



FACT SHEET
Broadband Technology Opportunities Program
Davis-Bacon Act Requirements

Overview

Section 1606 of the American Recovery and Reinvestment Act (ARRA) of 2009, Pub. L. No. 111-5, 123 Stat. 115 (Feb. 17, 2009) (the "Recovery Act"), requires BTOP grant award recipients, subrecipients, contractors, and subcontractors to comply with the wage requirements of the Davis-Bacon Act (40 U.S.C. 3141 et seq.) and related acts, stating:

Notwithstanding any other provision of law and in a manner consistent with other provisions in this Act, all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to this Act shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code. With respect to the labor standards specified in this section, the Secretary of Labor shall have the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (64 Stat. 1267; 5 U.S.C. App.) and section 3145 of title 40, United States Code.

Scope of the Davis-Bacon Act

The Davis-Bacon Act prevailing wage requirements apply to laborers and mechanics employed under contracts or subcontracts in excess of \$2,000 for construction, alteration, or repair activities (including but not limited to painting and decorating) that are funded, in whole or in part, under BTOP grant awards. In general:

- Laborers and mechanics – Are workers whose duties are manual or physical in nature, including apprentices, trainees and helpers, but do not include workers whose duties are primarily managerial, administrative, executive, or clerical. See 29 C.F.R. § 5.2(m).
- The \$2,000 threshold – Pertains to the amount of the prime construction contract, not to the amount of individual subcontracts. Accordingly, if the prime construction contract exceeds \$2,000, all construction work on the project (including subcontracts) is covered by the Davis-Bacon Act. See 29 C.F.R. § 5.5(a)(6).
- Construction, alteration, or repair activities – Are those occurring at the "site of the work" that involve the alteration, remodeling, or installation of items fabricated off-site; painting and decorating; manufacturing or furnishing of materials, articles, supplies, or equipment on the site of the building or work; and, in certain cases, transportation between the site of the work and other points. See 29 C.F.R. § 5.2(j).
- Site of the work – Is the physical place or places where the building or work called for in the contract will remain, and any other site where a significant portion of the building or work is constructed, provided that such site is established specifically for the performance of the contract or project, and includes job headquarters, tool yards, batch plants, borrow pits, etc., if they are dedicated exclusively, or nearly so, to performance of the contract or project, and are adjacent or virtually adjacent to the site of the work. The site of the work does not include permanent home offices, branch plant establishments, fabrication plants, tool yards, etc., of a contractor or subcontractor whose location and continued operation are determined wholly without regard to a particular Federal or Federally-assisted contract or project. See 29 C.F.R. § 5.2(l).
- Application to Governmental Agencies – Governmental agencies, such as states or their political subdivisions, are not subject to the Davis-Bacon Act requirements when construction work is being performed by their own employees on a "force account" basis. See 29 C.F.R. § 5.2(h).





Davis-Bacon Act prevailing wage requirements are likely to apply to construction and related activities undertaken in connection with Infrastructure Round 1 and Comprehensive Community Infrastructure (CCI) Round 2 projects. In many cases, Davis-Bacon Act prevailing wage requirements will also apply to activities under BTOP grants for Sustainable Broadband Adoption (SBA) and Public Computer Centers (PCC), when construction and related activities (including minor renovation of facilities) can be segregated from the other work contemplated by the grant. See 29 C.F.R. § 4.116; F.A.R. § 22.402(b).

Davis-Bacon Act Requirements

Required contract provisions (appearing at 29 C.F.R. § 5.5) and the applicable wage determination(s) for the activities contemplated by a construction project must be included in any contract or subcontract to which the Davis-Bacon Act applies providing, among other items, that:

- Laborers and mechanics must be paid the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) at least once a week;
- No paycheck deductions or rebates are permitted, except as permitted under Department of Labor (DOL) regulations (29 C.F.R. §§ 3.5-3.6); and
- Wage and fringe benefit rates must be no less than those contained in DOL wage determination for the labor classification for the work actually performed.

The recipient is responsible for ensuring that the required contract provisions appear in all contracts and subcontracts entered into by recipients, subrecipients, contractors, and subcontractors for construction, alteration and repair activities covered by the Davis-Bacon Act and related acts. Applicable wage determinations included in the contract must be verified by the recipient within 10 days of the contract date.

In cases where state wage rates (determined under state statutes often called "Mini-Davis-Bacon Acts") are higher than the Federal wage rates, the state wage rates take precedence and should be included in contracts in lieu of the lower, Federal wage rates.

In cases of construction projects on tribal lands, the recipient should contact its assigned Federal Program Officer (FPO) for guidance on the interplay among the Davis-Bacon Act, state Mini-Davis-Bacon acts and the Tribal Employment Rights Ordinance (TERO).

Contracts for amounts over \$100,000 that are covered by the Davis-Bacon Act must include additional standard clauses (also appearing in 29 C.F.R. § 5.5) providing, among other things, that overtime for laborers and mechanics must be paid at a rate 1.5 times the basic rate of pay for time worked in excess of 40 hours per week.

In addition, the DOL Davis-Bacon poster (WH-1321) must be prominently posted at the site of the work. Refer to: www.dol.gov/whd/regs/compliance/posters/fedprojc.pdf.

Davis-Bacon Wage Rate Determinations

DOL conducts statewide surveys seeking payment data on wage and fringe benefit rates from construction contractors and other interested parties, such as labor unions. Wage determinations are issued by locality, typically on a county-by-county basis. Davis-Bacon Act wage determinations are published on DOL's Wage Determinations OnLine (WDOL) website accessible at: www.wdol.gov. The Davis-Bacon Act prevailing wages are determined by DOL based on wages paid to various classes of laborers and mechanics employed on specific types of construction projects in an area.





If DOL has not published a wage determination for work that is needed to complete a BTOP construction project, the recipient may seek a Conformance. The recipient must submit a Conformance request using Standard Form (SF) 1444. Please go to www.wdol.gov/library.aspx to obtain a copy of the form and instructions.

To complete the form, the recipient must describe the work to be done (identified with a classification that is used in the subject area in the construction industry) and propose a wage rate that bears a reasonable relationship to existing wage determinations. Typically, the rate must not be less than the wage determination for an unskilled laborer and, for a skilled craft, must be at least equal to the lowest wage determination for any other skilled craft.

Infrastructure and CCI recipients should submit the completed SF-1444 through Grants Online as an "Other Action Request." The SF-1444 will be routed to the National Oceanic and Atmospheric Administration (NOAA) Grants Officer and transmitted to the DOL Wage and Hour Division for review and approval. The Wage and Hour Division has committed to act on Conformance requests within 30 days.

SBA and PCC recipients should submit completed SF-1444 Conformance requests through the Post-Award Monitoring (PAM) System. To do so, the recipient should create a report package of the type "POR: PAM Other Request." After filling out and attaching the Request Template, the recipient should attach the completed SF-1444 form using the "Add File" button. The SF-1444 will be routed to the National Institute of Standards and Technology (NIST) Grants Officer and transmitted to the DOL Wage and Hour Division for review and approval. The Wage and Hour Division has committed to act on Conformance requests within 30 days.

Recordkeeping and Monitoring Obligations

Recipients, subrecipients, contractors, and subcontractors must prepare weekly certified payroll documentation using Form WH-347 (available at: www.dol.gov/whd/forms/wh347.pdf), properly completed for laborers and mechanics performing activities covered by the Davis-Bacon Act requirements of the Recovery Act. Subrecipients, contractors, and subcontractors must submit this information to the BTOP grant award recipient on a weekly basis within seven days of the regular payment date of the subrecipient's, contractor's or subcontractor's payroll period.

A recipient must review the weekly certified payroll documentation it receives from its subrecipients, contractors and subcontractors on an ongoing basis. See 29 C.F.R. §§ 3.3-3.4. If a subrecipient receives the original payroll documents, the subrecipient should review these documents and forward the original documents to the recipient on a weekly basis within the time period described above.

The recipient must maintain in its files the original Davis-Bacon Act payroll records it prepares for itself, as well as those prepared by subrecipients, contractors, and subcontractors. The recipient is not required to submit any of the payroll documents to the BTOP Grants Office unless the assigned Grants Officer makes a request for such records. The payroll records must be maintained so as to be easily accessed by BTOP Grants Officers and by other duly authorized officials. The recipient must retain these records as provided in the Department of Commerce (DOC) Uniform Administrative Requirements for Grants and Cooperative Agreements, 15 C.F.R. § 14.53 or 24.42, as applicable, generally for the later of three years after closeout of the award, or until any litigation, claim, or audit is resolved.

Enforcement and Penalties

Violation of the requirements of Section 1606 of the Recovery Act and the Davis-Bacon Act and related acts is a serious offense. Compliance is subject to audit during OMB Circular A-133 audits (including program-specific audits) of BTOP grant recipients and subrecipients, as well as audits and investigations by the DOC Office of Inspector General, the Government Accountability Office (GAO), the DOL Wage and Hour Division, and other duly authorized officials.





A violation of the Davis-Bacon Act wage requirements may lead NTIA to impose appropriate enforcement action in connection with a BTOP grant award, up to and including suspension or termination of the award. In addition, contracting parties are subject to payment of back wages, and suspension or debarment from future contracts for a period of up to three years. Monetary damages may also apply.

Falsification of certified payroll records or the required kickback of wages may subject a violator to civil or criminal prosecution, the penalty for which may include fines and/or imprisonment.

Frequently Asked Questions

I prepared my project budget using labor rates below those specified in DOL wage determinations. How do I request an increase in the size of my BTOP award?

NTIA will not increase the amount of Federal funding of a BTOP award for this reason. The recipient will need to fund the increased labor costs from other non-Federal sources.

What if I have already received bids for a contract that is covered by the Davis-Bacon Act requirements?

A BTOP recipient should ensure that the bidders for contracts and subcontracts covered under the Davis-Bacon Act used labor rates that are consistent with the DOL prevailing wage determinations. It is the recipient's responsibility to ensure that all contracts and subcontracts covered by the Davis-Bacon Act satisfy the prevailing wage requirements. If the wage rates paid under the contract or subcontract do not meet the prevailing wage requirements, laborers and mechanics employed under the contract will be entitled to back wages, and additional penalties may apply.

I cannot find wage determinations for the type of work my BTOP project requires. How can I incorporate the necessary wage determinations in my contracts?

You should contact your assigned Grants Officer, or the DOL Wage and Hour Division District Office nearest your location. The DOL has staff members in each of its District Offices that are available to assist Recovery Act award recipients, including BTOP recipients, with Davis-Bacon Act questions. It is possible that one of the existing wage determinations may apply or, if not, you will be required to request a Conformance.

Are my own employees subject to Davis-Bacon wage requirements? What if my employee performs more than one type of work?

State and local governments are not considered "contractors" or "subcontractors" subject to Davis-Bacon Act requirements with respect to their own employees when the work is being performed on a "force account" basis. Therefore, BTOP-funded work that a state or local government performs using its own employees is not subject to Davis-Bacon Act requirements. See 29 C.F.R. § 5.2(h).

Other BTOP recipients and subrecipients are subject to the requirements of the Davis-Bacon Act and related acts with respect to their own employees, and should ensure that any employee's salary is at least equal to the level established by the proper Davis-Bacon Act prevailing wage determination when the employee is working as a laborer or mechanic performing construction, alteration or repair work under a BTOP grant award.

In cases where an employee is performing more than one type of work, the employer may track the employee's time and pay the employee at the proper prevailing wage rate for each hour he or she spends working within a particular labor classification. In the alternative, the employer may choose to pay the employee at a rate at least as high as the highest Davis-Bacon Act prevailing wage rate that applies to any work the employee performs.

When preparing my project budget, I planned to have volunteers complete a portion of the construction needed to complete my BTOP-funded Infrastructure project. Are volunteers exempt from the wage requirements of the Davis-Bacon Act?





There are no exceptions to Davis-Bacon Act coverage for volunteer labor unless an exception is specifically provided for in the particular Davis-Bacon Related Act under which the project funds are derived. The Davis-Bacon Related Act in this case is the Recovery Act, which does not provide such an exception for volunteer labor. Therefore, on BTOP-funded projects, the recipient and its subrecipients, contractors, and subcontractors must pay all workers performing work within the scope of the Davis-Bacon Act, including volunteers, in accordance with the applicable DOL's Davis-Bacon Act prevailing wage determination. See 29 C.F.R. 5.2(o).

Additional Resources

For additional information on Davis-Bacon Act requirements, please refer to the following resources:

- Department of Labor Wage and Hour Division Information related to the American Recovery and Reinvestment Act of 2009: www.dol.gov/WHD/recovery/index.htm
- All Agency Memorandum No. 207 – Applicability of Davis-Bacon to Federal and Federally-assisted construction work funded by the American Recovery and Reinvestment Act of 2009: www.dol.gov/whd/recovery/AAM207.pdf.
- Davis-Bacon Poster (WH-1321): www.dol.gov/whd/regs/compliance/posters/fedprojc.pdf.
- Department of Labor Wage and Hour Division Davis Bacon Fact Sheet: www.dol.gov/whd/regs/compliance/whdfs66.pdf.
- Wage Determinations: www.wdol.gov.
- Prevailing Wage Resource Book: www.dol.gov/whd/recovery/pwr/toc.htm.

