CPRG Frequently Asked Questions Guidance Document: Davis-Bacon and Related Acts

The following frequently asked questions (FAQs) are for the US Environmental Protection Agency's (EPA) Climate Pollution Reduction Grants (CPRG) Program. Responses are based on Department of Labor regulations and guidance on Davis-Bacon and Related Acts (DBRA) in consultation with the EPA Office of General Counsel and Office of Grants and Debarment.

The FAQs are to assist federal financial assistance recipients in determining whether and how Davis-Bacon labor standards apply to projects receiving federal funding. The FAQs will be updated as necessary, and for the most up-to-date information on DBRA requirements, visit the EPA's DBRA website: https://www.epa.gov/grants/davis-bacon-and-related-acts-dbra.

CPRG grant recipients are encouraged to work with their EPA project officer as questions arise. Questions may also be submitted to CPRG@epa.gov.

The FAQs in this document apply to the implementation of Davis-Bacon labor standards for the CPRG Program unless otherwise superseded by regulation, statute, or other applicable guidance.

This document is organized to provide responses to questions in the following topic areas:

SECTION 1: GENERAL INFORMATION

1. What are Davis-Bacon and Related Acts (DBRA)?

The Davis-Bacon Act requires that all contractors and subcontractors performing construction, alteration or repair (including painting or decorating) work under federal contracts in excess of $2,000 pay their laborers and mechanics not less than the locally prevailing wage and fringe benefits for corresponding work on similar projects in the area. Under the Davis-Bacon and Related Acts, the U.S. Department of Labor is responsible for determining prevailing wages, issuing regulations and standards to be observed by federal agencies that award or fund projects subject to Davis-Bacon labor standards, and overseeing consistent enforcement of the Davis-Bacon labor standards.

The Davis-Bacon Act prevailing wage provisions apply to the "Related Acts," under which federal agencies assist construction projects through grants, loans, loan guarantees, and insurance. The Clean Air Act (CAA), from which the authority for CPRG is derived, codifies the Davis-Bacon prevailing wage standards in Section 314 and is a "Related Act." This language requires all programs established or funded under the CAA to comply with the prevailing wage requirements of the Davis-Bacon Act.

For prime contracts in excess of $100,000, contractors and subcontractors must also, under the provisions of the Contract Work Hours and Safety Standards Act, as amended, pay laborers and mechanics, including guards and watchmen, at least one and one-half times their regular rate of pay for all hours worked over 40 in a workweek. The overtime provisions of the Fair Labor Standards Act may also apply to Davis-Bacon Act-covered contracts.

2. What is the effective date of DBRA?

The Davis-Bacon Act (DBA or Act) was enacted in 1931. In August 2023, the U.S. Department of Labor (DOL) published updates titled, "Updating the Davis-Bacon and Related Acts Regulations." The regulations, 29 CFR Parts 1, 3, and 5, set forth rules for the administration and enforcement of the Davis-Bacon labor standards that apply to federal and federally assisted construction projects. The most recent updates became effective on October 23, 2023.

3. Does DBRA end or sunset?

No. For questions on how long DBRA might apply to a specific contract, please see the answer for the FAQ question, "*How is 'Purpose, Time, and Place' (PTP) used to determine the scope of a project?*" for details. In short, if the work is part of the project, then DBRA continues to apply until the project ends, according to the PTP test.

4. Where can I find more information about DBRA?

Here are several useful references:

- Davis-Bacon and Related Acts (DBRA) | US EPA
- Guidance on the Implementation of Davis-Bacon in EPA Funded Construction Grants | US EPA

- DBRA Requirements for EPA Subrecipients | US EPA
- Presentations: Prevailing Wage Seminars | U.S. Department of Labor (dol.gov)
- Davis-Bacon and Related Acts | U.S. Department of Labor (dol.gov)
- Federal Register: Updating the Davis-Bacon and Related Acts Regulations
- SAM.gov | Wage Determinations

SECTION 2: APPLICABILITY

1. Under what circumstances do Davis-Bacon and Related Acts (DBRA) apply?

DBRA applies Davis-Bacon labor standards to contractors and subcontractors performing on CPRG funded contracts for construction, alteration, or repair (including painting and decorating). Please note that Davis-Bacon labor standards do not apply when a state, local, or Tribal government is using its own employees to complete the construction project.

For prime contracts of **more than $100,000**, contractors and subcontractors must also adhere to the provisions of the Contract Work Hours and Safety Standards Act.

Overtime provisions of the Fair Labor Standards Act may also apply to Davis-Bacon Act-covered contracts.

Note that DBRA applies regardless of whether the proper Terms and Conditions or contract clauses were included in the grant's Terms and Conditions, subawards, or contracts.

2. How is "construction" defined for DBRA?

Under CAA section 314 (42 USC 7614), any activities that meet the definition of construction under 29 CFR 5.2 are subject to Davis-Bacon labor standards. 29 CFR 5.2 defines the term "*construction, prosecution, completion, or repair*" to include all types of work done on a particular "building or work," as defined in 29 CFR 5.2, at the worksite by laborers and mechanics employed by a contractor or subcontractor. This may include the following:

- Altering, remodeling, worksite installation of items fabricated offsite.
- Painting and decorating.
- Manufacturing or furnishing of materials, articles, supplies or equipment.
- Covered transportation, including:
    - Transportation that takes place entirely within the worksite.
    - Transportation of one or more entire portions or modules (which just require installation or final assembly) of the building or work between a secondary construction site established specifically for the contract or project, where these portions or modules are constructed, and the primary construction site where the building or work in the contract will remain.
    - Transportation between adjacent dedicated support facilities that are dedicated exclusively to the contract or project, or locations where workers direct traffic around or away from the primary construction site.
- Demolition and/or removal, under any of the following circumstances:
    - Where the demolition and/or removal activities themselves constitute construction, alteration, and/or repair of an existing building or work (including removal of specific parts of a facility, or hazardous waste removal that involves substantial earth moving).

- Where future construction covered in whole or in part by DBRA labor standards is contemplated at the site of the demolition or removal, either as part of the same contract or as part of a future contract.

Note that for purposes of the CPRG program, the term "construction" or "construction, alteration, and repair" refers to the activities listed in 29 CFR 5.2.

Note also that except for transportation that constitutes "covered transportation" as defined above, construction, prosecution, completion, or repair does not include the transportation of materials or supplies to or from the site of the work.

Finally, covered "construction" activities may be categorized as "contractual" rather than "construction" on an SF-424A form. DBRA requires compliance with Davis-Bacon labor standards even if the project is listed under the "contractual" category.

3. Does DBRA apply to incidental construction?

DBRA does not require compliance with Davis-Bacon labor standards for construction work that is incidental to the furnishing of supplies or equipment if the construction work is so merged with non-construction work or so fragmented in terms of the locations or time spans of its performance that the construction work is not capable of being segregated as a separate contractual requirement.

DBRA will apply if:

1. The amount of construction is "more than incidental"; and
2. The construction work is physically or functionally separate from, and could be performed on a segregated basis from, the non-construction work in the project.

Whether installation requires "more than incidental" construction work is a fact-specific determination, but factors to consider are:

- The nature of the prime contract work;
- The type of work performed by the workers performing the installation on the project site (i.e., the techniques, materials, and equipment used and the skills required for the installation)
- Whether the contract contains specific requirements for construction, alteration, or repair work.
- The extent to which structural modifications to buildings are needed to accommodate the installation (i.e., widening entrances, relocating walls, or installing wiring)
- The cost of the installation work.

For more on the factors in this determination, please refer to the "Purpose, Time, and Place" test.

4. What is a "laborer or mechanic" for the purposes of DBRA?

The term "laborer or mechanic" includes at least those workers whose duties are manual or physical in nature (including those workers who use tools or who are performing the work of a trade), as distinguished from mental or managerial. The term "laborer" or "mechanic" includes apprentices, helpers, and, in the case of contracts subject to the Contract Work Hours and Safety Standards Act, watchpersons or guards.

The term does not apply to workers whose duties are primarily administrative, executive, or clerical, rather than manual. Persons employed in a bona fide executive, administrative, or professional capacity as defined in 29 CFR part 541 are not deemed to be laborers or mechanics. Forepersons who devote more than 20% of their time during a workweek to mechanic or laborer duties, and who do not meet the criteria of part 541, are laborers and mechanics for the time spent to such duties.

5. What is a "project" for purposes of DBRA?

The word "project" may replace and broaden the term "contract for construction" found in the Davis-Bacon Act. Use of the term "project" in a DBRA provision broadens the application of Davis-Bacon labor standards to contracts for activities "needed to undertake and complete the project."[1] Further, EPA interprets a "project" as consisting of all associated activities regardless of the number of contracts or financial awards involved so long as all are closely related in purpose, time, and place. As long as activities are closely related in purpose, time, and place, all wages associated with that project are subject to DBRA wage requirements, even if the costs are listed in the "Contractual" budget category and not the "Construction" budget category of an SF-424A budget table. In situations where activities are clearly undertaken in separate phases that are distinct in purpose, time, and place, separate projects would carry separate requirements. The 40 CFR 33.103 definition of "c*onstruction"* remains the EPA standard for determining how to categorize costs for the purposes of the SF-424A budget table.

6. How is "Purpose, Time, and Place" (PTP) used to determine the scope of a project?

When questions arise regarding the extent of a project, EPA will use a "Purpose, Time, and Place" (PTP) test to determine DBRA applicability.[2]

While each analysis will be fact-specific, generally the PTP test will consider whether, regardless of the number of individual awards, contracts or subawards, the activities funded are closely related in purpose, time, and place. The PTP test considers whether the activities are integrally and proximately related to the whole, but also recognizes that many activities are undertaken in segregable phases that are distinct in purpose, time, or place.

Purpose: Is the purpose for the funded activity segregable? For example, EPA might issue an award for $50 million. The recipient plans to fund $10 million each in subawards to 5 different subrecipients for

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[1] *See Application of the Davis-Bacon Act to Urb. Dev. Projects That Receive Partial Fed. Funding*, 11 U.S. Op. Off. Legal Counsel 92 (1987).

[2] The PTP test has been used in other similar applications, e.g., by the Department of Labor for applicability of Davis-Bacon labor standards and by the EPA in defining a "project" under the American Iron and Steel requirements that apply to the Clean Water State Revolving Fund and Drinking Water State Revolving Fund programs and the Water Infrastructure Finance and Innovation Act program. See Department of Labor Memorandum dated May 29, 2009, titled "Applicability of Davis-Bacon labor standards to federal and federally-assisted construction work funded in whole or in part under provisions of the American Recovery and Reinvestment Act of 2009" (DOL ARRA DB Memorandum).

different projects. The purpose of the financial assistance to each subrecipient is distinct. Therefore, each subaward would be considered a distinct "project" for DBRA compliance.

Time: Is the timing of the funded activity distinct? For example, EPA issues funds that were used to install a more energy efficient HVAC system , and then 14 months later, the HVAC compressor had to be replaced. Despite the awarded funds being issued to the same recipient for work done in the same place and arguably the same purpose, there is a clear break in the time when the work is being performed and the work involved in each would be treated as distinct.

Place: Is the location of the funded activity distinct? For example, EPA award monies are directed through a primary recipient to two different school districts. The project conducted by one school district would be in a different location than the project conducted by the other school district.

7. If I am a subrecipient, but I contract with an entity, does DBRA still apply?

Yes. When recipients of EPA awards provide further subawards or subcontracts, they must ensure those subrecipients are also aware of, and comply with, DBRA. Recipients must ensure that a link to the DBRA Requirements for EPA Subrecipients are included on all subawards and subcontracts and are also responsible for the oversight of sub-awardees to ensure those subrecipients also comply with DBRA requirements.

8. If my project is only partially funded by a CPRG implementation grant, is the non-CPRG-funded portion of my project also subject to DBRA?

Yes. Any project that is funded in whole or in part with federal assistance under the Clean Air Act must comply with DBRA requirements if the contract for construction is more than $2,000. There is no "portion" that does not need to satisfy the DBRA requirements.

Note that even when only non-construction elements of a project receive CAA assistance, the construction activities on that project become subject to the DBRA.

9. Does DBRA apply to employees of Tribal entities, state government entities, or local government entities that receive a CPRG implementation grant?

According to DOL, DBRA does not apply with regard to CPRG when a government entity (Tribal, state, or local) is using their own employees to complete the construction project. DBRA only applies to the contractors of the construction project, even if the contractor or subcontractor is also a member of the Tribe that received the grant.

If a project includes construction work to be conducted by a contractor *and* construction work to be conducted by government employees (Tribal or otherwise), Davis-Bacon labor standards would not apply to the work performed by the employees of the government agency (Tribal or otherwise), but would apply to anyone working for a contractor or subcontractor that is performing on the project (even if the contractor or subcontractor is also a member of the Tribe that received the grant).

10. Do DBRA rates apply to apprentices?

Apprentices can work at less than the predetermined rate for the work they perform when they are employed under and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship (OA), or with a State Apprenticeship Agency recognized by the OA, in accordance with the terms of the apprenticeship program.

A person who is not individually registered in the program, but who has been certified by the OA or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice, will be permitted to work at less than the predetermined rate for the work they perform in the first 90 days of probationary employment as an apprentice in such a program.

In the event the OA or an OA-recognized State Apprenticeship Agency withdraws approval of an apprenticeship program, the contractor will no longer be permitted to use apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

11. Would program beneficiaries receiving a participant support cost (PSC) that includes construction (e.g., EV chargers and their installation) need to meet Davis-Bacon labor standards?

Individuals/businesses who are solely receiving a subsidy or rebate under a state, local, Tribal, or territorial PSC program are program beneficiaries and not subrecipients or contractors receiving a federal award. The definitions of *Subrecipient* at 2 CFR 200.1 and *Participant support cost* at 2 CFR 1500.1(a)(2) as interpreted in the EPA Guidance on Participant Support Costs expressly distinguish subrecipients from program beneficiaries, and DBRA's language specifically applies to contractors, which in turn are narrowly defined in 2 CFR 200.1 as entities receiving a contract from a recipient or subrecipient. However, if the program beneficiary is required to use a contractor (one hired by the state, local, Tribal, or territorial government using CPRG funds) for the installation of the EV charger in order to receive the subsidy or rebate, Davis-Bacon labor standards would apply to the work performed by the contractor.

12. If a Tribal government procures contractor support outside of their government, then DBRA applies to their contractors. However, if part of the work is performed by a Tribal LLC under the control of the Tribe, would DBRA apply? In such cases, the workers may not be counted as employees of the Tribal government, but part of the LLC's profits might go back to the Tribal government.

Tribally-owned businesses need to adhere to Davis-Bacon labor standards when performing work that falls under DBRA coverage. This is also true when businesses or entities act as separate entities from governments, even though such businesses or entities may provide income to the government.

However, in certain circumstances (such as those involving tribal utilities or section 17 corporations), entities might be considered an arm of the tribal government. Davis-Bacon labor standards may not apply in such circumstances. In such cases, grantees should consult with their EPA project officer.

SECTION 3: COMPLIANCE & REPORTING

1. Who is responsible for DBRA compliance and what are they responsible for?

Any non-Federal entity that accepts a CPRG grant is considered a grant recipient. Some grant recipients may further contract work or may provide subawards to other entities. In such cases, grant recipients are considered the "contracting agency" and are responsible for oversight of DBRA compliance for contractors and subawardees, and should collect and review certified payroll reports for all such work. Grant recipients and subrecipients are required to ensure federal award funds are used consistently with federal law, including the 42 USC 7614 and 2 CFR 200.332(a)(2).

Additionally, recipients should make sure that the wage determination and the Davis-Bacon poster (WH–1321) are posted at all times at the site of the work in a prominent and accessible place where it can easily be seen by workers.

2. Is EPA the contracting agency responsible for collecting DBRA-related payroll reports?

EPA considers CPRG implementation grant recipients to be the "contracting agencies" for purposes of DBRA implementation under the CPRG program.

3. What kinds of records are required to be collected by contracting agencies?

Contracting agencies may collect two sets of documents from contractors: basic records and certified payrolls.

Basic Records

Contractors must keep basic records that include payroll information over the course of the grant award. Contractors have to provide these basic records to the contracting agency upon request but do not have to provide them to the agency routinely. Such records must contain the following for each worker under DBRA:

- Name
- Social Security number
- Last known address
- Telephone number
- Email address
- Classification(s) of work actually performed
- Hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents)
- Records relating to apprenticeship registration
- Daily and weekly number of hours actually worked in total and on each covered contract
- Deductions made, and
- Actual wages paid.

Certified Payrolls

For every week that DBRA-covered work is performed, all contractors must submit certified payrolls to their contracting agency. In the case of subcontractors, prime contractors are responsible for submitting all subcontractors' certified payroll. The certified payrolls must fill out all the information listed above, except that full Social Security numbers and last known addresses, telephone numbers, and email addresses must **not** be included on weekly transmittals (*see Appendix 4: Optional Form WH-347 for an example template that such a payroll may follow)*.

Each certified payroll submitted must be accompanied by a "Statement of Compliance" signed by the contractor or subcontractor (or their agent who pays or supervises the payment of the contract's workers) and must certify the following:

- That the certified payroll for the payroll period contains the information listed above, the appropriate information and basic records are being maintained, and such information and records are correct and complete;
- That each laborer or mechanic (including each helper and apprentice) working on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned; and,
- That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification(s) of work actually performed, as specified in the applicable wage determination incorporated into the contract.

A contracting agency or prime contractor may allow contractors to submit certified payrolls through an electronic system as long as this system requires a legally valid electronic signature; the system allows the contractor, the contracting agency, and the Department of Labor to access the certified payrolls upon request for at least 3 years after the work on the prime contract has been completed; and the contracting agency or prime contractor permits other methods of submission in situations where the contractor is unable or limited in its ability to use or access the electronic system.

4. Do the DBRA records need to include benefits in addition to wages?

Whenever a contractor is claiming any fringe benefit credit towards their prevailing wage obligation, they must maintain a record of their rates of contributions or costs anticipated for the fringe benefits - so they will generally be required to keep a record of their contributions to fringe benefit plans/costs of providing fringe benefits directly, what those fringe benefit plans are, and how they computed the hourly credit for those contributions/costs as stated in 29 CFR 5.5(a)(3)(i)(B).

Instead of the traditional funded fringe benefit plan, it may be possible that the contractor is claiming a fringe benefit credit for an unfunded plan. An unfunded plan is the term used when the contractor claims a credit for the reasonably anticipated costs of benefits that they provide directly to workers, as opposed to the more traditional funded fringe benefit plan where a contractor makes irrevocable contributions to a third-party plan or trustee, who is then responsible for paying out all benefit claims.

If the contractor is claiming that fringe benefit credit for an unfunded plan, which requires specific approval from DOL under 29 CFR 5.5(a)(1)(v), the contractor must maintain records that show the following:

- The commitment to provide such benefits is enforceable,

- The plan or program is financially responsible,
- The plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits.

Note that these fringe benefits records are part of the basic records that the contractor must maintain and provide to the contracting agency upon request; they are not part of the certified payrolls that are routinely submitted to contracting agencies.

Also note that benefits covered under the Davis-Bacon Act may include payment or insurance for medical or hospital care, pensions on retirement or death, injuries or illness resulting from occupational activity, for unemployment benefits, life insurance, disability and sickness insurance, or accident insurance, for vacation and holiday pay, for defraying the costs of apprenticeship or other similar programs, or for other bona fide fringe benefits.

5. How long should contractors keep compliance documentation?

Contractors and subcontractors should keep contracts, subcontracts, and related documents during the work and for a period of 3 years after all of the work on the prime contract has been completed. For the same amount of time, contractors should also preserve all certified payroll and other basic records.

6. Is there suggested DBRA language for contracts and assistance agreements?

The EPA provides Contract Provisions for Davis-Bacon and Related Acts. Link(s) to these contract provisions for Davis-Bacon and Related Acts (DBRA) must be included in all contracts to which Davis-Bacon and Related Acts apply, unless a link with identical information, an attachment with identical information, or the language in these contract provisions is provided verbatim in the contracts, as required by 29 CFR 5.5.

7. For Wage Determination categories, do basements count as "floors"?

Under DBRA, different construction categories may require different wage determinations. One of four categories – building, residential, highway, and heavy – is applied for wage determinations depending on a variety of factors. The "residential" construction category consists of projects involving the construction, alteration, or repair of single-family houses or apartment buildings of no more than four floors in height (information on other categories is hyperlinked here).

A lowermost floor is considered to be the first "floor" for wage determination purposes in any of the following circumstances:

1) it is
   (a) **primarily above ground level** on **one or more sides**, and
   (b) contains **at least 50% living accommodations** or **related non-residential uses**, such as laundry space, recreation/hobby rooms, commercial use, and/or corridor space;
2) if it is **primarily above ground level** on **two or more sides,** regardless of how the space is used;
3) if it contains the **main entrance** to the building; or

4) if it is used for **apartment space** in a way **substantially similar to the upper floors**.

Floors wholly below ground level used for storage, parking, mechanical systems/equipment, etc., are considered basement floors which are **not** used in determining a building's height. More information on the "residential" construction category is hyperlinked here.

8. *Would a non-utility scale neighborhood solar project be categorized as "heavy" construction in terms of DBRA Wage Determination categories?*

It would depend on the work being performed. "Heavy" is a catch-all grouping that includes projects not properly classified under the other three types of construction. Smaller ground-mounted arrays of solar panels could still be considered as "heavy." However, installation of solar panels on the roof of a building or residence would generally fall under the "building" or "residential" wage determination categories.
These categories are defined as the following:

- "Building" includes sheltered enclosures with walk-in access for the purpose of housing, persons, machinery, or supplies.
- "Residential" includes construction, alteration or repair of single-family houses or apartment buildings of no more than four stories in height.

9. *Are contractors or non-federal agencies ever able to make requests for wage determinations?*

Contracting agencies can request project wage determinations when these are necessary. A project wage determination

- Is issued at the specific of a contracting agency using a Standard Form (SF) 308,
- Is applicable to the named project only, and
- Expires 180 calendar days from the date of issuance unless it is incorporated into a contract within that timeframe or an extension of the expiration date is requested by the agency and approved by the Department of Labor's Wage and Hour Division.

Note that general wage determinations are rates determined by the Wage and Hour Division to be prevailing in a specific geographic area for the type of construction described. These are found at *https://sam.gov/content/home* and might apply to most projects.

If a general wage determination applies to the contract, but the wage determination that was incorporated into the contract does not contain a classification of workers that is needed to complete the construction, the contractor must submit a request for the addition of the needed classification(s), together with proposed wage rates and fringe benefits that bear a reasonable relationship to the wage determination, to the contracting agency. This is called a "conformance" request. Contractors initiate conformance requests, but contracting agencies must then submit these requests to the Department of Labor and also indicate to the Department of Labor whether they agree with the contractor's request.

10. ***What are the consequences for contractors who may have violated DBRA-related clauses in their contract?***

When a federal or contracting agency finds that a contractor has underpaid workers and has thereby violated the DBRA-related clauses in their contract, the DBRA restitution process gives contractors the chance to voluntarily come into compliance and pay the backwages. If contractors refuse to do so, then generally withholding is the only way that to obtain payment of backwages. Most contractors do prefer to make the voluntary payment rather than having their contract payments withheld, but withholding is still sometimes necessary.

11. ***Suppose that construction has started on a project before a contract is awarded, and in this scenario, the contract is considered retroactively to apply to the entire construction period. In this case, how might wage determinations be made for that construction?***

As stated in 29 CFR 1.6(g), if the contract is awarded after the construction starts, and the Davis-Bacon labor standards apply, then Davis-Bacon prevailing wage requirements will apply retroactively to the date of the award of the construction contract or the start of construction, whichever comes first. However, the Federal agency can also apply for an exception for this retroactive application, which the Department of Labor Wage and Hour Administrator may grant if it is necessary and proper in the public interest to prevent injustice or undue hardship, as long as the Administrator finds no evidence of intent to apply for the federal funding prior to contract award or start of construction.

APPENDIX 1: DBRA REQUIREMENTS FOR CONTRACTORS AND SUBCONTRACTORS UNDER EPA GRANTS

DBRA Requirements for Contractors and Subcontractors Under EPA Grants

The contractor acknowledges that by entering into this contract with a contracting agency, funded by an Environmental Protection Agency assistance agreement (grant), the contractor agrees to comply with the following terms and conditions in accordance with 29 CFR 5.5, if this contract is for activities covered under Davis-Bacon and Related Acts (DBRA) and exceeds (or will exceed) $2,000. Definitions for many of the terms used below are provided in 29 CFR 5.2.

For the purposes of this clause, non-Federal entities that enter into contracts with contractors are considered "contracting agencies." Contracting agencies may be EPA grant recipients and/or subrecipients at any tier (including borrowers). "Contracting officers" work for contracting agencies.

(a) Required Contract Clauses

(1) Minimum Wages

(i) Wage rates and fringe benefits

All laborers and mechanics employed or working upon the site of the work (or otherwise working in construction or development of the project under a development statute), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of basic hourly wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

As provided in paragraphs (d) and (e) of this section, the appropriate wage determinations are effective by operation of law even if they have not been attached to the contract.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under the Davis-Bacon Act (40 U.S.C. 3141(2)(B)) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(v) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics must be paid the appropriate wage rate and fringe benefits on the wage determination for the classification(s) of work actually performed, without regard to skill, except as provided in paragraph (a)(4) of this section.

Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which

work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (a)(1)(iii) of this section) and the Davis-Bacon poster (WH–1321) must be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii) Frequently recurring classifications

(A) In addition to wage and fringe benefit rates that have been determined to be prevailing under the procedures set forth in 29 CFR Part 1, a wage determination may contain, pursuant to § 1.3(f), wage and fringe benefit rates for classifications of laborers and mechanics for which conformance requests are regularly submitted pursuant to paragraph (a)(1)(iii) of this section, provided that:

(1) The work performed by the classification is not performed by a classification in the wage determination for which a prevailing wage rate has been determined;

(2) The classification is used in the area by the construction industry; and

(3) The wage rate for the classification bears a reasonable relationship to the prevailing wage rates contained in the wage determination.

(B) The Administrator will establish wage rates for such classifications in accordance with paragraph (a)(1)(iii)(A)(3) of this section. Work performed in such a classification must be paid at no less than the wage and fringe benefit rate listed on the wage determination for such classification.

(iii) Conformance

(A) The contracting officer must require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract be classified in conformance with the wage determination. Conformance of an additional classification and wage rate and fringe benefits is appropriate 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 used 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) The conformance process may not be used to split, subdivide, or otherwise avoid application of classifications listed in the wage determination.

(C) 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 of the action taken will be sent by the contracting officer by email to *DBAconformance@dol.gov*. The Administrator, or an authorized representative, will

approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30–day period that additional time is necessary.

(D) 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 will, by email to *DBAconformance@dol.gov*, refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30–day period that additional time is necessary.

(E) The contracting officer must promptly notify the contractor of the action taken by the Wage and Hour Division under paragraphs (a)(1)(iii)(C) and (D) of this section. The contractor must furnish a written copy of such determination to each affected worker, or it must be posted as a part of the wage determination. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraph (a)(1)(iii)(C) or (D) of this section must 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.

(iv) Fringe benefits not expressed as an hourly rate

Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor may either pay the benefit as stated in the wage determination or may pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(v) Unfunded plans

If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, in accordance with the criteria set forth in § 5.28, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(vi) Interest

In the event of a failure to pay all or part of the wages required by the contract, the contractor will be required to pay interest on any underpayment of wages.

(2) Withholding

(i) Withholding requirements

The EPA, grant recipient, subrecipient at any tier, and/or contracting agency may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for the full amount of wages and monetary relief, including interest, required by the clauses set forth in paragraph (a) of this section for violations of this contract, or to satisfy any such liabilities required by any other Federal contract, or federally assisted contract subject to Davis-Bacon labor standards, that is held by the same prime contractor (as defined in § 5.2).

The necessary funds may be withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to Davis-Bacon labor standards requirements and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld.

In the event of a contractor's failure to pay any laborer or mechanic, including any apprentice or helper working on the site of the work (or otherwise working in construction or development of the project under a development statute) all or part of the wages required by the contract, or upon the contractor's failure to submit the required records as discussed in paragraph (a)(3)(iv) of this section, the **EPA, grant recipient, subrecipient at any tier, and/or contracting agency** may on its own initiative and after written notice to the contractor, sponsor, applicant, owner, or other entity, as the case may be, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(ii) Priority to withheld funds

The Department has priority to funds withheld or to be withheld in accordance with paragraph (a)(2)(i) or (b)(3)(i) of this section, or both, over claims to those funds by:

(A) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;

(B) A contracting agency for its reprocurement costs;

(C) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;

(D) A contractor's assignee(s);

(E) A contractor's successor(s); or

(F) A claim asserted under the Prompt Payment Act, 31 U.S.C. 3901–3907.

(3) Records and certified payrolls

(i) Basic record requirements

(A) Length of record retention

All regular payrolls and other basic records must be maintained by the contractor and any subcontractor during the course of the work and preserved for all laborers and mechanics working at the site of the work (or otherwise working in construction or development of the project under a development statute) for a period of at least 3 years after all the work on the prime contract is completed.

(B) Information required

Such records must contain the name; Social Security number; last known address, telephone number, and email address of each such worker; each worker's correct classification(s) of work actually performed; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in 40 U.S.C. 3141(2)(B) of the Davis-Bacon Act); daily and weekly number of hours actually worked in total and on each covered contract; deductions made; and actual wages paid.

(C) Additional records relating to fringe benefits

Whenever the Secretary of Labor has found under paragraph (a)(1)(v) of this section that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in 40 U.S.C. 3141(2)(B) of the Davis-Bacon Act, the contractor must maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits.

(D) Additional records relating to apprenticeship.

Contractors with apprentices working under approved programs must maintain written evidence of the registration of apprenticeship programs, the registration of the apprentices, and the ratios and wage rates prescribed in the applicable programs.

(E) Additional records related to semi-annual summaries - placeholder

(ii) Certified payroll requirements

(A) Frequency and method of submission

The contractor or subcontractor must submit weekly, for each week in which any DBA-or Related Acts-covered work is performed, certified payrolls to the **contracting agency** if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the certified payrolls to the applicant, sponsor, owner, or other entity, as the case may be, that maintains such records, for transmission to the **contracting agency**. The prime contractor is responsible for the submission of all certified payrolls by all subcontractors. A contracting agency or prime contractor may permit or require contractors to submit certified payrolls through an electronic system, as long as the electronic system requires a legally valid electronic signature; the system allows the contractor, the contracting agency, and the Department of Labor to access the certified payrolls upon request for at least 3 years after the work on the prime

contract has been completed; and the contracting agency or prime contractor permits other methods of submission in situations where the contractor is unable or limited in its ability to use or access the electronic system.

(B) Information required

The certified payrolls submitted must set out accurately and completely all of the information required to be maintained under paragraph (a)(3)(i)(B) of this section, except that full Social Security numbers and last known addresses, telephone numbers, and email addresses must not be included on weekly transmittals. Instead, the certified payrolls need only include an individually identifying number for each worker (e.g., the last four digits of the worker's Social Security number). The required weekly certified payroll information may be submitted using Optional Form WH–347 or in any other format desired. Optional Form WH–347 is available for this purpose from the Wage and Hour Division website at *https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/wh347.pdf* or its successor website. It is not a violation of this section for a prime contractor to require a subcontractor to provide full Social Security numbers and last known addresses, telephone numbers, and email addresses to the prime contractor for its own records, without weekly submission by the subcontractor to the sponsoring government agency (or the applicant, sponsor, owner, or other entity, as the case may be, that maintains such records).

(C) Statement of Compliance

Each certified payroll submitted must be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor, or the contractor's or subcontractor's agent who pays or supervises the payment of the persons working on the contract, and must certify the following:

> *(1)* That the certified payroll for the payroll period contains the information required to be provided under paragraph (a)(3)(ii) of this section, the appropriate information and basic records are being maintained under paragraph (a)(3)(i) of this section, and such information and records are correct and complete;
>
> *(2)* That each laborer or mechanic (including each helper and apprentice) working on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR part 3; and
>
> *(3)* That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification(s) of work actually performed, as specified in the applicable wage determination incorporated into the contract.

(D) Use of Optional Form WH–347

The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH–347 will satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(C) of this section.

(E) Signature

The signature by the contractor, subcontractor, or the contractor's or subcontractor's agent must be an original handwritten signature or a legally valid electronic signature.

(F) Falsification

The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under 18 U.S.C. 1001 and 31 U.S.C. 3729.

(G) Length of certified payroll retention

The contractor or subcontractor must preserve all certified payrolls during the course of the work and for a period of 3 years after all the work on the prime contract is completed.

(iii) Contracts, subcontracts, and related documents

The contractor or subcontractor must maintain this contract or subcontract and related documents including, without limitation, bids, proposals, amendments, modifications, and extensions. The contractor or subcontractor must preserve these contracts, subcontracts, and related documents during the course of the work and for a period of 3 years after all the work on the prime contract is completed.

(iv) Required disclosures and access

(A) Required record disclosures and access to workers

The contractor or subcontractor must make the records required under paragraphs (a)(3)(i) through (iii) of this section, and any other documents that the **EPA, recipient, or subrecipient at any tier, and/or contracting agency**, or the Department of Labor deems necessary to determine compliance with the labor standards provisions of any of the applicable statutes referenced by § 5.1, available for inspection, copying, or transcription by authorized representatives of the **EPA, recipient, or subrecipient at any tier, and/or contracting agency**, or the Department of Labor, and must permit such representatives to interview workers during working hours on the job.

(B) Sanctions for non-compliance with records and worker access requirements

If the contractor or subcontractor fails to submit the required records or to make them available, or refuses to permit worker interviews during working hours on the job, the Federal agency may, after written notice to the contractor, sponsor, applicant, owner, or other entity, as the case may be, that maintains such records or that employs such workers, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available, or to permit worker interviews during working hours on the job, may be grounds for debarment action pursuant to

§ 5.12. In addition, any contractor or other person that fails to submit the required records or make those records available to WHD within the time WHD requests that the records be produced will be precluded from introducing as evidence in an administrative proceeding under 29 CFR part 6 any of the required records that were not provided or made available to WHD. WHD will take into consideration a reasonable request from the contractor or person for an extension of the time for submission of records. WHD will determine the reasonableness of the request and may consider, among other things, the location of the records and the volume of production.

(C) Required information disclosures

Contractors and subcontractors must maintain the full Social Security number and last known address, telephone number, and email address of each covered worker, and must provide them upon request to the **Environmental Protection Agency** if the agency is a party to the contract, or to the Wage and Hour Division of the Department of Labor. If the Federal agency is not such a party to the contract, the contractor, subcontractor, or both, must, upon request, provide the full Social Security number and last known address, telephone number, and email address of each covered worker to the applicant, sponsor, owner, or other entity, as the case may be, that maintains such records, for transmission to the **EPA, recipient, or subrecipient at any tier, contracting agency**, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or other compliance action.

(4) Apprentices and Equal Employment Opportunity

(i) Apprentices

A) Rate of pay

Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship (OA), or with a State Apprenticeship Agency recognized by the OA. A person who is not individually registered in the program, but who has been certified by the OA or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice, will be permitted to work at less than the predetermined rate for the work they perform in the first 90 days of probationary employment as an apprentice in such a program. In the event the OA or a State Apprenticeship Agency recognized by the OA withdraws approval of an apprenticeship program, the contractor will no longer be permitted to use apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(B) Fringe benefits

Apprentices must be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage

determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringe benefits must be paid in accordance with that determination.

(C) Apprenticeship ratio

The allowable ratio of apprentices to journey workers on the job site in any craft classification must not be greater than the ratio permitted to the contractor as to the entire work force under the registered program or the ratio applicable to the locality of the project pursuant to paragraph (a)(4)(i)(D) of this section. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in paragraph (a)(4)(i)(A) of this section, must be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under this section must be paid not less than the applicable wage rate on the wage determination for the work actually performed.

(D) Reciprocity of ratios and wage rates

Where a contractor is performing construction on a project in a locality other than the locality in which its program is registered, the ratios and wage rates (expressed in percentages of the journey worker's hourly rate) applicable within the locality in which the construction is being performed must be observed. If there is no applicable ratio or wage rate for the locality of the project, the ratio and wage rate specified in the contractor's registered program must be observed.

(ii) Equal employment opportunity

The use of apprentices and journey workers under this part must be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) is reserved

(6) Subcontracts

The contractor or subcontractor must insert in any subcontracts the clauses contained in paragraphs (a)(1) through (11) of this section or a link to the **DBRA Requirements for Contractors and Subcontractors Under EPA Grants** document on EPA's Contract Provisions for Davis-Bacon and Related Acts webpage, along with the applicable wage determination(s) and such other clauses or contract modifications as the Environmental Protection Agency may by appropriate instructions require, and a clause requiring the subcontractors to include these clauses and wage determination(s) in any lower tier subcontracts. The prime contractor is responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this section. In the event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and may be subject to debarment, as appropriate.

(7) – (9) are reserved

10) Certification of Eligibility

(i) By entering into this contract, the contractor certifies that neither it nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of 40 U.S.C. 3144(b) or § 5.12(a).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of 40 U.S.C. 3144(b) or § 5.12(a).

(iii) The penalty for making false statements is prescribed in the U.S. Code, Title 18 Crimes and Criminal Procedure, 18 U.S.C. 1001.

(11) Anti-Retaliation

It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

(i) Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the DBA, Related Acts, this part, or 29 CFR part 1 or 3;

(ii) Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under the DBA, Related Acts, this part, or 29 CFR part 1 or 3;

(iii) Cooperating in any investigation or other compliance action, or testifying in any proceeding under the DBA, Related Acts, this part, or 29 CFR part 1 or 3; or

(iv) Informing any other person about their rights under the DBA, Related Acts, this part, or 29 CFR part 1 or 3.

APPENDIX 2: DBRA REQUIREMENTS FOR CONTRACTS IN EXCESS OF $100,000 UNDER EPA GRANTS

Under the Davis-Bacon and Related Acts (DBRA), all contracts awarded under EPA assistance agreements (grants) in excess of $100,000 that involve the employment of mechanics or laborers require contractors and subcontractors to comply with the overtime provisions of the Contract Wage Hours and Safety Standards Act (CWHSSA) at 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations in 29 CFR Part 5 and 2 CFR 200 Appendix II(E). By accepting this contract, you agree to comply with the requirements of CWHSSA described below, in addition to the DBRA Requirements for Contractors Under EPA Grants.

These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence. For the purposes of this provision, the terms "laborers and mechanics" include watchpersons and guards.

(b) Contract Work Hours and Safety Standards Act (CWHSSA).

(1) Overtime requirements

No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; Liability for Unpaid Wages; Liquidated Damages

In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages and interest from the date of the underpayment. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchpersons and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of $31 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1).

(3) Withholding for Unpaid Wages and Liquidated Damages

(i) Withholding process.

The EPA, recipient, or subrecipient at any tier, and/or contracting agency may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for any unpaid wages; monetary relief, including interest; and liquidated damages required by the clauses set forth in this paragraph (b) on this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract subject to the Contract Work Hours and Safety Standards Act that is held by the same prime

contractor (as defined in § 5.2). The necessary funds may be withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to the Contract Work Hours and Safety Standards Act and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld.

(ii) Priority to withheld funds

The Department has priority to funds withheld or to be withheld in accordance with paragraph (a)(2)(i) or (b)(3)(i) of this section, or both, over claims to those funds by:

(A) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;

(B) A contracting agency for its reprocurement costs;

(C) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;

(D) A contractor's assignee(s);

(E) A contractor's successor(s); or

(F) A claim asserted under the Prompt Payment Act, 31 U.S.C. 3901–3907.

(4) Subcontracts

The contractor or subcontractor must insert in any subcontracts the clauses set forth in paragraphs (b)(1) through (5) of this section and a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor is responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (5). In the event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and associated liquidated damages and may be subject to debarment, as appropriate.

(5) Anti-Retaliation

It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

(i) Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the Contract Work Hours and Safety Standards Act (CWHSSA) or its implementing regulations in this part;

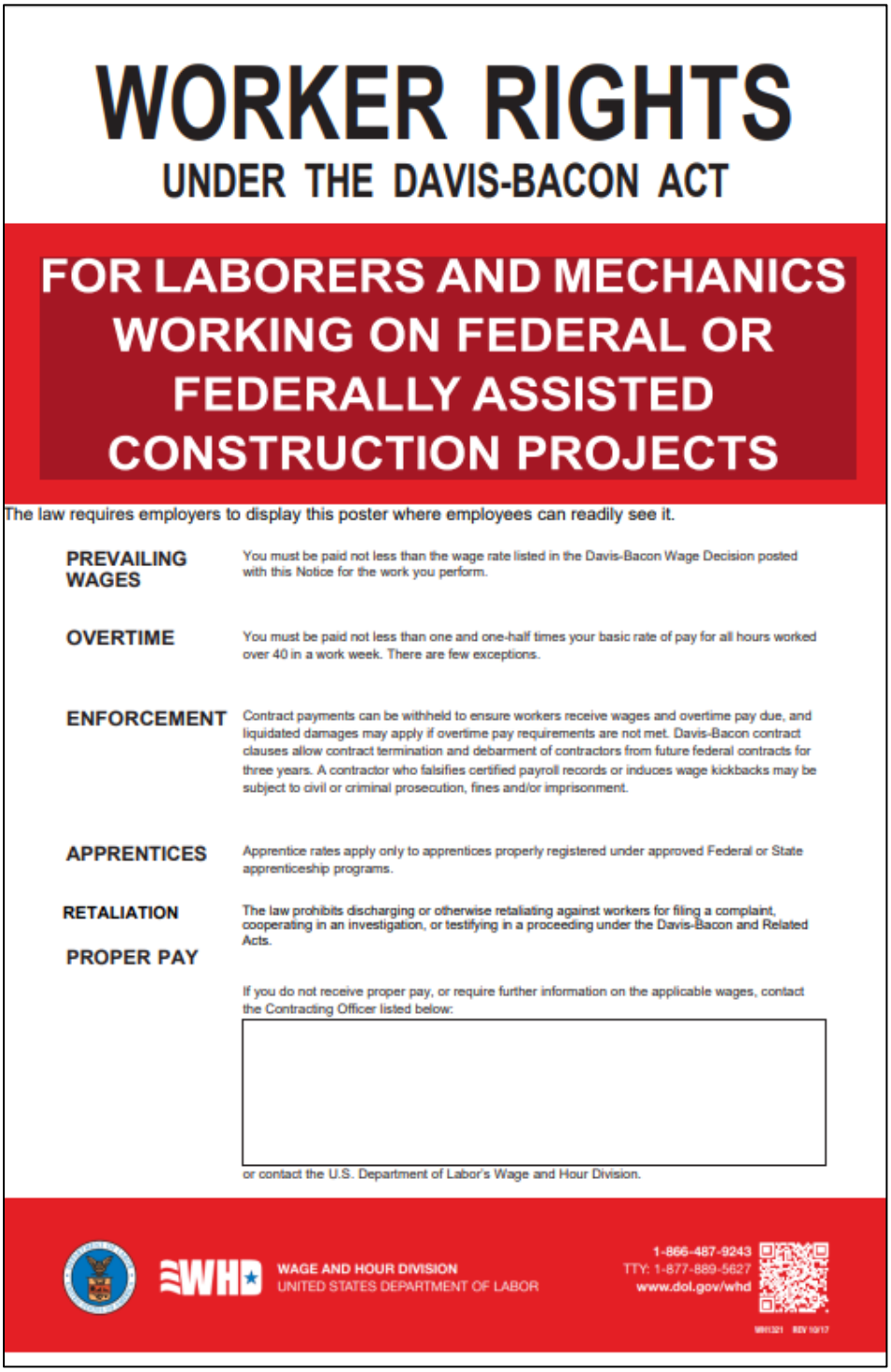
(ii) Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under CWHSSA or this part;

(iii) Cooperating in any investigation or other compliance action, or testifying in any proceeding under CWHSSA or this part; or

(iv) Informing any other person about their rights under CWHSSA or this part.

APPENDIX 3: DAVIS-BACON POSTER TO BE POSTED PROMINENTLY AT WORKSITES

The following is an image of the poster, but to follow Department of Labor regulations, the poster must be downloaded from https://www.dol.gov/agencies/whd/posters/dbra.



WORKER RIGHTS

UNDER THE DAVIS-BACON ACT

FOR LABORERS AND MECHANICS WORKING ON FEDERAL OR FEDERALLY ASSISTED CONSTRUCTION PROJECTS

The law requires employers to display this poster where employees can readily see it.

PREVAILING WAGES — You must be paid not less than the wage rate listed in the Davis-Bacon Wage Decision posted with this Notice for the work you perform.

OVERTIME — You must be paid not less than one and one-half times your basic rate of pay for all hours worked over 40 in a work week. There are few exceptions.

ENFORCEMENT — Contract payments can be withheld to ensure workers receive wages and overtime pay due, and liquidated damages may apply if overtime pay requirements are not met. Davis-Bacon contract clauses allow contract termination and debarment of contractors from future federal contracts for three years. A contractor who falsifies certified payroll records or induces wage kickbacks may be subject to civil or criminal prosecution, fines and/or imprisonment.

APPRENTICES — Apprentice rates apply only to apprentices properly registered under approved Federal or State apprenticeship programs.

RETALIATION — The law prohibits discharging or otherwise retaliating against workers for filing a complaint, cooperating in an investigation, or testifying in a proceeding under the Davis-Bacon and Related Acts.

PROPER PAY — If you do not receive proper pay, or require further information on the applicable wages, contact the Contracting Officer listed below:

or contact the U.S. Department of Labor's Wage and Hour Division.

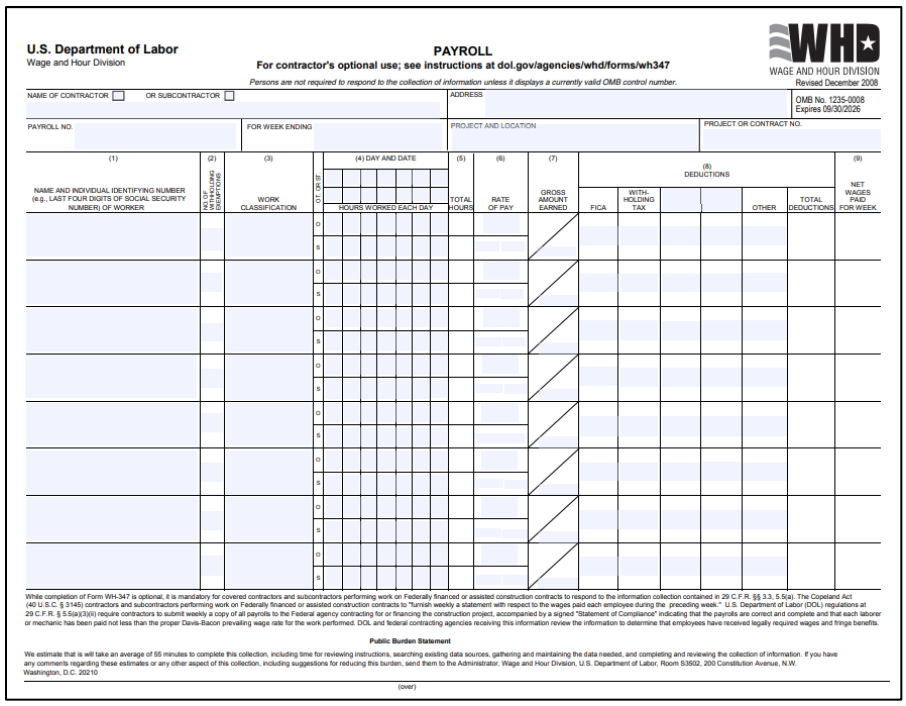
WHD WAGE AND HOUR DIVISION
UNITED STATES DEPARTMENT OF LABOR

1-866-487-9243
TTY: 1-877-889-5627
www.dol.gov/whd

WH1321 REV 10/17

APPENDIX 4: OPTIONAL FORM WH-347 (PAYROLL FORM)

The following is an image of the Optional Form, which contracting agencies can choose to have contractors or subcontractors fill out for payroll submissions. The second image is the compliance statement on the back of the form. A fillable-PDF version of the form can be found at https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/wh347.pdf.



U.S. Department of Labor
Wage and Hour Division

PAYROLL
For contractor's optional use; see instructions at dol.gov/agencies/whd/forms/wh347

Persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

WAGE AND HOUR DIVISION
Revised December 2008

NAME OF CONTRACTOR ☐ OR SUBCONTRACTOR ☐ | ADDRESS | OMB No. 1235-0008 Expires 09/30/2026

PAYROLL NO. | FOR WEEK ENDING | PROJECT AND LOCATION | PROJECT OR CONTRACT NO.

(1) NAME AND INDIVIDUAL IDENTIFYING NUMBER (e.g., LAST FOUR DIGITS OF SOCIAL SECURITY NUMBER) OF WORKER	(2) NO. OF WITHHOLDING EXEMPTIONS	(3) WORK CLASSIFICATION	(4) DAY AND DATE — DAY	HOURS WORKED EACH DAY	(5) TOTAL HOURS	(6) RATE OF PAY	(7) GROSS AMOUNT EARNED	(8) DEDUCTIONS — FICA	WITH-HOLDING TAX			OTHER	TOTAL DEDUCTIONS	(9) NET WAGES PAID FOR WEEK
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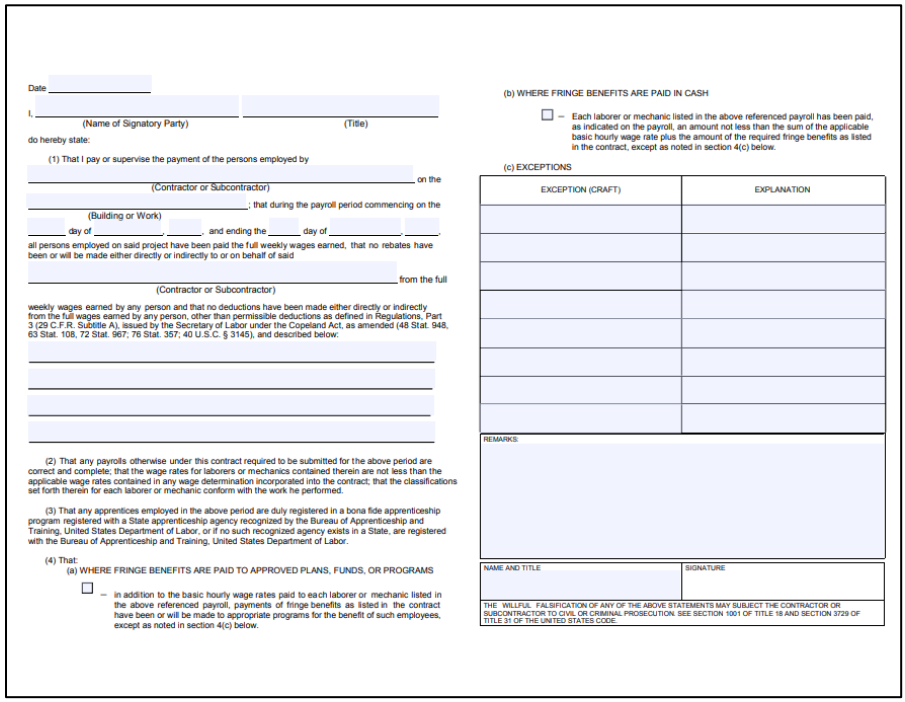
While completion of Form WH-347 is optional, it is mandatory for covered contractors and subcontractors performing work on Federally financed or assisted construction contracts to respond to the information collection contained in 29 C.F.R. §§ 3.3, 5.5(a). The Copeland Act (40 U.S.C. § 3145) contractors and subcontractors performing work on Federally financed or assisted construction contracts to "furnish weekly a statement with respect to the wages paid each employee during the preceding week." U.S. Department of Labor (DOL) regulations at 29 C.F.R. § 5.5(a)(3)(ii) require contractors to submit weekly a copy of all payrolls to the Federal agency contracting for or financing the construction project, accompanied by a signed "Statement of Compliance" indicating that the payrolls are correct and complete and that each laborer or mechanic has been paid not less than the proper Davis-Bacon prevailing wage rate for the work performed. DOL and federal contracting agencies receiving this information review the information to determine that employees have received legally required wages and fringe benefits.

Public Burden Statement

We estimate that it will take an average of 55 minutes to complete this collection, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding these estimates or any other aspect of this collection, including suggestions for reducing this burden, send them to the Administrator, Wage and Hour Division, U.S. Department of Labor, Room S3502, 200 Constitution Avenue, N.W. Washington, D.C. 20210

(over)



Date _____

I, _____ _____
(Name of Signatory Party) (Title)

do hereby state:

(1) That I pay or supervise the payment of the persons employed by

_____ on the
(Contractor or Subcontractor)

_____ ; that during the payroll period commencing on the
(Building or Work)

_____ day of _____, _____, and ending the _____ day of _____, _____, all persons employed on said project have been paid the full weekly wages earned, that no rebates have been or will be made either directly or indirectly to or on behalf of said

_____ from the full
(Contractor or Subcontractor)

weekly wages earned by any person and that no deductions have been made either directly or indirectly from the full wages earned by any person, other than permissible deductions as defined in Regulations, Part 3 (29 C.F.R. Subtitle A), issued by the Secretary of Labor under the Copeland Act, as amended (48 Stat. 948, 63 Stat. 108, 72 Stat. 967; 76 Stat. 357; 40 U.S.C. § 3145), and described below:

(2) That any payrolls otherwise under this contract required to be submitted for the above period are correct and complete; that the wage rates for laborers or mechanics contained therein are not less than the applicable wage rates contained in any wage determination incorporated into the contract; that the classifications set forth therein for each laborer or mechanic conform with the work he performed.

(3) That any apprentices employed in the above period are duly registered in a bona fide apprenticeship program registered with a State apprenticeship agency recognized by the Bureau of Apprenticeship and Training, United States Department of Labor, or if no such recognized agency exists in a State, are registered with the Bureau of Apprenticeship and Training, United States Department of Labor.

(4) That:

(a) WHERE FRINGE BENEFITS ARE PAID TO APPROVED PLANS, FUNDS, OR PROGRAMS

☐ – in addition to the basic hourly wage rates paid to each laborer or mechanic listed in the above referenced payroll, payments of fringe benefits as listed in the contract have been or will be made to appropriate programs for the benefit of such employees, except as noted in section 4(c) below.

(b) WHERE FRINGE BENEFITS ARE PAID IN CASH

☐ – Each laborer or mechanic listed in the above referenced payroll has been paid, as indicated on the payroll, an amount not less than the sum of the applicable basic hourly wage rate plus the amount of the required fringe benefits as listed in the contract, except as noted in section 4(c) below.

(c) EXCEPTIONS

EXCEPTION (CRAFT)	EXPLANATION

REMARKS:

NAME AND TITLE	SIGNATURE

THE WILLFUL FALSIFICATION OF ANY OF THE ABOVE STATEMENTS MAY SUBJECT THE CONTRACTOR OR SUBCONTRACTOR TO CIVIL OR CRIMINAL PROSECUTION. SEE SECTION 1001 OF TITLE 18 AND SECTION 3729 OF TITLE 31 OF THE UNITED STATES CODE.