DAVIS-BACON

WAGE DETERMINATIONS
DAVIS-BACON ACT, AS AMENDED, AUGUST 30, 1935
(EXCERPT FROM SECTION 1)

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HOW TO LOCATE GENERAL WAGE DETERMINATIONS
HOW TO INTERPRET GENERAL WAGE DETERMINATIONS; AND
HOW TO FIND THE WAGE RATE FOR A PARTICULAR CLASSIFICATION AND UNDERSTAND THE BASIS FOR THE WAGE RATE
DAVIS-BACON ACT, AS AMENDED, AUGUST 30, 1935
(Excerpt from Section 1)

“The advertised specifications for every [covered] contract in excess of $2,000 … shall contain

a provision stating the minimum wages to be paid various classes of laborers and mechanics

which shall be based upon the wages that will be determined by the Secretary of Labor to be prevailing for the corresponding classes of laborers and mechanics

employed on projects of a character similar to the contract work

in the city, town, village, or other civil subdivision of the State in which the work is to be performed, or in the District of Columbia if the work is to be performed there…. “
PHYSICAL INCLUSION OF
DAVIS-BACON WAGE DETERMINATION(S)
IN BID SPECIFICATIONS AND CONTRACT

The Department of Labor regulations, at 29 CFR Part 1, establish the procedures for predetermining the wage rates required to be included in bid specifications/contracts for construction projects to which the Davis-Bacon and related Acts apply. (See excerpt, above, from the Davis-Bacon Act.) The Federal Acquisition Regulations (FAR) also discuss the application of proper wage determinations in 48 CFR Subpart 22.4 -- “Labor Standards for Contracts Involving Construction.”

It is important for the actual wage determination(s) to be physically included in the bid specifications/contract. Contractors need to see the minimum wages they will be required to pay while they develop their cost estimates for work to be performed.

It is generally the responsibility of the federal agency that funds or financially assists Davis-Bacon covered construction:

- To ensure that the proper Davis-Bacon wage determination(s) is/are applied to such construction contract(s). (See 29 CFR 1.5, and 1.6(b)),

- To advise contractors which schedule of prevailing wages applies to various construction items if a contract includes multiple wage schedules.

- To be able/ready to advise contractors regarding the duties performed by the various crafts in the wage determination, if they inquire. If two or more classifications in the applicable wage determination may perform the work in question, an area practice survey may be required. Where the classifications are from a single segment of the industry (union or non-union), data needs to be collected only from that segment of the construction industry (for the type of construction involved). Where union and non-union-based classifications are involved, the data should be obtained from both segments. (See the “area practice” section of the materials under the “DBRA Enforcement” tab, below, for a detailed discussion of area practice surveys.)

Questions and disputes regarding the application of the proper Davis-Bacon wage determination(s) to covered construction projects should be referred to the Wage and Hour Division, Branch of Construction Wage Determinations.

It can be disruptive and costly for an agency to correct a situation where a covered contract is awarded without a wage determination, or with the wrong wage determination (i.e., a wage determination that by its terms or according to the requirements of 29 CFR
Part 1, further discussed below clearly does not apply to the contract. When this happens, **corrective action** is required:

“The agency shall terminate and resolicit 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.” (29 CFR 1.6(f)).
MAJOR CONSIDERATIONS IN SELECTING THE PROPER WAGE DETERMINATION(S) FOR INCORPORATION IN A CONTRACT TO WHICH DAVIS-BACON LABOR STANDARDS REQUIREMENTS APPLY

As stated in the Davis-Bacon Act (see excerpt quoted on page 1, above), the Act requires the Secretary of Labor to determine prevailing wage rates for inclusion in covered contracts based upon those paid to “...corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work to be performed in the city, town, village, or other civil subdivision of the State in which the work is to be performed, or in the District of Columbia if the work is to be performed there....”

A “wage determination” is the listing of wage rates and fringe benefit rates for each classification of laborers and mechanics which the Administrator of the Wage and Hour Division of the Department of Labor has determined to be prevailing in a given area for a particular type of construction.

Consider these three basic factors in selecting Davis-Bacon wage determinations:

**THE LOCATION WHERE THE CONSTRUCTION PROJECT WILL BE PERFORMED:** It is a longstanding practice that Davis-Bacon wage determinations are made on a county-by-county basis. Identify the State and county where the construction work will be performed.

In some cases a project may be located in more than one county and/or State. In such cases include the proper wage determinations for each county/State where work is to be performed under the contract. The bid specifications must also include instructions specifying the contract work to which each wage determination applies.

**TYPE OF CONSTRUCTION:** As a matter of longstanding policy, the Department of Labor has distinguished four general types of construction for purposes of making prevailing wage determinations: building construction, residential construction, heavy construction, and highway construction. All Agency Memoranda Nos. 130 and 131 provide guidance in the application of this policy. (See Reference Materials, and also discussion with examples, below.)

**CURRENT WAGE DETERMINATION(S):** See the discussion, below, of agency obligations to incorporate current wage determinations.
TYPE OF CONSTRUCTION --
“PROJECTS OF A SIMILAR CHARACTER”

As a matter of longstanding policy, the Department of Labor has distinguished four general types of construction for purposes of making prevailing wage determinations: building construction, residential construction, heavy construction, and highway construction. All Agency Memoranda Nos. 130 and 131 provide guidance in the application of this policy.

Generally, for wage determination purposes, a project consists of all construction necessary to complete a facility regardless of the number of contracts involved, so long as all contracts awarded are closely related in purpose, time, and place.

All Agency Memorandum No. 130 -- “Application Of The Standard Of Comparison 'Projects of a Character Similar' Under the Davis-Bacon And Related Acts” provides general descriptions of each general type of construction and includes lists of examples in each general category. In brief:

**Building Construction** includes the construction, rehabilitation and repair of sheltered enclosures with walk-in access for the purpose of housing persons, machinery, equipment, or supplies.

**Residential Construction** includes the construction, rehabilitation, and repair of single family houses, townhouses, and apartment buildings of no more than four (4) stories in height.

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

**Heavy Construction** is a “catch-all” category which includes those projects which cannot be classified as Building, Residential or Highway. Heavy construction is often further distinguished on the basis of the characteristics of particular projects, such as dredging, water and sewer line, dams, major bridges and flood control projects.

Any questions or disputes regarding the appropriate classification of a project with regard to type of construction should be referred to the Wage and Hour Division for resolution prior to bid opening (or receipt of best and final offers). A request for a ruling should include a complete description of the project and other relevant information, such as wage payment data from similar construction projects in the local area, documentation of the views of parties in dispute, and other material interested parties wish to have considered. This may be appropriate where questions arise concerning the proper categorization of an entire project or particular portions of a project. (See discussion, below, of when multiple wage schedules should be applied, as compared to when lesser portions of a project will be considered incidental to the main type of construction to be performed.)
APPLICATION OF MULTIPLE WAGE SCHEDULES FOR PROJECTS THAT INVOLVE MORE THAN ONE TYPE OF CONSTRUCTION VERSUS INCIDENTAL CONSTRUCTION OF ANOTHER TYPE

All Agency Memorandum No. 131 provides further guidance, particularly on the application of multiple wage determinations for projects that involve more than one type of construction.

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

- 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 $1 million dollars cost.

- Generally, if such items that in themselves would be classified as a separate type of construction will be less than 20% of the total project cost and will cost less than $1 million dollars, they are considered incidental to the primary type of construction involved on the project, and a separate wage determination is not applicable, unless there is an established local area practice to the contrary.

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

- Such instructions are needed, not only when the wage determinations for different types of construction (and/or locations) are in separate “Wage Decisions” but also where wage determinations for various types of construction (and/or counties) have been consolidated into a single “Wage Decision.” (This has often been done for administrative convenience in issuing wage determinations.)

- Because of the complexities in the application of multiple schedules, the contracting agency should consult with the Wage and Hour Division, Branch of Construction Wage Determinations to resolve any questions.
GENERAL AREA WAGE DETERMINATIONS,
PROJECT WAGE DETERMINATIONS,
MODIFICATIONS AND SUPERSEDEAS ACTIONS

The Wage and Hour Division issues two types of Davis-Bacon wage determinations: general determinations, also known as area determinations, and project determinations.

The term “wage determination” is defined as including not only the original decision but any subsequent decisions modifying, superseding, correcting, or otherwise changing the rates and/or scope of the original decision.

GENERAL WAGE DETERMINATIONS:

➤ General wage determinations have been issued and are now in effect for most counties for each general type of construction, nationwide. (Note that in many areas separate schedules have also been issued for sewer and water line construction, for dredging, and for certain other types of projects which would otherwise be categorized as “heavy” construction.)

➤ General wage determinations are issued in the publication General Wage Determinations Issued Under The Davis-Bacon And Related Acts.

➤ Each year a new annual edition of this publication is issued in the month of February. Each annual edition supersedes general wage determinations issued previously, and new wage decision numbers reflect the new edition year. (The 2002 edition was issued March 1, 2002).

➤ Throughout the year, weekly updates are issued to subscribers. Each week (normally on Friday) a Notice is published in the Federal Register that lists the general wage determinations being issued, modified, or withdrawn.

➤ The General Wage Determinations Issued Under The Davis-Bacon And Related Acts, including the weekly updates, is available either on-line or in hard-copy.

>>> An electronic on-line service is available by subscription through the Fed-World Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce. Further information concerning subscriptions to this service is available from NTIS at 1-800-363-2068.

The hard-copy subscriptions are available through the Government Printing Office, Superintendent of Documents. The hard-copy (GPO) version is available in seven volumes (see chart, on page 14, below), and may be ordered for any or all of the seven volumes. Inquiries regarding price and availability may be directed to the Superintendent of Documents Order Desk at 202-512-1800. New subscribers will receive the current year’s annual edition and all weekly updates for that calendar year regardless of when the order is placed. Complaints concerning non-receipt or errors in the filling of subscriptions may be directed to the Superintendent of Documents at 202-512-1806.

For those not wishing to subscribe, the publication is available at each of the 50 Regional Government Depository Libraries and many of the other 1,400 Government Depository Libraries across the Nation. However, please note that it is important to use the Federal Register notices to determine the most up-to-date wage determination for any particular location and type of construction, as individual libraries often may not yet have the most recent issuance(s).

PROJECT WAGE DETERMINATIONS:

Project Wage Determinations are obtained on a case-by-case basis for individual projects where:

- There is no general wage determination in effect for a county/type of construction needed for an upcoming project, or

- Virtually all the work on a contract will be performed by a classification that is not listed in the general wage determination that would otherwise apply and bid opening/award has not yet taken place.

A Standard Form 308 (SF-308) “Request for Determination and Response to Request” should be used by the agency (normally a federal agency) to request a project wage determination.

- SF-308’s can be obtained on our website at:
  

  (A copy is included in the reference materials attached to this guidance material.)

- If the project involves multiple types of construction, the requesting agency should attach information indicating the expected cost breakdown by type of construction.

- The completed SF-308 should be sent to:
The time required for processing requests for a wage determination varies according to the facts and circumstances in each case. An agency should anticipate that such processing will take at least 30 days.

Project decisions are applicable only to the particular project for which they are issued and are effective for 180 days. If a project decision is not used in the period of its effectiveness, it is void.

Accordingly, if it appears that a wage determination may expire between bid opening and contract award, the agency should request a new project wage determination sufficiently in advance of the bid opening to assure receipt prior thereto.

However, when due to unavoidable circumstances a project wage determination expires before award but after bid opening (or other date specified in 29 CFR 1.6(a)(1) for certain HUD programs), an extension of the project wage determination expiration date may be requested from and granted by the Wage and Hour Administrator if certain conditions are met. (See “Wage Determination Extensions,” below.)

“Special” Project Wage Determinations are issued for retroactive application to covered contracts let without a Davis-Bacon wage determination, or with a wage determination which by its terms or the provisions of 29 CFR Part 1 clearly does not apply to the contract -- for example, if a wage determination for the wrong county or an out-of-date wage decision has been included in an awarded contract, and there was no general wage determination in effect for the given county and type of construction at the time of contract award.

MODIFICATIONS AND SUPERSEDEAS ACTIONS:

Both general wage determinations and project wage determinations may be modified or superseded from time to time.

Wage determinations are normally updated either:

- to apply the results of a new survey, or
- to update union rates to reflect collectively bargained changes in wage and fringe benefit rates (escalators) for classifications for which negotiated rates have been determined to be prevailing (for a given type of construction in the given geographic area).
Each new annual edition of the *General Wage Determinations* publication contains “supersedeas wage decisions” that replace the prior general wage decisions, and carry wage decision numbers that reflect the new year. These supersedeas decisions show the date of issuance with a modification number listed as “Modification No. 0.”

Subsequent modifications to each general wage determination list the record of all modifications issued to date for that determination within the given year’s edition, and the dates of issuance. Each modification to a general wage determination replaces the entire general wage determination that it modifies.
CURRENT WAGE DETERMINATION(S)

It is the responsibility of the federal agency to assure that the appropriate up-to-date wage determination is included in the bid/RFP documents, and that modifications are included up to the time of award, or other applicable wage determination lock-in date.

Section 1.6 of Regulations, 29 CFR Part 1 sets forth, in detail, the requirements regarding inclusion of up-to-date wage determinations in bid/contract documents:

- As a general rule, which particularly affects negotiated contracts (RFP’s), the most up-to-date wage determination(s) issued at the time of contract award must be incorporated into Davis-Bacon covered contracts.

- In the case of contracts entered into pursuant to competitive bidding procedures, an exception provides that wage determination updates issued less than 10 days before the opening of bids shall be effective unless there is not a reasonable time still available before bid opening to notify bidders of the update, and a report of the finding to that effect is inserted in the contract file.

>>> However:

Where a general wage decision applies, if the contract is not awarded within 90 days after bid opening, modifications to the wage determination(s) must be incorporated into the contract up to award, unless the contracting/assisting agency requests and obtains an extension of the 90-day period.

Similarly, if, due to unavoidable circumstances, a project wage decision expires between bid opening and contract award, a new wage decision must be obtained, unless an extension is granted.

>>> Note:

Specific requirements that involve dates other than bid opening apply for projects assisted under the National Housing Act and for projects that are to receive housing assistance payments under section 8 of the U.S. Housing Act of 1937.

- “Modifications” to Davis-Bacon wage determinations and supersedeas wage determinations issued after award of a contract do not apply to the contract.

>>> A Davis-Bacon wage determination that is appropriately applied to a covered contract normally establishes the minimum wage rates and fringe benefits which must be paid for the entire term of the contract.
After bid opening/award of a contract, properly applied Davis-Bacon wage determinations will not be modified, except rarely, where a correction of an inadvertent clerical error is issued.

In pre-bid conferences, contractors should be advised/encouraged to review the Davis-Bacon wage determinations in the bid documents, and to raise any questions/complaints they have during the advertising period. Often, out-of-date rates, errors, and wrong assumptions regarding the application of Davis-Bacon wage determinations can be corrected prior to bid opening/award, which, if not corrected then, and brought to light later will be deemed untimely complaints. (For example, see United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry, Local 469, WAB Case No. 90-40, dated March 29, 1991, which is included at the end of the material under the “DB Wage Determinations” tab for your convenient reference.)
WAGE DETERMINATION EXTENSIONS AND CLERICAL ERROR CORRECTIONS

EXTENSIONS:

Bid/contract documents must be amended to include modifications to a general wage determination (or if a project wage determination expires, to include a new project wage determination), unless an extension is requested from and granted by the Wage and Hour Administrator, if after bid opening:

> In the case of a general wage determination, award does not take place within 90 days after the bid opening, or

> In the case of a project wage determination, the determination expires prior to award.

A request for an extension must be supported by a written finding, including 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. (An example is where a public commission must review bid documents after bid opening and before award, and the prospective bidders have agreed to continue their bids in effect during the review period.)

CORRECTION OF INADVERTENT CLERICAL ERRORS:

Upon his or her own initiative, or at the request of an agency, the Administrator of the Wage and Hour Division may correct any wage determination if she/he finds that the determination contains an inadvertent clerical error. Such corrections shall be included in any on-going contracts containing the wage determination in question, retroactively to the start of construction, and also in any bid specifications containing the wage determination (for example, after bid opening). (29 CFR 1.6(d)).
USING THE GENERAL WAGE DETERMINATIONS

STATE LISTINGS FOR SEVEN VOLUMES OF
GENERAL WAGE DETERMINATIONS
IN HARD-COPY VERSION

The hard-copy version of the *General Wage Determinations* publication is divided geographically into seven volumes, each including wage determinations for a regional area of several States. The State composition of each volume is as follows:

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HOW TO LOCATE GENERAL WAGE DETERMINATIONS

HOW TO FIND THE WAGE DETERMINATION YOU NEED:

➤ For the electronic version, to find the wage determination(s) needed for the given location(s) and type(s) of construction use either the electronic or the boolean searches on the database. (For information concerning search services available with subscriptions to the electronic version of Davis-Bacon wage determinations through NTIS is available at 1-800-363-2068.)

➤ For the hard-copy, the Government Printing Office (GPO) version of the general wage determinations, determine which volume of the publication includes wage determinations for the State where the contract work will be performed:

➤ Consult the previous page in this package, or the listing of States in the introductory material to the most recent annual edition, the section entitled “How General Wage Determinations is Distributed” to determine which volume of the publication includes the State of interest.

➤ In the proper volume, locate the State and county in the “Listing of General Wage Determinations by Location, Type of Construction, and Number,” which follows this guide to locating and interpreting general wage determinations.

➤ Find the wage determination number listed to the right of the relevant county and under the appropriate type of construction. (If there is no general wage determination listed for a particular area and type of construction, project wage determinations will be issued at the request of contracting/assisting agencies. See discussion of project wage determinations, above.)

➤ Obtain the wage determination of interest from the State-by-State compilation of general wage determinations published in the relevant volume of the current edition of the General Wage Determinations.

➤ The general wage determinations are arranged in alphabetic order by State abbreviation, and then in numerical order within each State. For example, the first wage determination in Volume I is for Connecticut, Wage Decision No. CT020001; the next is No. CT020002, etc. After the Connecticut wage determinations, Wage Decision Nos. MA020001, MA020002, etc., for the State of Massachusetts are provided, and so on for Maine (ME), New Hampshire (NH), New Jersey (NJ), etc.

➤ Each modification issued replaces the entire general wage determination that it modifies. To be sure that you have the most recently issued modification or
supersedeas to a Davis-Bacon wage determination, you may refer to the *Federal Register*, where each week (normally on Friday, except when a holiday delays issuance) a “Notice” lists Davis-Bacon wage determinations, supersedeas actions, modifications, withdrawals and corrections being issued.
HOW TO INTERPRET GENERAL WAGE DETERMINATIONS

A. WAGE DETERMINATIONS ARE STRUCTURED ACCORDING TO THE FOLLOWING FORMAT:

Each wage determination begins with a cover sheet that defines its applicability. Included on this sheet are:

- The decision number.
- The number of the decision superseded, if applicable.
- State(s) covered.
- Type of construction (building, heavy, highway, and/or residential).
- County(ies) or city(ies) covered.
- Description of the construction to which the wage determination applies and/or construction excluded from its application.

Record of modifications, including the initial publication date, modification numbers and dates.

Page numbering is internal to each wage determination. For example, NE02005 - 1; NE020005 - 2; NE020005 - 3 are the page numbers for General Wage Determination No. NE020005.

In the body of each wage determination is the listing of classifications (laborers and mechanics) and accompanying basic hourly wage rates and fringe benefit rates that have been determined to be prevailing for the specified type(s) of construction in the geographic area(s) covered by the wage determination. Classification listings may also include classification groupings, fringe benefit footnotes, descriptions of the geographic areas to which subclassifications and different wage rates apply, and/or certain classification definitions. (See below for how to know the source of a rate.)

In wage determination modifications, an asterisk ("*"") is used to indicate that the item marked is changed by that modification.

The wage determination appeals process is explained at the end of the wage determination. The explanation includes a description of the criteria for appeal and where to file the appeal. (See DB Appeals tab below.)