

## DAVIS BACON COMPLIANCE PROCEDURES

The Davis Bacon and Related Acts (DBRA) require all contractors and subcontractors performing on federally-funded construction contracts in excess of \$2,000 to pay their laborers and mechanics no less than the locally prevailing wage rates and fringe benefits for corresponding work on similar projects in the area as determined by the Secretary of Labor for inclusion in Davis-Bacon-covered contracts. See the U.S. Department of Labor (DOL) Wage and Hour Division (WHD) Government Contracts Compliance Assistance for information on [Davis-Bacon and Related Acts](#).

### ASD Responsibilities

- Obtain wage determination and monitor it through contract award.
- Ensure all bid, contract, and subcontract documents and sole source contracts contain the wage determination and Davis-Bacon labor standards clauses (prime contractor and sub-contractors).
- For prime contracts over \$100,000, comply with Contract Work Hours and Safety Standards Act (CWHSSA).
- Ensure no contracts are awarded to ineligible contractors.
- Ensure the Davis-Bacon poster and wage determination are posted at work site.
- Collect certified payroll reports and statements of Davis-Bacon compliance weekly.
- Spot-check payroll reports/related records.
- Conduct confidential, onsite interviews using Standard Form 1445, Labor Standards Interview.
- Periodically review use of apprentices and trainees.
- Report all alleged Davis-Bacon violations.
- Maintain full documentation of payrolls, certifications, interview forms, etc., for 3 years after project completion in the event the Office of Inspector General examines the project.

### Contracts

ASD must ensure bids, contracts, and subcontracts contain the applicable wage determination and the Davis-Bacon labor standards clauses found in [29 CFR § 5.5](#) (Code of Federal Regulations), titled Contract Provisions and Related Matters. The labor standards describe contractor responsibilities and provide remedies for noncompliance. A wage determination (WD) is a set of wages, fringe benefits, and work rules that the DOL has ruled to be prevailing for a given labor category in each locality. Note that if federal and state wage rates apply, contracts must contain both wage decisions/contract standards and employers must pay the higher of the two rates.

### The following language (or a variation thereof) to be included in all bid solicitations and resulting 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 subcontractors 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. Department of Labor Wage and Hour Division Guidance.

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

- DOL Davis-Bacon wage determination for the project type and location.
- Requirement for sub-contractors to apply the same wage determination.
- Requirement for the wage determination and [Davis-Bacon Poster WH1321](#) to always be posted in all relevant languages by the contractor and sub-contractors at the project/work site in a prominent and accessible place for laborers and mechanics.

Additionally, prime contractors and sub-contractors must provide certifications with submitted bids agreeing to comply with Davis-Bacon requirements. **If Davis-Bacon language is included in the sub's contract and the sub signs the contract, this would cover the certification.** If any portion of the construction contract is receiving funding subject to Davis-Bacon, the entire contract is subject to Davis-Bacon. If the punchlist work is included in the construction contract and will be invoiced and paid through the contractor, then Davis-Bacon applies.

### **Wage Determination (WD)**

Prior to issuing a request for bids or proposals, ASD must obtain the WD for the project area by accessing Wage Determinations at [SAM.gov/content/wage-determinations](https://sam.gov/content/wage-determinations), then selecting the Davis-Bacon Act (DBA) option, the state and county where the work will be performed, and the DBA construction type (see Wage Determination Instructions in the Appendix). ASD must include the generated WD document in all bid specifications and resulting contracts. If you are unsure about the funding source, a project can be bid with alternates—one including federal wage rates and one without.

### **Monitor the WD**

Once the bids have been opened, the wage determination is valid for 90 days. During the bid advertisement period, ASD or their consulting engineers must monitor SAM.gov to ensure DOL has not changed the WD. If the WD changes more than 10 days before bid opening, the bid specifications must be amended with the new WD. If the contract award is more than 90 days after bid opening, the WD must be updated. The Davis-Bacon wage determination included in the contract at the time of contract award stays in effect for the duration of the project.

### **Request additional classifications**

If the WD is missing a wage rate needed for a specific work/job classification, construction type, and/or project location, contact your contractor for guidance on requesting a conformance using the Request for Authorization of Additional Classification and Rate Standard Form 1444. ASD should incorporate the final conformance rate into the bid specifications and construction contracts, and copies of the conformance letter should be kept on file.

### **Ineligible Contractors**

ASD cannot knowingly award a construction project to a contractor who has been debarred or suspended by the Federal government. During the bid evaluation period, ASD must look up all bidders at [SAM.gov/content/exclusions](https://sam.gov/content/exclusions) to determine if they are ineligible contractors. ASD should make a note of verification in the contract file. Contractors are responsible for verifying the eligibility of subcontractors.

## Payroll Reports

ASD must collect certified payroll reports and compliance statements from the prime contractor and subcontractors for every week of contract work and keep them on file for at least three years after project completion. Prime contractors are responsible for preparing and submitting payroll reports for their own employees and submitting payroll reports for all subcontractor employees. Per 29 CFR 5.5(a)(3)(ii), payroll reports do **not** include full social security numbers and home addresses. The optional [Payroll Form WH-347](#) (see [instructions](#)) may be used to collect and report all of the necessary information.

A weekly payroll statement must provide the following information:

- Name of contractor or sub-contractor (indicate which).
- Project and location.
- Project or contract number.
- Name of employee.
- Employee identification number (e.g., last four digits of social security number – Do not use full SSN).
- Work/Job classification.
- Hourly rate of pay (straight and overtime).
- Daily and weekly number of hours worked.
- Deductions made.
- Actual wages paid.

Along with each payroll report, the contractor (or payment supervisor) must submit to the ASD a signed statement of Davis-Bacon compliance, such as the one on the back of [Payroll Form WH-347](#).

## Review Payroll Reports

To verify that contractors and sub-contractors are paying appropriate wage rates and fringe benefits, ASD Director of Facilities must spot-check a representative sample of weekly payroll reports for accuracy at least twice for each contract and subcontract during the project—a minimum of once within 2 weeks of initial payroll and once within 2 weeks of final payroll. The Director of Facilities will email the Business Office confirmation of the reviews.

## Interview Employees

ASD Director of Facilities should periodically conduct confidential, onsite interviews with a sampling of the contractor and subcontractors' employees to determine whether laborers, mechanics, apprentices, and trainees are being paid in accordance with Davis-Bacon requirements—a minimum of once within 2 weeks of initial payroll and once within 2 weeks of final payroll is suggested. The [Labor Standards Interview Standard Form 1445](#) must be completed with every interview and kept on file for at least three years after project completion.

## Verify Apprentice and Trainee Registrations

While ASD is onsite conducting Davis-Bacon interviews, the Director of Facilities should take the opportunity to review the apprentice and trainee registrations and certifications that the contractor should be able to easily provide upon request. ASD can use the relevant documents to confirm that the number of apprentices does not exceed the ratio to journeymen allowed by the apprenticeship program plan.

## Report Violations

Additional interviews may be completed at the municipality's discretion and are required in the case of questionable payroll reports or employee complaints. [Report alleged violations](#) to the [DOL WHD District Office](#).

Violations include:

- 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.
- Failure to post the Davis-Bacon poster and applicable wage determination.

## **Davis-Bacon Applicability**

### **Site of work**

Davis-Bacon applies only to laborers and mechanics employed “directly upon the site of the work.” The site of work is the physical place or places where the construction is called for in the contract or will remain after work has been completed, and any other site where a sizable portion of the building or work is construction, provided that such site is established specifically for the contract. It may also include job headquarters, tool yards, batch plants, borrow pits, etc., provided the properties are located adjacent or virtually adjacent to the “site of work” and dedicated exclusively or nearly so to the performance of the contract or project.

### **Laborers and mechanics**

Laborers and mechanics are employees who work with their hands, have manual or physical duties, or are in specific trades. They include carpenters, plumbers, sheet metal workers, etc., including apprentices and trainees. **The DOL focuses on the actual work being performed by the person, not necessarily the title.** Generally, an employee who spends the majority of time in a supervisory position onsite and who spends less than 20% of the work week engaged in skilled labor, is exempt from Davis-Bacon requirements for the percentage of time spent in that skilled time. Clerical staff (timekeepers), professionals (architects, engineers, inspectors), and certain utility installers are also exempt.

### **Force account employees**

Davis-Bacon does not apply to “force account” work in which ASD performs the construction in-house with its own “force account” employees rather than contracting out the construction work. 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 5.2(h)).

### **Business owners**

Davis-Bacon requirements do **not** apply to the owner of a construction company. However, to be exempt, the owner must be a “business owner” as defined under [29 CFR § 541.101](#) and be actively engaged in the management of their business. Davis-Bacon would **apply** if the owner were not engaged in management but predominantly performs manual or physical duties of construction work.

### **Truck drivers**

Davis-Bacon does **not** apply to truck drivers employed by the contractor who come on the job site to deliver construction materials because they are not employed “directly upon the site of the work.” Davis-Bacon **does** apply to truck drivers employed by the contractor to move materials on the site of work or from a property located adjacent or virtually adjacent to it. Davis-Bacon does **not** apply to truck drivers employed by the contractor to move materials at any location that existed prior to bid opening (e.g., contractor’s headquarters).

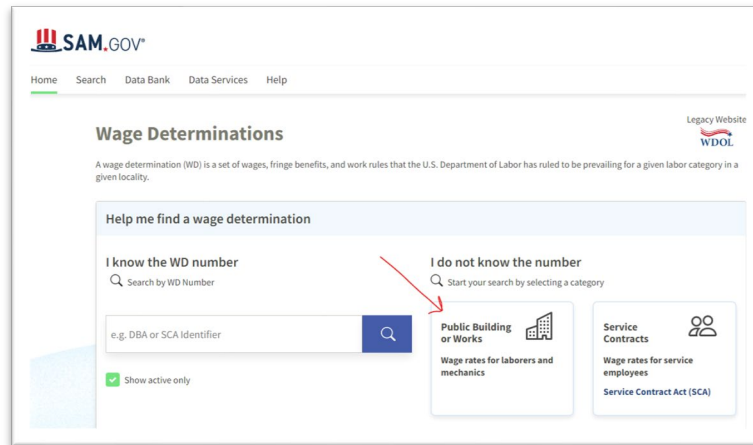
## APPENDIX

### Wage Determination Search

You can find Wage Determinations on SAM.gov.

<https://sam.gov/content/wage-determinations>

Click on the Public Buildings and Works icon.



Select the Construction and the correct State and County.

Select the DBA Construction Type.

Select Domain  
Wage Determinations

By Wage Determination ID

- Construction (DBA)
- Service Contracts (SCA)
- Collective Bargaining Agreement (CBA)

Filter By

Location

State  
Wisconsin

County/Independent City  
Sheboygan

DBA Construction Type  
Building

Status

- Active
- Inactive

Published Date  
Anytime

The construction types are building, residential, highway, and heavy. Most ASD projects will fall under the "building" type. The "building" type is for sheltered enclosures, especially with windows, doors, and roofs, that house machinery and equipment, and will be occupied at times. ASD should ask their consulting engineer what type to use if they are unsure. A contract can contain more than one construction type. If over 80% of the project cost falls into one construction type, the municipality can use that type for the WD; this may be a benefit or a detriment depending on the project.

Click on the WD #.

The screenshot shows a search interface with a sidebar on the left and a main results area on the right. The sidebar has a 'Select Domain' section with a plus icon and a 'Filter By' section with a minus icon. Under 'Select Domain', there are four options: 'By Wage Determination ID', 'Construction (DBA)', 'Service Contracts (SCA)', and 'Collective Bargaining Agreement (CBA)'. Under 'Filter By', there is one option: 'Location'. The main results area shows 'Showing 1 - 1 of 1 results' and a 'Sort by' dropdown menu set to 'Published Date'. The search results display the following information: 'Davis-Bacon Act WD #: WI20230016', 'State: Wisconsin', 'Counties: Calumet, Outagamie, Sheboygan, Winnebago', 'DBA Wage Determination', 'Modification Number: 2', 'Construction Types: Building', and 'Published Date: Jan 26, 2023'. At the bottom of the results area, there are navigation arrows, a page indicator '1 of 1', and a 'Results per page' dropdown menu set to '25'.

This will open the Wage Determination document for download or printing.

The screenshot shows the details of a Davis-Bacon Act Wage Determination document. The title is 'Davis-Bacon Act WD # WI20230016'. Below the title, there is a 'Wage Determination' section with the following information: 'Modification # 2', 'Construction Building', and 'Last Revised Date Jan 27, 2023'. Below this, there is a 'States and Counties' section with the following information: 'State Wisconsin' and 'Counties Calumet, Outagamie, Sheboygan, Winnebago'. At the bottom of the page, there is a 'Document' section with the following text: 'General Decision Number: WI20230016 01/27/2023', 'Superseded General Decision Number: WI20220016', 'State: Wisconsin', 'Construction Type: Building', and 'Counties: Calumet, Outagamie, Sheboygan and Winnebago'. A red arrow points to the 'Download' and 'Print' buttons located at the bottom right of the page.

Search the document for the work classification and current rates.

	Rates	Fringes
BOILERMAKER		
Boilermaker.....	\$ 39.52	31.50
Small Boiler Repair (under 25,000 lbs/hr).....	\$ 26.91	16.00
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BRWI0011-003 06/01/2022		
	Rates	Fringes
BRICKLAYER		
Bricklayer, Cement Mason, Plasterer, Tile Layer.....	\$ 38.00	25.09
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CARP0731-001 06/05/2022		
Calumet and Sheboygan		
	Rates	Fringes
CARPENTER		
Excluding Batt Insulation...	\$ 36.80	26.12
Piledriver.....	\$ 37.37	25.96
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CARP0955-001 06/05/2022		
Outagamie and Winnebago		
	Rates	Fringes
CARPENTER		
Excluding Batt Insulation...	\$ 36.80	26.12
Piledriver.....	\$ 37.37	25.96
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