

New EPA Davis-Bacon Grant Term and Condition Webinar
March 28, 2024
Frequently Asked Questions (FAQ)

Q1: Is Davis-Bacon applicable to the Diesel Emissions Reduction Act (DERA) and the Charging and Fueling Infrastructure (CFI) programs?

A1: Yes, the Davis-Bacon Act's prevailing wage requirements apply to projects funded by the DERA and CFI programs.

1. DERA:

The Environmental Protection Agency (EPA) administers the DERA program, which provides grants and loans to retrofit or replace older diesel engines to reduce emissions. Davis-Bacon Act requirements apply to DERA-funded construction projects if federal funds are used for construction, alteration, or repair of public works.

2. CFI Program:

The Charging and Fueling Infrastructure program, part of the Bipartisan Infrastructure Law (BIL), aims to expand electric vehicle (EV) charging and alternative fueling infrastructure. The Davis-Bacon Act applies to construction projects funded under the CFI program to ensure that workers are paid locally prevailing wages.

In summary, if the DERA or CFI programs involve construction, alteration, or repair projects, the Davis-Bacon Act's requirements for prevailing wages are applicable.

Q2: Where can I submit questions regarding procurement regulations and grant/tax credits?

A2: **1. Government Agencies**

- **Small Business Administration (SBA):** For small business-related procurement questions, the SBA is a good resource.
- **Grants.gov:** If you have questions about federal grants, you can use their support center or help desk.
- **Internal Revenue Service (IRS):** The IRS offers various resources, including online FAQs and helplines, for questions about tax credits.

2. State and Local Government Offices

- Your state's Department of Commerce or Economic Development might offer guidance on procurement and grant opportunities, as well as tax incentives.
- Local government procurement offices can also provide specific information regarding local regulations.

3. Professional Organizations

- **National Institute of Governmental Purchasing (NIGP):** They offer resources and support for procurement professionals.

- **Council on Governmental Relations (COGR):** Focused on federal grants management.

4. Consulting Firms and Legal Advisors

- Many consulting firms specialize in government procurement and grants and can provide expert advice for a fee.
- Tax attorneys or Certified Public Accountants with experience in grants and tax credits can be valuable resources for complex questions.

5. Online Forums and Communities

- **GovWin IQ by Deltek:** A platform for businesses pursuing government contracts, where you can ask questions and connect with others in the field.
- **Reddit:** Subreddits like r/grants or r/tax might have community members who can provide advice.

6. Official Websites

- Directly through the **Federal Register** or specific government procurement portals (like SAM.gov) for clarifications on regulations.

These channels should cover a wide range of questions related to procurement regulations, grants, and tax credits.

Q3: If we are receiving zero grant funds but are getting tax credits, do Davis-Bacon rules apply?

A3: Generally, Davis-Bacon applies to federally funded construction projects. If no federal funds (grant funds) are involved and only tax credits are received, Davis-Bacon typically would not apply. However, specific cases may vary, and it's advisable to consult with a legal expert or the Department of Labor (DOL).

Q4: Does the force account labor exemption only apply to government entities? What about grants/subgrants from the prime recipient (state) to entities such as rural electric cooperatives or private for-profit utilities using in-house labor?

A4: The force account labor exemption generally applies to work performed by a government entity's own employees. For non-government entities, like rural electric cooperatives or private utilities, this exemption might not apply. For specific situations, check with the DOL or legal counsel.

Q5: Does Davis-Bacon apply to installing septic systems for a State Revolving Fund (SRF) grant funded with EPA funds? Is installing a septic system "treatment work?"

A5: Yes, Davis-Bacon may apply if the project is funded with federal SRF grants. Installation of septic systems could be considered "treatment work" under the Clean Water Act if it involves the construction, alteration, or repair of public works. The EPA often requires Davis-Bacon compliance for SRF-funded projects.

Q6: Do projects installing new EV charging infrastructure trigger Davis-Bacon? Does this count as construction?

A6: Yes, Davis-Bacon may apply if federal funds are used, and the installation is considered construction, alteration, or repair of public works. EV charging infrastructure installation could be categorized as construction, depending on the scope and funding source.

- Q7:** Is there a clear definition of construction? Particularly, under removal response action, what constitutes as construction?
- A7:** The DOL defines construction broadly, including alteration, repair, remodeling, or installation. Under removal response actions, activities considered as construction may include site preparation, removal, installation of equipment, etc. For specific definitions, refer to the DOL or consult legal guidance.
- Q8:** If the project is not on a permanent job site, for example, if activities include remediation or activities on or in personal residences that are not continuous, where would the poster be posted?
- A8:** The DOL requires that Davis-Bacon posters be displayed in a visible and accessible location where employees can see them. For non-permanent or personal residence job sites, it might be necessary to display posters at the main project office or another centralized location where workers gather.
- Q9:** So, if there is no mention of Davis-Bacon in the grant agreement, does it not apply?
- A9:** The absence of a mention in the grant agreement does not necessarily exempt a project from Davis-Bacon requirements if the project otherwise meets the criteria for Davis-Bacon applicability. It's essential to verify with the grantor or legal counsel (Office of General Counsel).
- Q10:** Does the CFR specify bi-weekly payrolls?
- A10:** The Code of Federal Regulations (CFR) under the Davis-Bacon Act requires that contractors submit weekly certified payrolls, not bi-weekly.
- Q11:** Does Davis-Bacon apply to grants for Tribal entities?
- A11:** Yes, Davis-Bacon can apply to projects funded by federal grants, even for Tribal entities, particularly if the projects involve construction, alteration, or repair of public buildings or public works.
- Q12:** Is there a Spanish version of the Davis-Bacon Interview Form?
- A12:** Yes, the DOL provides certain forms, including the Davis-Bacon Employee Interview Form ([Form WH-347](#)), in Spanish.
- Q13:** Can we use a different interview form?
- A13:** Generally, the Davis-Bacon Act requires the use of specific forms for worker interviews, such as the [Standard Form WH-347](#). However, alternative forms may be used if they capture all the required information and are approved by the DOL.
- Q14:** What is the maximum number of hours per week before the time and a half-requirement begins?
- A14:** Under the Fair Labor Standards Act (FLSA), time-and-a-half (overtime) pay is required for hours worked over 40 in a work week.

Q15: Are the forms available as Word documents?

A15: Davis-Bacon forms, such as the WH-347 payroll form, are typically available in PDF format on the DOL's website. Some forms may also be available in Word format through other sources or by request.

Q16: Can Davis-Bacon interviews be done by a borrower, or can it be done on a Revolving Loan Fund (RLF)?

A16: Interviews must be conducted by the appropriate entity responsible for ensuring Davis-Bacon compliance. This typically falls to the prime recipient or their designated representative, not the borrower.

Q17: Who conducts the interviews? Is it the contractor or the EPA? Are the interviews part of the Davis-Bacon terms and conditions?

A17: Interviews are generally conducted by the contracting agency, prime recipient, or an authorized representative, not by the contractor. Yes, conducting interviews is part of the Davis-Bacon compliance requirements.

Q18: Does the EPA need to review contracts and bids for Community Grants/Earmarks?

A18: The EPA may need to review contracts and bids to ensure compliance with federal requirements, including Davis-Bacon, if applicable. This review helps ensure adherence to terms and conditions.

Q19: When determining the 45-mile zone radius, is this measured by road miles or direct radius mileage?

A19: Typically, a 45-mile radius is measured as a straight-line distance, or "as the crow flies," rather than by road miles.

Q20: How is public works defined for Davis-Bacon? For example, if a private utility or rural electric cooperative were to build a community solar array with 50% of the energy produced going to a private organization and the other 50% of the energy produced being credited to individual households for energy bill savings, is this a public works project since none of the direct beneficiaries are public? If it is not defined as a public works project, then is the project exempt from Davis-Bacon?

A20: Public works projects under Davis-Bacon generally involve construction funded by the federal government and intended for public use or benefit. If the project does not meet these criteria, it may be exempt from Davis-Bacon requirements. However, specific cases can vary, and legal guidance or DOL consultation is recommended.

Q21: Will Solar for All grants have Davis-Bacon requirements? The Notice of Funding Opportunity (NOFO) did not mention Davis-Bacon.

A21: If federal funds are used for construction projects under Solar for All grants, Davis-Bacon requirements may apply even if not mentioned in the NOFO. Verification with the grant officer or DOL is advisable.

Q22: Can you clarify if Davis-Bacon applies to Brownfields 128(a), even though construction is one of the budgeted categories?

- A22:** Davis-Bacon may apply to Brownfields 128(a) projects if they involve construction, alteration, or repair of public works. Each grant and project should be reviewed for specific applicability.
- Q23:** Is Davis-Bacon required for the entire project if we have additional funds outside of federal funds? We have state funds and other non-federal funds being used on the same project as an EPA grant. Do we have to follow Davis-Bacon for the entire construction project?
- A23:** Yes, Davis-Bacon requirements generally apply to the entire project if federal funds are used, even if combined with non-federal funds. All construction work under the contract must comply.
- Q24:** Is there a page that defines job classes? Specifically, what job class defines a pipefitter?
- A24:** The [DOL's Wage Determinations website \(SAM.gov\)](https://sam.gov) provides job classifications and descriptions. A pipefitter's duties are typically defined under "Plumber, Pipefitter, or Steamfitter" in the relevant wage determination.
- Q25:** Does the grant recipient conduct the worker interviews?
- A25:** Yes, the grant recipient or their designated representative is responsible for conducting Davis-Bacon worker interviews to ensure compliance with wage requirements.
- Q26:** Regarding contractor's addendums/amendments, if a contractor issues an addendum a year after their bid/award date, do they have to update and operate under the wage determination based on the addendum date? Does this apply to monetary changes too or just work/construction addendums?
- A26:** Wage determinations in effect at the time of contract award generally apply for the duration of the project. However, substantial changes, such as addendums, may require updates to the wage determination. Legal or DOL guidance is recommended.
- Q27:** Does the definition of construction include streambank restoration or erosion control activities such as berms, rock structures, etc.?
- A27:** Yes, these activities are typically considered construction under Davis-Bacon, as they involve altering or repairing public works.
- Q28:** Are infrastructure and remediation projects the only types of projects subject to Davis-Bacon and Related Acts (DBRA)?
- A28:** No, DBRA applies to a broader range of projects, including construction, alteration, and repair of public buildings and works, regardless of the specific type of project.
- Q29:** When undertaking residential contracts, which in most cases will be for \$2,000 or more, and assuming energy efficiency retrofits and solar photovoltaic (PV) installations are covered under DBRA, does compliance paperwork need to be completed for each project or is some aggregation of the projects permitted for compliance purposes?
- A29:** Compliance paperwork typically needs to be completed for each individual project unless the projects are part of a larger contract that aggregates multiple works. Consult with the DOL for specific guidance.

- Q30:** Our Indefinite Delivery, Indefinite Quantity (ID/IQ) contracts include language related to minimum wage laws. Do we need to amend the contracts to reference the Davis-Bacon Act?
- A30:** If the contract involves federal funds for construction, Davis-Bacon requirements should be included, and the contract may need to be amended accordingly.
- Q31:** Are our state recipients who receive grants every year getting training?
- A31:** Yes, federal agencies like the EPA often provide training to state recipients on compliance with Davis-Bacon and other grant conditions.
- Q32:** The compliance descriptions of the Terms and Conditions seem oriented to workers/mechanics working full days or weeks, but EPA grants can include residential projects for a single family (e.g., for installation of a heat pump HVAC system). An electrician may only work 1-2 hours on that project, and otherwise work on non-federally funded projects. How do the 8-hour and weekly wage requirements apply to a sub-contractor who may work only a few hours on an EPA funded project?
- A32:** Davis-Bacon requirements apply to all hours worked on federally funded projects, even if the worker only spends a short time on the project. The wage rate and fringe benefits must be paid for every hour worked on the project, regardless of the total hours in a week.
- Q33:** How often do wage rates change? Do they change frequently?
- A33:** Wage rates can change periodically based on surveys conducted by the DOL. The frequency can vary, but they are typically updated annually or when significant wage changes in the industry occur.
- Q34:** As a grant recipient, would our project officer alert us of any change in Davis-Bacon requirements during the performance period of a grant?
- A34:** While project officers may provide updates, it is ultimately the responsibility of the grant recipient to stay informed about Davis-Bacon requirements throughout the performance period.
- Q35:** For the SRF program, who needs to verify that the correct wage determination is being used? When should that check occur?
- A35:** The grant recipient or their designated representative is responsible for verifying that the correct wage determination is used. This should occur at the time of contract award and be checked again before construction begins.
- Q36:** Regarding the wage lock, what about promotions or staff changes that might increase wages?
- A36:** Promotions or wage increases can be implemented, but they must meet or exceed the locked wage determination for the project. The wage determination sets the minimum, not the maximum, wage.
- Q37:** How can you change wage rates after a contract is awarded? The contract price includes proposed rates. This would be a disadvantage if higher wage rates became effective.
- A37:** Typically, wage rates locked in at the time of the contract award remain in effect for the project. If changes are necessary, they must be negotiated, and contract adjustments may be required.

- Q38:** Who could a grant recipient (or a subrecipient) contact to discuss if certain types of work are subject to Davis-Bacon?
- A38:** The grant recipient or subrecipient should contact the DOL's Wage and Hour Division or consult with their project officer or legal counsel for clarification.
- Q39:** Who identifies the specific labor category for the wage determination? Is it the contractor or the grant recipient?
- A39:** The grant recipient or their designated representative typically identifies the specific labor category for the wage determination based on the work being performed.
- Q40:** My project has federal funds, but I noticed that some of the Davis-Bacon wage rates are less than the Pennsylvania prevailing wage rates for the same trades. Should both Pennsylvania prevailing wage rates and Davis-Bacon wage rates be included in the specifications so the contractor will have to pay their employees the higher wage between the two wage rates? Or do you have to do a project specific Davis-Bacon wage rate request?
- A40:** Contractors are required to pay the higher of the two rates—federal Davis-Bacon or state prevailing wage. Both rates should be included in the project specifications.
- Q41:** When do we submit the certified payrolls to the EPA?
- A41:** Certified payrolls are typically submitted weekly to the contracting agency or recipient overseeing the project. The EPA may require copies as part of compliance reviews.
- Q42:** Other than trying to determine if we fall within the heavy construction area, is there another way to know if our EPA contract requires Davis-Bacon? Is it listed in all grant agreements or only those specifically subject to this act?
- A42:** Davis-Bacon applicability is generally stated in the grant agreement. If there is uncertainty, it's advisable to confirm with the EPA or consult the grant terms and conditions.
- Q43:** How do we know when federal wages apply? Will it be in the grant contract?
- A43:** Yes, federal wage requirements, including Davis-Bacon, will be specified in the grant contract if they apply.
- Q44:** Does the use of the higher wage determination between the federal and state rates apply to all states?
- A44:** Yes, the higher of the federal Davis-Bacon or state prevailing wage rate must be paid, regardless of the state where the work is performed.
- Q45:** Can you clarify if Davis-Bacon requirements apply to financing programs by EPA grantees? If an EPA grantee is making loans, is the recipient a contractor?
- A45:** Davis-Bacon applies if federal funds are used for construction projects. If a grantee makes loans to fund construction, the recipient of the loan is considered a contractor, and Davis-Bacon requirements may apply.
- Q46:** Does Davis-Bacon apply to certain projects under new grant programs (e.g. the Environmental Justice Government-to-Government program (EJG2G))? Does it apply to activities like expanding solar PV systems, energy efficiency upgrades, etc.?

- A46:** If these activities involve construction, alteration, or repair of public works and are federally funded, Davis-Bacon requirements likely apply. The specific terms of the grant agreement will clarify applicability.
- Q47:** Outside of construction contracts, does the EPA apply prevailing wages when reviewing the remaining payroll on their grants? Should the wage determination be used for those positions as well?
- A47:** Prevailing wage requirements generally apply to construction, alteration, or repair projects. Other positions may not be subject to Davis-Bacon but must comply with any applicable wage laws.
- Q48:** Could you please share the link for the comparison chart showing the recent changes?
- A48:** The comparison chart of recent Davis-Bacon changes can typically be found on the [DOL's website](#) or through the specific federal agency managing the grant.
- Q49:** Is there somewhere that defines what type of jobs are considered Heavy, Highway, or Residential? For example, we do broadband projects, and we struggle to determine what category projects would fit under.
- A49:** The DOL provides definitions for these categories on their [wage determinations website \(SAM.gov\)](#). Generally, heavy construction includes large-scale infrastructure projects, highway construction involves roadways, and residential construction pertains to housing projects.
- Q50:** What is the difference between building and heavy construction?
- A50:** Building construction typically involves the construction of structures such as schools, offices, and other buildings. Heavy construction includes large-scale infrastructure projects like bridges, dams, and highways.
- Q51:** Does DBRA apply to all EPA grants? Are retrofits or installations of stormwater infrastructure considered construction under DBRA?
- A51:** DBRA applies to EPA grants that involve construction, alteration, or repair of public works. Retrofits and installations of stormwater infrastructure are typically considered construction and thus subject to DBRA.
- Q52:** How do we identify the Davis-Bacon requirements for residential?
- A52:** Residential Davis-Bacon requirements can be identified by reviewing the specific wage determination for residential projects in the area where the work will be performed, available on SAM.gov.
- Q53:** Is the Davis-Bacon fringe rate added to the Davis-Bacon rate? Does the Davis-Bacon rate already include fringe?
- A53:** The Davis-Bacon wage rate typically consists of the basic hourly rate plus any fringe benefits. If the employer does not provide the fringe benefits, they must be added to the hourly wage rate to meet the total required wage.
- Q54:** We usually pay above prevailing wage, and this has stopped us from applying for EPA grants or federal grants with Davis-Bacon requirements. Is there any flexibility in the regulation to allow payment of above-standard prevailing rates?

- A54:** There is no restriction on paying wages above the Davis-Bacon prevailing wage rates. Employers can pay higher rates, but they must at least meet the minimum Davis-Bacon requirements.
- Q55:** If a site has environmental remediation and construction, how do we separate the projects from the Davis-Bacon Act?
- A55:** If both remediation and construction are part of the same project and are federally funded, Davis-Bacon likely applies to the entire project. Projects may not be easily separable for Davis-Bacon purposes.
- Q56:** Is this still true that the Davis-Bacon Act is applicable to only 319 grants that fund construction of treatment works? The Clean Water Act §212 defines construction and treatment works for grants under Title II. Although the §212 definition can be used as a guide for determining whether a project is a treatment work for purposes of §319(h) grants, the §212 definition includes items that may not be “treatment works” in common understanding (e.g., storage facilities that do not provide treatment). For such projects, the Davis-Bacon Act (40 U.S.C. §§ 176a–276a-7) requires that wages for laborers and mechanics working on specific, federally funded projects be set at the current wage rate for that region. Specifically, the act requires that each contract over \$2,000 for the construction, alteration, or repair of public buildings or public works follow the minimum wages to be paid to various classes of laborers and mechanics employed under the contract.
- A56:** Yes, the Davis-Bacon Act applies to 319 grants if they involve the construction, alteration, or repair of public works, including treatment works as defined by the Clean Water Act §212.
- Q57:** In SAM.gov, on the wage determinations page, are fringes listed in dollars or percentages?
- A57:** Fringes on the [wage determinations page in SAM.gov](#) are typically listed in dollar amounts.