



Davis-Bacon and Related Acts

Wage Determinations: General Overview



WAGE AND HOUR DIVISION
UNITED STATES DEPARTMENT OF LABOR



dol.gov/agencies/whd
1-866-4-US-WAGE

Introduction

- The Wage and Hour Division (WHD) is responsible for administering and enforcing several federal laws involving labor standards including:
 - The Davis-Bacon and Related Acts (DBRA);
 - The McNamara – O’Hara Service Contract Act (SCA);
 - Executive Orders applicable to federal contractors;
 - The Fair Labor Standards Act (FLSA);
 - Family Medical Leave Act (FMLA).



Davis-Bacon and Related Acts

- The DBRA applies to contractors and subcontractors performing on federal or federally assisted contracts in excess of \$2,000 for construction, alteration, or repair.
- Covered contractors and subcontractors must pay their laborers and mechanics working on the site of work no less than the locally prevailing wages and fringe benefits for corresponding work on similar projects in the area.



Agency Responsibilities

- Ensure proper wage determination (WD) is identified and incorporated into the prime contract
- Advise contractors which schedule of rates applies to various construction items
- Advise contractors regarding the duties performed by various crafts in the WD



Wage Determinations

- Two types of wage determinations:
 - General wage determinations
 - Project wage determinations
- Most often, general wage determinations will be applicable.



“General” Wage Determinations

- Issued for most counties for each major type of construction (building, heavy, highway and residential) nationwide
- Official site for General Wage Determinations – www.SAM.gov
- May be used by Federal agencies without notifying the WHD



“Project” Wage Determinations

- Issued at request of funding agency
 - No “General” WD in effect
 - Virtually all work (100%) on contract performed by a classification not listed on General WD, or
 - Where a project requires work in multiple counties
- Standard Form (SF) 308 used to request
- Agency to provide wage data
- Application to a specific project only
- Effective for 180 days



Categories of Construction

- Construction Type – All Agency Memorandum (AAM) 130
 - Building
 - Residential
 - Highway, and/or
 - Heavy



Building Construction

- 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



Residential Construction

- Construction, alteration, or repair of single-family homes or apartment buildings of no more than four stories in height.
- Includes items such as site work, utilities, etc.



Residential – Lowermost Floor

- The lowermost floor counts as the first story when:
 - It contains the main entrance to the building
 - It is used for apartment space in a way substantially similar to the upper floors
 - It is primarily above ground on two or more sides
 - It is primarily above exterior grade on one or more sides and contains at least 50% living accommodations or related non-residential uses
- Stories below grade used for storage, parking, mechanical systems or equipment, etc., are considered basement stories which are not used in determining a building's height.



Residential – Top Story

- The top story, not finished for living accommodations, between the uppermost floor and the ceiling or the roof above, with floor space as large as the story below, is considered a story for purposes of determining a building's height.
- A half-story finished as living accommodations located wholly or partially within the roof frame with floor space at least half as large as the story below would bring the building above four stories.
- An attic is unfinished space located immediately below the roof. Such space is not used in determining a building's height even if used for storage purposes.



Highway Construction

- Highway projects include the construction, alteration or repair of roads, streets, highways, runways, taxiways, alleys, trails, paths, parking areas, and other similar projects.



Heavy Construction

- The “other” category - projects that are not properly classified as either “building,” “residential,” or “highway”
- Because of this catch-all nature, projects within the heavy category may sometimes be distinguished on the basis of their particular project characteristics, and separate schedules issued, such as for dredging, water and sewer lines, dams, major bridges and flood control.



Application of Multiple WDs

- When a project has construction work in more than one category of construction, the wage determination from each category will apply if the cost of the work involved in the category is substantial.
- The cost is generally considered substantial if it exceeds 20% of the overall cost of the project or is over \$2.5 million.



Incidental Work

- If the cost is not substantial, it must then be determined whether the work is incidental in function to the overall project.
- If the construction in and of itself is within a separate category, is not substantial in cost, and is incidental in function, one wage determination applies.
- If the construction is neither substantial in cost nor incidental in function (i.e., a small separate project included in the same contract for convenience), two wage determinations would still be issued.



Current Wage Determinations

Incorporate most current WD:

- Negotiated contracts – Time of award
- Sealed bid contracts – WD in effect 10 days or more before opening of bids
- If the contract is not awarded within 90 days of bid opening, the most current WD must be incorporated into the contract up to award unless the Federal agency requests and obtains an extension of the 90-day period



Updating Wage Determinations in Revised Contracts

- After contract award, the contracting agency must include the most recent applicable wage determination modification(s) when:
 - a contract or order is changed to include additional and substantial work not within the scope of work of the original contract, or to require the contractor to perform work for an additional time period.
 - an option to extend the term of a contract is exercised.



Updating Wage Determinations in Ongoing Contracts

- Where contracts require a general commitment to perform necessary construction as the need arises, over a period of time that is not tied to the completion of any particular project, the contracting agency must incorporate the most recent applicable wage determination modification(s) on each anniversary date of the contract's award.




Retroactive Incorporation of Wage Determinations

Incorporation of WD after contract award or start of construction:

- Failure to incorporate a WD into contract
- Incorporation of wrong WD into the contract



Operation of Law

- Even if the contracting agency fails to incorporate the applicable wage determination(s) into a covered prime contract, the clauses and wage determination(s) will still be considered part of that contract and will be effective as a matter of law.
- Where the applicable wage determinations are effective by operation of law, contracting agencies must compensate the prime contractor for any resulting increase in wages in accordance with applicable law. 

Letters of Inadvertence

- Clerical error in WD
- Letter of Inadvertence correcting the error will be issued by DOL
- Corrected WD to be included in contract retroactively



Referring Questions to WHD

- When referring a question about wage determinations to WHD, contracting agencies should provide:
 - A complete and accurate description of the project
 - Where multiple schedules may apply, the major segments of the project and a cost break-down for the construction items involved
 - Evidence of area practice regarding wages paid on similar projects (if available)
 - Comments or other information submitted to the agency by interested parties
 - The agency's recommendation as to applicability.



Internet Sites

- Wage Determinations: <https://sam.gov>
- Wage and Hour Division: <http://www.dol.gov/agencies/whd/government-contracts>
- WHD Protections for Workers in Construction under the Bipartisan Infrastructure Law: <https://www.dol.gov/agencies/whd/government-contracts/protections-for-workers-in-construction>
- Resource Book: <http://www.dol.gov/agencies/whd/prevaling-wage-resource-book>
- Office of the Administrative Law Judges Law Library: <https://www.dol.gov/agencies/oalj/topics/libraries/LIBDBA>
- Prevailing Wage Topic videos: <https://www.dol.gov/agencies/whd/government-contracts/construction/presentations>



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