

IS A DAVIS-BACON WAGE CONFORMANCE REQUEST NEEDED?

Laborers and mechanics performing work on WIFIA projects must be paid no less than the locally prevailing wages based on the construction type and locality in which the work is being performed. The locally prevailing wages are specified in **wage determinations (WDs)**, which are published and updated periodically on sam.gov/wage-determinations www.sam.gov. See [Davis-Bacon Prevailing Wages and Selecting the Right Wage Determinations for WIFIA Projects](#) for instructions on how to do this.

Sometimes, the Department of Labor (DOL) publishes WDs that lack survey data – and subsequently, labor classifications and wages – for certain jobs performed on a construction project. When a laborer or mechanic has specialized skills that do not fall under any other labor classification listed on the relevant WD, a Davis-Bacon wage conformance request is likely needed.

KEY QUESTIONS TO CONSIDER:

Before diving into a Davis-Bacon conformance request, consider the following:

- Is the work physical or manual in nature such that it would fall under “laborer or mechanic”? If not, Davis-Bacon requirements may not apply.
- Is the correct federal wage determination being applied for the work (i.e., proper construction type is being applied - usually Heavy or Building)? If not, pull the proper wage determination and check if the labor classification exists.
- Is the work similar enough, in terms of level of skills, to fit under an existing labor classification? In most cases, the work and skill set are similar enough that using prevailing wages for an existing labor classification is appropriate. If the work is not similar enough to other existing labor classifications in the relevant wage determination, a conformance request will be needed.

Example. If there is no specific classification for a backhoe operator but there is one for an excavator, the type of skill set needed to operate both could be similar enough to apply the wages for an excavator.

Example. If a helper labor classification doesn’t exist, but the skills are general and similar enough to be classified as a general laborer, the wages for a general laborer could apply.

WHO APPROVES CONFORMANCE REQUESTS?

The DOL approves all Davis-Bacon wage conformance requests. The Environmental Protection Agency (EPA) does not have the authority to grant a conformance request to adopt new labor classifications and wages for a WIFIA project. That said, WIFIA program staff are available to assist the borrower with evaluating the need for a request and navigating the DOL’s conformance approval process for a WIFIA project.

WHO SUBMITS A CONFORMANCE REQUEST?

The borrower should prepare and submit a Davis-Bacon conformance request and supporting documentation to the DOL. Submit requests to DBAConformance@dol.gov.

Davis-Bacon Act regulations address processes related to federal construction contracts. Given that the WIFIA program does not issue these types of contracts, and that the borrower has direct oversight on the bidding, award, and execution of construction contracts for the WIFIA project, the borrower is responsible for ensuring the use of proper labor classifications and wages on their contracts and following up with conformance requests as needed.

Regionally, there have been instances where DOL requires the WIFIA program to submit the documentation on the borrower's behalf. If this is the case, contact your WIFIA portfolio manager.

HOW TO COMPLETE A CONFORMANCE REQUEST?

Use [GSA Standard Form 1444](#) (SF-1444) for your conformance request. Having a complete request will limit unnecessary back-and-forth correspondence and optimize your chances of a successful submission. The following screenshots provide a WIFIA guide for completing sections of the form.

Note: The conformance request is for labor classifications missing from the Wage Determination that is tied to the construction contract issued for a project.

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| Request For Authorization Of Additional Classification And Rate | | Check Appropriate Box <input type="checkbox"/> Service Contract <input checked="" type="checkbox"/> Construction Contract | | OMB Control Number: 9000-0066 Expiration Date: 5/31/2027 | |
| Instructions: The Contractor shall complete items 3 through 16, keep a pending copy, and submit the request, in quadruplicate, to the Contracting Officer. | | | | | |
| 1. To: Administrator, Wage And Hour Division U.S. Department Of Labor Washington, DC 20210 | | | 2. From: (Reporting Office) <div style="background-color: #e6f2ff; padding: 5px; text-align: center;">WIFIA Borrower Information</div> | | |
| 3. Contractor <div style="background-color: #e6f2ff; padding: 5px;">Construction Contractor (not the WIFIA Loan, not the Borrower)</div> | | | | 4. Date Of Request <div style="background-color: #e6f2ff; padding: 5px;">Date of Conformance Request</div> | |
| 5. Contract Number <div style="background-color: #e6f2ff; padding: 5px;">Contract ID</div> | 6. Date Bid Opened (Sealed Bidding) <div style="background-color: #e6f2ff; padding: 5px;">Contract Info</div> | 7. Date Of Award <div style="background-color: #e6f2ff; padding: 5px;">Contract Info</div> | 8. Date Contract Work Started <div style="background-color: #e6f2ff; padding: 5px;">Contract Info</div> | 9. Date Option Exercised (If Applicable) (Service Contract Only) <div style="background-color: #e6f2ff; padding: 5px;">Leave Blank, NA</div> | |
| 10. Subcontractor (If Any) <div style="background-color: #e6f2ff; padding: 5px;">If there are any subcontractors under this construction contract, list them.</div> | | | | | |
| 11. Project And Description Of Work (Attach Additional Sheet If Needed) <div style="background-color: #e6f2ff; padding: 5px;">Describe the contract scope of work and its relation to the project.</div> | | | | | |
| 12. Location (City, County, And State) <div style="background-color: #e6f2ff; padding: 5px;">Project Info</div> | | | | | |

13. In Order To Complete The Work Provided For Under The Above Contract, It Is Necessary To Establish The Following Rate(s) For The Indicated Classification(s) Not Included In The Department Of Labor Determination

Number: Use the General Decision Number for the Wage Determination (in format: YYYYIdentifierState) Dated: Wage Determination, Modification Date

| a. List In Order: Proposed Classification Title(s); Job Description(s); Duties; And Rationale For Proposed Classifications (Service contracts only) | b. Wage Rate(s) | c. Fringe Benefits Payments |
|---|--|-----------------------------|
| <p>(Use reverse or attach additional sheets, if necessary)</p> <p>Though this states "Service Contracts Only", also provide this information for "Construction Contracts" to provide sufficient justification of the need.</p> <p>List each labor classification that needs conformance.</p> <ul style="list-style-type: none"> For each labor classification, describe the distinct responsibilities and any specialized tools/skills that are needed to perform those responsibilities. Provide information on the rationale for the proposed wage and fringe benefits that are being proposed for conformance. | <p>Proposed Base Pay (or just total wage rate, including fringe)</p> | <p>Proposed Fringe Pay</p> |

14. Signature And Title Of Subcontractor Representative (If Any)

Subcontractor representative will sign here. Please include a title and the company name.

15. Signature And Title Of Prime Contractor Representative

Construction contractor representative will sign here. Please include a title and the company name.

Note: Answer based on whether the borrower agrees with the proposed wages or needs DOL to provide a determination.

Note: Answer based on whether there is consensus on the proposed rates between contractor, subcontractor, and employee/union rep

| | | |
|--|---|--|
| 16. Signature Of Employee Or Representative <small>Employee or Union Representative will sign here</small> | Title <small>Include title and company name</small> | Check Appropriate Box - Referencing Block 13. <input type="checkbox"/> Agree <input type="checkbox"/> Disagree |
|--|---|--|

To Be Completed By Contracting Officer (Check As Appropriate - See FAR 22.1019 (Service Contract Labor Standards) Or FAR 22.406-3 (Construction Wage Rate Requirements))

- The Interested Parties Agree And The Contracting Officer Recommends Approval By The Wage And Hour Division. Available Information And Recommendations Are Attached.
- The Interested Parties Cannot Agree On The Proposed Classification And Wage Rate. A Determination Of The Question By The Wage And Hour Division Is Therefore Requested. Available Information And Recommendations Are Attached.

(Send 3 copies to the Department of Labor)

| | | |
|---|--|--|
| Signature Of Contracting Officer Or Representative <small>Borrower rep will sign here</small> | Title And Commercial Telephone Number <small>Include title and company name</small> <small>Include phone number</small> | Date Submitted <small>Add Date</small> |
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TIPS FOR DEVELOPING A STRONG REQUEST

- **Coordinate with relevant parties.** When a conformance request is needed, bring together the contractor, subcontractors, and union representatives or employees to build consensus on needed labor classifications and wages for the respective contract. When all parties agree on the wages, particularly employees performing the work, it can provide a strong case to DOL on the proposed wages.
- **Provide justification for proposed wages.** A reasonable justification of the proposed prevailing wages improves the likelihood of approvals. Along with a complete SF-1444, make sure the supporting documentation can help answer the following questions:
 - How are the proposed rates being developed? What is the source of the cost data to support the proposed rates?
 - Does the labor category exist in the locality for other construction types? If not, is this a common labor category in the locality that can help establish a basis for the proposed wages?
 - How do the proposed rates compare to other prevailing wages in the wage determination? They should be, at a minimum, equal to the general laborer or mechanic category, as this is generally considered the catch-all category.
 - Are there specific construction site conditions that could require a unique skill set or tools to perform the work? If the work requires specialized experience or tools, provide additional information to distinguish this work from other existing labor categories.
- **Complete ALL relevant fields on SF-1444.** An incomplete form will more likely be returned for additional information, adding time to the conformance request process.
- **Include an email summary.** Though not necessary, providing a brief summary of the request could help streamline the review. Remember to attach the completed SF-1444 and supporting documents and submit the request to the DOL via DBAConformance@dol.gov.

Sample email language (optional):

Subject: Wage Conformance Request (Borrower Name, Labor Categories)

Please see the attached conformance request for [x number of] labor classifications. The work is [heavy or other type] in [County, State], and these labor categories do not exist. We are requesting a wage conformance for these labor categories based on [include summary of wage justification and consensus with the proposed rates].

WHAT INFORMATION DOES THE WIFIA PROGRAM NEED?

You do not need to provide upfront documentation to the WIFIA program; however, project-related information showing compliance with the federal requirements should be documented. Make sure the following documents are saved to the project file: (1) SF-1444 and supporting documentation submitted to the DOL, and (2) approval documentation from the DOL, in case the WIFIA program requests them as part of project monitoring activities.