform work for an additional time period not originally obligated, such as when an option is exercised. See AAM 157 (Dec. 9, 1992). The final rule clarifies that this requirement applies to both unilateral and bilateral exercises of options.
- IDIQ and similar long-term contracts: The final rule requires contracting agencies to update wage determinations annually for IDIQ and similar long-term contracts that require construction work over a period of time that is not tied to the completion of any particular project. Even where such contracts involve the exercise of options, but have extended base or option periods, wage determinations must still be incorporated on an annual basis in years in which an option is not exercised. See 29 CFR 1.6(c)(2)(iii)(A) and (B)

Q: When including wage determinations in their contracts for CHIPS-funded projects, when does the CHIPS grantee have to update the wage determinations for their contracts, and how is that affected by the new Davis Bacon Act Final?

A: When a CHIPS grantee enters into a contract for construction, the grantee should incorporate the most recent applicable wage determination modification, depending upon the contracting method used, when entering into the contract. This wage determination will apply to all subcontracts, whenever awarded, and the prime contractor should flow the applicable wage determination from their contract into all subcontracts.

For contracts entered into pursuant to sealed bidding procedures, a revised wage determination issued up to 10 calendar days before the opening of bids will apply to the contract so long as the contract is awarded within 90 days of bid opening. (A revised wage determination that is issued less than 10 calendar days before the opening of bids, it still applies to the contract unless the grantee finds that there is not a reasonable time still available before bid opening to notify bidders of the change. In such instances, the grantee should maintain a record of that finding.) If the contract is not awarded within 90 days of bid opening, the wage determination must be updated up to the date of contract award, unless the grantee requests and obtains a waiver from DOL, which can only be granted if 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. For all other types of contracts entered into by the grantee, the wage determination must be updated up until the date of contract award. If the correct wage determination was not included in the contract at the time of award, the contract must be modified to include the correct wage determination retroactively to the date of contract award.

Generally, the wage determination(s) incorporated into the prime contract applies for the life of the project. As noted in the recent Davis-Bacon final rule, however, in certain circumstances wage determinations must be updated after contract award. When any 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, the wage determination must be updated and the new wage determination will apply to all work remaining on the project. Similarly, any contract that includes the exercise of options must update the applicable wage determination when the option is exercised. In addition, for certain on-going contracts, such as indefinite delivery indefinite quantity (IDIQ) contracts or maintenance and operations contract, the wage determination should be updated annually to the wage determination

modification in effect on the annual anniversary of the contract award. These updating requirements apply regardless of whether the contract was awarded before or after the effective date of the DBRA final rule.

Equipment Projects

Q: Does DBA application differ if grant funds will cover only the purchase of equipment?

If construction work is involved in the installation of purchased equipment, the requirement for DBA compliance applies to the entirety of the project. The requirements of the Davis-Bacon Act apply to construction, alteration, and/or repair (including painting or decorating) of public buildings or public works.

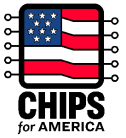
Example 1: Company A is awarded funding to construct a new fabrication facility on a greenfield site. Company B will hire Contractor 1 serve as the prime contractor to substantially oversee all or substantially all of the construction. Contractor 1 will engage with Subcontractor 1 to perform excavation and site clearing, Subcontractor 2 for constructing the building, and Subcontractor 3 to install new equipment. Company B will be required to ensure prevailing wage requirements are met for work completed by Contractor 1 as well as Subcontractors 1, 2, and 3.

Example 2: Company B is awarded funding to purchase equipment to modernize the production process of a fabrication facility. The purchase and delivery of the equipment to the designated site of work, in this case the fabrication facility, would not be subject to prevailing wage. Once the new equipment arrives at the fabrication facility, any construction work to install the new equipment would be classified as construction to a building or work within a building and subject to prevailing wage requirements.

Example 3: Company C is awarded funding to purchase equipment to modernize the production process of a fabrication facility. The installation of equipment does not involve construction work but, instead required IT support; thus it is not subject to prevailing wage requirements.

Q: If an applicant is in compliance with the Service Contract Act (SCA), is DBA applicable? For example, the Applicant does not perform work within the scope of work covered by the DBA and maintains a compensation program that is compliant with the Service Contract Act (SCA).

A: Being in compliance with the Service Contract Act (SCA) is not relevant to the determination of the applicability of Davis-Bacon labor standards, which will apply when construction work is performed on a CHIPS-funded project. However, in determining whether construction work is being performed, it is important to note that there are some kinds of work that can be either services or construction, depending on the context in which the work is performed. For example, drilling work that is directly related and incidental to, or an integral part of, the construction process is considered to be covered construction, while exploratory drilling done for engineering studies or general planning purposes would be a service. Moreover, some contracts require both services and construction work, such as maintenance and operations contracts, which typically involve both maintenance (service work) and repairs (construction work). For such contracts, the Davis-Bacon prevailing wage requirements will apply to the construction work performed on the contract. Note: SCA is only applicable to federal contracts, not federally funded contracts like CHIPS contracts, so SCA coverage would not be applicable.



Q: Both the conformance request form and the certified payroll form have a field where the contractor is supposed to include the contract or project number. How does the CHIPS grantee obtain this number from DOL?

A: Project numbers or contract numbers are generally assigned by the entity that awards the contract, not DOL. DOL requests this number so that they can use an identification number for the project or contract that is already familiar to the contracting entity and the contractors if follow-up inquiries need to be made. CHIPS grantees should continue to use whatever identifiers they would typically use to reference and distinguish among their projects and contracts when awarding CHIPS contracts, and that identifier can be used wherever DOL forms request a contract or project number.

Q: If the contract is both for maintenance and has annual options when would the wage determination be updated?

A: Where a contract includes the exercise of options, the applicable wage determinations must be updated each time an option is exercised. If the base period and option period are annual, no further updates will be needed. If the base period or option periods exceed one year and the contract is an ongoing contract, such as an indefinite quantity (IDIQ) contract or a long-term maintenance and operations contract where repairs and alterations are performed as needed, wage determinations would also need to be updated annually in years where an option is not exercised.

Q: Does the recent executive rule which require the use of PLAs for large Federal construction projects, where total estimated cost to the Federal Government is \$35 million or more apply to CHIPS projects?

A: The PLA Executive Order only applies to federal construction contracts entered into directly by the Federal government or District of Columbia. The executive order does not apply to federally funded or assisted construction contracts entered into by non-federal entities.