

**DAVIS-BACON  
ADDITIONAL CLASSIFICATIONS  
PROCESS**

**CONTRACT CLAUSE STIPULATED AT 29 C.F.R. § 5.5(a)(1)(ii)**

(Reiterated in the FAR at 48 C.F.R. § 52.222-6)

**CONFORMANCE/ADDITIONAL CLASSIFICATION REQUEST  
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**FOREMEN, TECHNICAL AND SUPERVISORY EMPLOYEES**

**STANDARD FORM 1444 – “REQUEST FOR AUTHORIZATION OF  
ADDITIONAL CLASSIFICATIONS AND RATES”**

**THE DAVIS-BACON CONTRACT CLAUSE  
STIPULATED AT 29 C.F.R. § 5.5(a)(1)(ii)**

(Reiterated in the FAR at 48 C.F.R. § 52.222-6)

- (A) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:
- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
  - (2) The classification is utilized in the area by the construction industry; and
  - (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
- (B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report . . . shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, . . . Department of Labor, . . . [for approval, modification or disapproval with respect to each proposed classification and wage rate].
- (C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for a determination.
- (D) The wage rate (including fringe benefits, where appropriate) determined pursuant to subparagraphs (1)(B) or (C) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

**CONFORMANCE/ADDITIONAL CLASSIFICATION  
REQUEST PROCESS  
CONTRACTING AGENCY ROLE**

**Pre-Bid/Pre-Award**

Look at the Wage Determination:

- ◇ Compare classifications on the wage determination with anticipated work to be performed to identify missing classes that may be needed.
- ◇ If virtually all the work is to be performed by a single missing classification, use Standard Form (SF) 308 to request an appropriate predetermined wage rate for incorporation in the bid specifications.

Tell contractors about the possible need to request additional classes and rates after award:

- ◇ Ensure that the Davis-Bacon clauses are in the solicitation, including the conformance criteria. (*See* 29 C.F.R. § 5.5(a) and FAR at 48 C.F.R. §§ 22.407 and 52.222-6(c).)
- ◇ During pre-bid/pre-award conferences discuss criteria to advise contractors concerning how requests for additional classifications are processed and proposed wage rates will be evaluated.
- ◇ Call the contracting agency's labor advisor or WHD for guidance where questions/disputes arise regarding proper application of Davis-Bacon wage determinations to specific upcoming projects.

**After contract award**

Identify Additional Classes that May Be Needed:

- ◇ Discuss the wage determination and conformance criteria in pre-construction conference.
- ◇ Review certified payrolls for classes not listed on the wage determination.
- ◇ Conduct on-site inspections/employee interviews and identify additional classes.

- ◇ Consider subcontractor inquiries about missing classifications/rates.
- ◇ Consider complaints by employees/unions/competitors.

Work with the contractors and other affected parties to help develop the conformance request:

- ◇ Provide request form (SF-1444 or similar) to the contractor. Instructions on how to complete the form are pre-printed on the form. (The SF-1444 can be downloaded from the “Library” section on the WDOL website (<http://www.wdol.gov>) and it is in the FAR at 48 C.F.R. § 53.301-1444.) A copy is shown at the end of this chapter of the *DOL Prevailing Wage Resource Book*.
- ◇ Consider the views of affected parties:
  - ◇◇ Prime contractor
  - ◇◇ Subcontractor (if applicable)
  - ◇◇ Employee(s) (if known)
  - ◇◇ Union representative (if the employees are represented by a union)
- ◇ Review the contractor’s request for additional classes and rates in accordance with conformance criteria and ensure that all required information is furnished.
  - ◇◇ Work to be performed is not performed by a classification already listed on the applicable wage determination.
  - ◇◇ Rate bears a reasonable relationship to other rates in the wage determination. Please see AAM No. 213.
- ◇ Be sure that the criteria for the approval of additional classifications and wage rates have been followed.
- ◇ Determine whether affected parties are in agreement or have dispute(s).
  - ◇◇ Attempt to resolve disputes in accordance with conformance criteria, if possible.
  - ◇◇ Develop agency recommendation and documentation of disputes (if any).

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Submit conformance request for DOL review and ruling:

- ◇ Include the following:
  - ◇◇ Completed SF-1444 (or similar form or letter).
  - ◇◇ Related documentation and agency recommendation.
  - ◇◇ Copy of contract wage determination(s). WHD policy requires the submission of the contract wage determination with the conformance request.
- ◇ Submit by e-mail only. Please scan the completed form and all supporting documents into a 'pdf' file and attach to the email. Include the Contracting Officer's name, address, telephone, and email address. Submit the email to: [WHD-CBACONFORMANCE\\_INCOMING@dol.gov](mailto:WHD-CBACONFORMANCE_INCOMING@dol.gov). An automated confirmation response will be generated upon receipt of your submission.
- ◇ For assistance with completing form SF 1444, with questions concerning the conformance process, or to check the status of a conformance request submitted, please contact the WHD Branch of Construction Wage Determinations (BCWD) wage analyst with responsibility for the state where your project is located. A list of analysts and their states can be found at the following website: <http://www.dol.gov/whd/govcontracts/stateassignments.htm>.
- ◇ The BCWD responds to most requests within 30 days.

Communicate with DOL after submitting conformance request, as appropriate:

- ◇ Lack of a DOL response within 30 days does not mean that the request has been approved. Contact the WHD BCWD either by mail, e-mail, or by phone (at a phone number listed at the WHD BCWD website noted above) if no response is received within 30 days. All conformances are processed and responses issued to the contracting agency by email.
- ◇ Respond promptly to DOL requests for additional information that may be needed to process the request.

Communicate DOL determination to the contractor and other interested parties:

- ◇ The contracting agency is responsible to provide the conformance determination to the general/prime contractor. The contractor and its subcontractors shall post

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approved additional classifications and wage rates at the site of the work in a prominent and accessible place where they can be easily seen by the workers.

Advise the contractor and other interested parties of the reconsideration and appeal processes, as appropriate:

- ◇ WHD Administrator review and reconsideration of a BWCD conformance determination may be sought pursuant to 29 C.F.R. § 5.13. An interested party may appeal a final ruling of the Administrator pursuant to the provisions of 29 C.F.R. Part 7. Prior to sending a review and reconsideration to the WHD Administrator, interested parties have an option of appealing to the BCWD first.

Note: Disputes arising out of the labor standards provisions of DBA/DBRA covered contracts are not subject to the general disputes clause in any such contract. Such disputes, including disputes between the contractor (or any of its subcontractors) and the contracting agency, DOL, or the employees or their representatives must be resolved in accordance with DOL procedures set forth in 29 CFR parts 5, 6, and 7. 29 C.F.R. § 5.5(a)(9) (reiterated at FAR 48 C.F.R. § 52.222-14).

**CONFORMANCE CHECKLIST FOR CONTRACTING AGENCIES**

Agency officials should provide the following information when requesting additional classifications and wage rates:

- \_\_\_ 1. The Contract Number, Project Number or HUD Identifying Number.  
SF 1444: Block 5
  
- \_\_\_ 2. The bid opening date (if advertised).  
SF 1444: Block 6
  
- \_\_\_ 3. The award date of the contract.  
SF 1444: Block 7
  
- \_\_\_ 4. The date the contract work started (if started).  
SF 1444: Block 8
  
- \_\_\_ 5. Prime/General contractor.  
SF 1444: Block 3
  
- \_\_\_ 6. Subcontractor (if any).  
SF 1444: Block 10
  
- \_\_\_ 7. The project location: city, **county**, and state.  
SF 1444: Block 12
  
- \_\_\_ 8. Brief description of project work.  
SF 1444: Block 11
  
- \_\_\_ 9. Contract Wage Decision No(s).  
SF 1444: Block 13  
\_\_\_ Modification No. (for each if multiple decisions).  
\_\_\_ Date of modification (for each if multiple decisions).
  
- \_\_\_ 10. Proposed classification(s); description of duties if other than a basic trade.  
SF 1444: Block 13a  
(Note: See separate instructions for apprentices, trainees, helpers, welders, foremen, technical workers and supervisory employees.)

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\_\_\_ 11. Proposed rates:

\_\_\_     ◇ basic hourly rate(s).  
          SF 1444: Block 13c

\_\_\_     ◇ fringe benefits (if any).  
          SF 1444: Block 13c

\_\_\_ 12. Documentation that the interested parties are in agreement or their views regarding any dispute. SF 1444: Blocks 14, 15, 16 for contractors, employees, and representatives, respectively.

\_\_\_     ◇ Contractor(s) signatures  
          SF 1444: Blocks 14 and 15

\_\_\_     ◇ Employees' or representative signature (if known when the request is submitted).  
          SF 1444: Block 16  
          (If the contractor is party to a collective bargaining agreement, the union representative may sign for the employees or the collective bargaining agreement may be submitted.)

\_\_\_     ◇ If there are parties in disagreement, documentation of their views should also be attached.

\_\_\_ 13. Agency signature and recommendation.

\_\_\_     ◇ Contracting officer/agency signature.

\_\_\_     ◇ No action will be taken on the request if the agency does not sign and provide its agreement/disagreement regarding the request, or its position regarding a dispute between other parties.

\_\_\_ 14. Agency contact person's name, address and phone number (clearly legible please).

All proposed additional classification/conformance actions must be submitted to the WHD for review. The WHD may approve, modify, or disapprove any proposed additional classifications.

## **CRITERIA FOR APPROVAL OF ADDITIONAL CLASSIFICATIONS AND WAGE RATES**

This section describes the detailed process for determining whether a request for an additional classification and wage rate can be approved. The criteria to be applied are:

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

29 C.F.R. § 5.5(a)(1)(ii).

**Following the criteria ensures that DOL processing of requests for approval of conformance actions can be expedited, and complications minimized** in the event of reconsideration and appeal actions. Where this process is not followed by the contracting agency, delays can be anticipated in DOL processing of additional classification requests, and reconsideration and appeals of such cases may occur.

Note: See separate guidance below for helpers, apprentices, trainees, welders, working foremen, technical and supervisory employees.

**Step 1:** Is the requested classification already listed in the contract wage determination for the appropriate county and type of construction?

If so, the classification and rate listed in the wage determination apply.

**Step 2:** Can a classification in the contract wage determination – for the appropriate county and type of construction – perform the work?

Note: If multiple wage determinations are included in the contract, reference is to work performed by classification(s) already in the wage determination on the portion of the project for which the additional classification is requested.

**Step 3:** If yes, is the wage determination classification that may apply a union or non-union rate?

- (A) **If** the classification in the applicable wage determination lists a **union rate** (the identifier above the classification will indicate the union source of the rate), then **only** information from the union segment of the industry for the type of construction in the area is relevant in determining whether the requested classification should be denied and the classification listed on the wage determination used for the work.
- (B) **If** the classification in the applicable wage determination lists a **non-union** rate (indicated by a “SU . . .” identifier above the relevant classification listing), then a non-union rate for the classification has been determined to be prevailing for the given type of construction in the area, and **only** the practices of non-union contractors in the area may be used as a basis for determining whether the requested classification should be denied and the classification listed on the wage determination used for the work.
- (C) If more than one classification in the applicable wage determination may perform the work, determining whether one of those classifications should be used, and the requested classification denied, depends on an examination of each in accordance with steps 3(A) and 3(B).

**Step 4:** For each classification in question, is there evidence that the duties in question were performed by workers employed by contractors whose rate prevailed (union or non-union, as listed in the wage determination) on **similar construction** in the area during the year **prior to bid opening/award of this contract?** (See *Fry Brothers Corp.*, WAB Case No. 76-6, dated June 14, 1977, and *American Building Automation*, ARB Case No. 00-067, dated March 30, 2001 (and cases cited therein)). A brief synopsis of these cases is provided below. (See Reference Case Nos. 1 and 4).

For example:

- ◇ For a building construction project, if the contract wage determination contains a union rate for the classification that may perform the duties in question, is there evidence that union workers in that classification performed those duties on building construction in the area during the year prior to award of this contract?

- ◇ On a highway construction project, if the contract wage determination contains a non-union rate for a classification that may perform the duties in question, is there evidence that non-union workers employed by non-union contractors in that classification performed the duties in question on highway construction project(s) in the area during the year prior to award of the contract?

**Step 5:** If there is such evidence, the request for the additional classification must be denied, as a classification already in the contract wage determination performs the work for which the additional classification was requested.

Example A - The wage determination classifications/rates are union:

- ◇ If a union rate is listed for a classification in the wage determination that may perform the duties in question, and if union worker(s) can be shown to have performed the duties in question in that classification on the same type of construction in the same area during the year prior to award of the contract in question, then in light of the first criterion for approval of an additional classification, the request for the additional classification must be denied.

**NOTE:**

A claim that the applicable union agreement applies to such work is normally **not** an adequate basis for denying the additional classification request when the work performed falls outside of what would generally be considered core craft work. **Specific information identifying project(s) on which the union workers in that classification performed such work, and identifying the contractor who employed them on such project(s)**, typically is needed to establish that the work in question was performed by a classification in the contract wage determination.

**Such data generally is needed to support denial of a proposed classification on the basis that work is performed in the area by the classification already listed in the applicable contract wage determination.** When there is evidence that union contractors in the area have established a local area practice of employing the union workers in a prevailing classification already listed in the contract wage determination when they perform the work for which an additional classification is requested, their project-based evidence is the basis for denial of the requested classification. While it is

important to have evidence that the union classification listed in the wage determination has been used to perform the duties in question; generally it is not necessary to demonstrate anew that the wage determination classification and rate already listed in the contract wage determination is prevailing in the area for the work at issue in a request for approval of a different classification and rate for the work in question. *See American Building Automation*, ARB Case No. 00-067 (March 30, 2001). (A synopsis of the ARB decision in that case is provided below.)

If there is evidence that the duties for which an additional classification is proposed have been performed using the union classification in the wage determination, then the work in question must be classified in accordance with the union classification in the contract wage determination, and at least the rate specified there, including fringe benefits, shall be paid to all workers performing work in the classification under the contract from the first day on which work has been performed.

If there is no evidence that the duties in question were performed by the classification in the contract wage determination, move to step 6, below.

Example B - The wage determination classifications/rates are non-union:

- ◇ **If a non-union rate is listed in the contract wage determination for a classification** that may perform the duties in question and non-union workers in the classification can be shown to have performed those duties on the same type of construction in the same area prior to award of the contract, then the request for the additional classification must be denied.

**Step 6:** If the duties of the proposed classification are not performed by a classification on the wage determination, it must then be determined whether or not the proposed conformed rate requested **bears a reasonable relationship** to the wage rates already listed in the applicable contract wage determination schedule **for the given county and type of construction. Please see AAM No. 213 for detailed guidance.**

- (A) Proposed rates should be compared to those already listed for classifications within appropriate subgroups. Thus, proposed rates for skilled classifications should be compared to those listed for skilled classifications on the wage determination; proposed power equipment operators should be

compared to power equipment operators; proposed laborers to laborers; and proposed truck drivers to truck drivers.

- (B) A determination of whether union or non-union sector rates prevail in the appropriate subgroup (skilled classifications, power equipment operators, laborers, or truck drivers) should be made.
- (C) After reviewing the entirety of the rates within the appropriate category and sector, a rate that bears a reasonable relationship to those rates in the wage determination must be determined.
- (D) A determination of whether any other considerations also apply should be made. For example, if the classification being conformed is a skilled classification and some of the wage rates for skilled classifications in the wage determination are lower than the rates for laborer classifications, then the contracting agency should generally consider only those existing skilled classification rates that are higher than the laborer rates to determine the proposed rate.

Please see relevant decisions in appeals board cases, below:

- (A) Skilled craft rates should bear a reasonable relationship to other skilled craft rates and conformance requests for skilled classifications should not be approved at wage rates below those already listed for other skilled crafts (excluding laborers, truck drivers, and power equipment operators) – (*See M Z. Contractors Co., Inc.*, WAB Case No. 92-06, dated August 25, 1992, and *Tower Construction*, WAB Case No 94-17, dated February 28, 1995; reference case no. 2, below.)
- (B) Rates for additional laborer, truck driver, and power equipment operator classes should normally be compared with other laborers, truck drivers, and power equipment operators, respectively. (*See Tower Construction*, WAB Case No 94-17, dated February 28, 1995; reference case no. 2, below.)
- (C) “If the contract wage determination includes rates for skilled craft(s) where almost all skilled crafts are higher than the laborers’ rate but a few skilled classifications are below the laborers’ rate, it would be unreasonable to set a wage rate for the skilled conformed classification by simply setting the rate at the same level as the laborers’ rate. (*See M Z. Contractors Co., Inc.*, WAB Case No. 92-06, dated August 25, 1992).
- (D) Where most of the wage rates and fringe benefits in a wage determination for “skilled” crafts are substantially higher than the wages and fringe

benefits applicable to one or two other “skilled” classifications in the wage determination, mechanical adoption of the wage rate and fringe benefits applicable to the lowest paid “skilled” classification, or the wage rate and fringe benefit for the “laborer” classification, whichever is higher, does not satisfy the requirement that “the proposed wage rate, including any fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.” See M Z. Contractors Co., Inc., WAB Case No. 92-06, dated August 25, 1992).

**REFERENCE CASE NO. 1**

*Fry Brothers Corp.*, WAB Case No. 76-6 (June 14, 1977)

Pursuant to the WAB decision in *Fry Brothers Corp.*, WAB Case No. 76-6, dated June 14, 1977, the proper classification for work performed on a particular Davis-Bacon covered project by laborers and mechanics is that classification used by contractors whose wage rates were found to be prevailing in the area and incorporated in the applicable wage determination. Accordingly, under the *Fry Brothers Corp.* decision, the classification practices utilized in the appropriate sector for such construction projects in the area in question must be used to determine the proper classification for work on this project.

Note: The above synopsis is provided for information purposes only. The full text of the decision can be obtained from the ARB and is available at:

<http://www.oalj.dol.gov/libdba.htm>

**REFERENCE CASE NO. 2**

*Tower Construction*, WAB Case No 94-17 (February 28, 1995)

In this case, the WAB confirmed the Administrator's ruling concerning the appropriate rate to be approved when the missing classification is in a separate and distinct subgroup.

The Board stated as follows:

In administering the conformance process Wage and Hour further groups classifications within the broad category of power equipment operators and distinguishes them from other skilled classifications since the operators are a 'separate and distinct subgroup of construction worker classifications.' [citation omitted]. Thus, when conforming omitted power equipment operator rates, Wage and Hour only looks to listed equipment operator rates for determining a reasonable relationship. Conversely, omitted skilled classifications are not conformed at operator rates. The unique skills and duties of power equipment operators are sufficiently distinguishable from the skills of mechanics in skilled construction trades, such that the Administrator's rejection of the equipment operator rates was well within the discretion granted her under the regulation . . . .

The Board further noted that the contract wage determination in this case also listed a truck driver classification and noted that truck driver skills are more akin to those of operators, that the truck driver rate was below that listed for an unskilled laborer, and that the Administrator also excluded that truck driver rate from consideration in determining the appropriate conformed rate for the skilled crafts in question. The Board concluded that:

where a rate within the clearly distinct equipment operator group is the 'floor' for a wage determination, it is reasonable to exclude those rates from consideration and conform missing skilled classifications to the next higher level for a skilled trade.

In this case, the Board also reiterated important positions it had stated in prior rulings, to the effect that:

a party seeking conformed classifications and rates 'may not rely on a wage determination granted to another party regardless of the similarity of the work in question.' *Inland Waters Pollution Control, Inc.*, WAB Case No. 94-12 (Sept. 30, 1994) slip op. at pp. 7-8."

and further that:

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a contractor could not prospectively rely on Wage and Hour's prior approval of conformed classifications and rates for application to a contract performed at the same location. *E&M Sales, Inc.*, WAB Case No. 91-17 (Oct. 4, 1991).

Note: The above synopsis is provided for information purposes only. The full text of the decision can be obtained from the ARB and is available at:

<http://www.oalj.dol.gov/libdba.htm>

**REFERENCE CASE NO. 3**

*M.Z. Contractors Co., Inc.*, WAB Case No. 92-06 (August 25, 1992)

The WAB remanded this matter to the WHD for further proceedings after the Acting Administrator had approved the addition (conformance) of an “insulator” classification, for pipe insulation work, at a wage rate equal to the rate listed on the wage determination for “laborers.” The WHD approval was in accordance with the former policy of approving conformance of a proposed rate for a skilled classification of worker so long as the proposed rate was equal to or exceeded the lowest rate for a skilled classification already contained in the contract wage determination. (The painters’ rate in the wage determination was lower than the laborers’ rate). The Board rejected this former WHD policy in its application to the present case because almost all the skilled classifications in the contract wage determination had wage rates substantially higher than the laborers’ rate. The Board ruled it was appropriate for the WHD to select the particular method to determine what conformed rate would meet the third regulatory requirement of bearing a reasonable relationship to the wage rates contained in the wage determination.

Note: The above synopsis is provided for information purposes only. The full text of the decision can be obtained from the ARB and is available at:

<http://www.oalj.dol.gov/libdba.htm>

**REFERENCE CASE NO. 4**

*American Building Automation*, ARB Case No. 00-067 (March 30, 2001)

In this case, the ARB concluded that the WHD Administrator properly denied a request for the addition of a “Building Automation and Controls Technician” (BACT) classification. The Administrator determined that the work of the proposed BACT classification was performed by another classification already found within the wage determination, and the ARB affirmed the Administrator’s denial of the conformance request.

The subcontractor who requested the BACT classification asserted that the work involved did not fall squarely within any single trade classification in the wage determination and that such workers had to be knowledgeable in all of the traditional trades, including electrical, mechanical, telecommunications and networks. The Davis-Bacon wage determination in the contract in question included a union wage rate for the plumber classification. Believing that the work to be performed by the proposed BACT classification might fall within the work performed by employees classified as plumbers, the WHD inquired into trade jurisdiction practices under the collective bargaining agreement negotiated by the Plumbers’ local union. The union provided a copy of its collective bargaining agreement and documentation of several construction projects where this work had been performed by workers classified and paid as plumbers. Based on this data, the Administrator determined that the first criterion for establishing a new classification under the conformance process was not satisfied.

In its decision affirming the Administrator’s determination, the ARB noted that “[a] conformance request does not call for a *de novo* evaluation of prevailing local practices or wage rates, questions that might appropriately be raised in a pre-award request for review and reconsideration of a wage determination under 29 C.F.R. § 1.8” and that:

[I]t is well-established that in a conformance situation the Division is not required to determine that a classification in the wage determination actually is the prevailing craft for the tasks in question, only that there is evidence to establish that the classification actually performs the disputed tasks in the locality. [citations to prior ARB and WAB decisions omitted)

Note: The above synopsis is provided for information purposes only. The full text of the decision can be obtained from the ARB and is available at:

<http://www.oalj.dol.gov/libdba.htm>

**REFERENCE CASE NO. 5**

*Swanson's Glass*, WAB Case No. 89-20 (April 29, 1991)

In this case, the WAB affirmed the WHD Administrator's denial of a request for the addition of a glazier classification on the ground that the contractor's proposed rate did not bear a reasonable relationship to the rates on the wage determination. The proposed wage rate was less than the lowest wage rate paid skilled classifications on the applicable wage determination, and also less than the hourly rate in the wage determination for laborers.

The WAB further characterized the petitioner's argument that the proposed glazier wage rate was "in reasonable conformity with the prevailing wage rate for glaziers for this locality" as essentially challenging the applicable wage determination, and emphasized that "the Board has consistently ruled that in order for a challenge to a wage determination to be timely, the challenge must be made prior to contract award (or the start of construction if there is no contract award)."

The contractor's contention that the contracting officer approved its proposed rate was also rejected. The WAB noted that the conformance regulations do not give the contracting officer final approval, and even if the contracting agency had described its actions as authoritative approval, erroneous contracting agency advice does not bar the DOL from requiring payment of the appropriate rate.

The Board also stated the WHD's failure to deny the requested classification within the 30-day timeframe contemplated by the regulations is not determinative, since this regulation is not jurisdictional. The conformance regulations do not provide that any failure by the Administrator to act within 30 days constitutes approval or acquiescence in the proposed classification or wage rate, and the absence of a response from the Administrator in the 30-day time period referenced in Section 5.5(a)(1)(ii)(B) therefore does not provide a basis to presume the requested classification and wage rate have been approved.

Note: The above synopsis is provided for information purposes only. The full text of the decision can be obtained from the ARB and is available at:

<http://www.oalj.dol.gov/libdba.htm>

## **APPRENTICES, TRAINEES, HELPERS, AND WELDERS**

### **Apprentices and Trainees**

- ◇ Additional classifications and wage rates are not needed for bona fide apprentices and trainees working on Davis-Bacon covered contracts. Rates for apprentices and trainees are not listed on Davis-Bacon wage determinations. Apprentices or trainees are permitted to work at less than the wage rates listed in the contract wage determination for the work they perform only if they meet the requirements of 29 C.F.R. Part 5, section 5.5(a)(4), such as being registered or certified in an appropriate apprenticeship or training program. (See FAR at 48 C.F.R. § 22.401 Definitions, “Laborers or mechanics,” paragraphs (1) and (2), and 48 C.F.R. § 52.222-6.)

### **Helpers**

- ◇ Generally, conformance requests for helpers will not be approved unless the duties performed are clearly defined and distinct from those of any other classification on the wage determination, the use of such helpers is an established prevailing practice in the area, and the helper is not employed as a trainee in an informal training program. The conformance process cannot be used to add a “helper” classification where any work to be performed by the helper is performed by a classification in the wage determination. 29 C.F.R. §§ 5.2(n)(4) and 5.5(a)(1)(ii)(A).

### **Welders**

- ◇ Additional classifications are not generally needed for welders. Welding is commonly considered incidental to the work of employees for whom classifications are issued. Thus, it is appropriate for welders to be classified in the same classification as the employees who are performing the duties to which the welding work is incidental (for example, ironworkers, plumbers, sheet metal workers, etc.). However, welders may sometimes represent a separate sub-classification and in those cases, may be conformed.

## **FOREMEN, TECHNICAL AND SUPERVISORY EMPLOYEES**

An individual employed in a bona fide executive, administrative or professional capacity, as defined in Regulations, 29 C.F.R. Part 541, is not a “laborer” or “mechanic” as these terms are defined under the Davis-Bacon Act.

- ◇ However, if a supervisory employee who is not exempt from coverage under that regulation spends more than an incidental amount of work as a laborer or mechanic, the hours spent in these activities would be subject to the Davis-Bacon labor standards.
- ◇ For example, if a working foreman spends more than 20 percent of the time during a workweek performing laborer or mechanic duties at the job site, the hours spent in these activities should be paid at least the hourly rate specified in the contract wage determination for the appropriate laborer or mechanic classification(s).

29 C.F.R. § 5.2(m).

**U.S. DEPARTMENT OF LABOR  
PREVAILING WAGE RESOURCE BOOK**

**DB CONFORMANCES**

**STANDARD FORM 1444**

**REQUEST FOR AUTHORIZATION OF  
ADDITIONAL CLASSIFICATION AND RATE**

CHECK APPROPRIATE BOX  
 SERVICE CONTRACT  
 CONSTRUCTION CONTRACT

OMB Number: 9000-0089  
 Expiration Date: 7/31/2014

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (MVP), Office of Acquisition Policy, GSA, Washington, DC 20405; and to the Office of Management and Budget, Paperwork Reduction Project (9000-0089), Washington, DC 20503.

**INSTRUCTIONS: THE CONTRACTOR SHALL COMPLETE ITEMS 3 THROUGH 16, KEEP A PENDING COPY, AND SUBMIT THE REQUEST, IN QUADRUPPLICATE, TO THE CONTRACTING OFFICER.**

1. TO: ADMINISTRATOR, Employment Standards Administration WAGE AND HOUR DIVISION U.S. DEPARTMENT OF LABOR WASHINGTON, D.C. 20210	2. FROM: (REPORTING OFFICE)
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3. CONTRACTOR	4. DATE OF REQUEST
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5. CONTRACT NUMBER	6. DATE BID OPENED (SEALED BIDDING)	7. DATE OF AWARD	8. DATE CONTRACT WORK STARTED	9. DATE OPTION EXERCISED (IF APPLICABLE) (SCA ONLY)
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10. SUBCONTRACTOR (IF ANY)

11. PROJECT AND DESCRIPTION OF WORK (ATTACH ADDITIONAL SHEET IF NEEDED)

12. LOCATION (CITY, COUNTY AND STATE)

13. IN ORDER TO COMPLETE THE WORK PROVIDED FOR UNDER THE ABOVE CONTRACT, IT IS NECESSARY TO ESTABLISH THE FOLLOWING RATE(S) FOR THE INDICATED CLASSIFICATION(S) NOT INCLUDED IN THE DEPARTMENT OF LABOR DETERMINATION

NUMBER: _____	DATED: _____	
a. LIST IN ORDER: PROPOSED CLASSIFICATION TITLE(S); JOB DESCRIPTION(S); DUTIES; AND RATIONALE FOR PROPOSED CLASSIFICATIONS (SCA ONLY) <i>(Use reverse or attach additional sheets, if necessary)</i>	b. WAGE RATE(S)	c. FRINGE BENEFITS PAYMENTS

14. SIGNATURE AND TITLE OF SUBCONTRACTOR REPRESENTATIVE (IF ANY) 	15. SIGNATURE AND TITLE OF PRIME CONTRACTOR REPRESENTATIVE 
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16. SIGNATURE OF EMPLOYEE OR REPRESENTATIVE 	TITLE	CHECK APPROPRIATE BOX-REFERENCING BLOCK 13. <input type="checkbox"/> AGREE <input type="checkbox"/> DISAGREE
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**TO BE COMPLETED BY CONTRACTING OFFICER (CHECK AS APPROPRIATE - SEE FAR 22.1019 (SCA) OR FAR 22.406-3 (DBA))**

- THE INTERESTED PARTIES AGREE AND THE CONTRACTING OFFICER RECOMMENDS APPROVAL BY THE WAGE AND HOUR DIVISION. AVAILABLE INFORMATION AND RECOMMENDATIONS ARE ATTACHED.
- THE INTERESTED PARTIES CANNOT AGREE ON THE PROPOSED CLASSIFICATION AND WAGE RATE. A DETERMINATION OF THE QUESTION BY THE WAGE AND HOUR DIVISION IS THEREFORE REQUESTED. AVAILABLE INFORMATION AND RECOMMENDATIONS ARE ATTACHED.

*(Send copies 1, 2, and 3 to Department of Labor)*

SIGNATURE OF CONTRACTING OFFICER OR REPRESENTATIVE 	TITLE AND COMMERCIAL TELEPHONE NO.	DATE SUBMITTED
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