



Davis Bacon Applicability Checklist

Introduction

Davis-Bacon requirements, including the requirement to pay the prevailing wage as set forth in a Davis-Bacon wage determination, are made applicable to the Community Development Block Grant program by Section 110 of the Housing and Community Development Act of 1974 (HCDA), now codified at 42 USC 5310, which provides that:

All laborers and mechanics employed by contractors or subcontractors in the performance of construction work financed in whole or in part with assistance received under this chapter shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with sections 3141-3144, 3146, and 3147 of Title 40: Provided, That this section shall apply to the rehabilitation of residential property only if such property contains not less than 8 units. The Secretary of Labor shall have, with respect to such labor standards, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 317 6: 64 Stat. 1267) and section 3145 of Title 40.

Department of Labor regulations, which govern the application of Davis-Bacon wage determinations to covered contracts, provide that:

where "Federal funding or assistance under a statute requiring payment of wages determined in accordance with the Davis-Bacon Act is not approved prior to contract award (or the beginning of construction where there is no contract award), the agency shall request a wage determination prior to approval of such funds. Such a wage determination shall be issued based upon the wages and fringe benefits found to be prevailing on the date of award or the beginning of construction (under the National Housing Act, under section 8 of the U.S. Housing Act of 1937 or where there is no contract award), as appropriate, and shall be incorporated in the contract specifications retroactively to that date, Provided, That upon the request of the head of the agency in individual cases the Administrator may issue such a wage determination to be effective on the date of approval of Federal funds or assistance whenever the Administrator finds that it is necessary and proper in the public interest to prevent injustice or undue hardship, Provided Further, That the Administrator finds no evidence of intent to apply for Federal funding or assistance prior to contract award or the start of construction, as appropriate."

29 CFR 1.6(g).

Instructions: The following checklist will be used to determine Davis Bacon Applicability on the project or program. Program Areas will use the checkboxes to identify status based on Program related information. Be sure to provide Information in the requested field areas.

Name of Program:

Name of Project:

Amount Verification:

Project is above \$2,000? ☐ Yes ☐ No

Scope Verification:

Project is for the construction of public works or housing? ☐ Yes ☐ No



Contract Scope Verification

Prime Contractor Name:

Prime Contract Date is:

Contract Type Verification

A/E ONLY

☐ Yes ☐ No (If Yes, DBRA will not apply)

Design and Build

☐ Yes ☐ No (If Yes, DBRA will apply)

Construction

☐ Yes ☐ No (If Yes, DBRA will apply)

Demolition ONLY

☐ Yes ☐ No (If Yes, DBRA will not apply)

Material Purchase & Significant Installation ☐ Yes ☐ No (If 20% or more, DBRA will apply)

Provide a copy of the contract (entire contract with exhibits).

Item: Does this item apply to the contract?	Response: Does this condition apply to the contract?
After Grant Agreement 1 Date September 20, 2018 \$1.5B	<input type="checkbox"/> Yes <input type="checkbox"/> No
After Grant Agreement 2 Date February 28, 2019 \$8.2B	<input type="checkbox"/> Yes <input type="checkbox"/> No
EO 2017-026 March 2017 construction contract with government \$8.25 an hour Applicable	<input type="checkbox"/> Yes <input type="checkbox"/> No
EO 2018-033 July 30, 2018 \$15/Hr for construction work Applicable	<input type="checkbox"/> Yes <input type="checkbox"/> No
EO 2020-075 September 30, 2020 \$15/hr prospectively removed	<input type="checkbox"/> Yes <input type="checkbox"/> No
EO 2021-023 March 18, 2021 \$10.95/ Hr Applicable	<input type="checkbox"/> Yes <input type="checkbox"/> No

Status of Project Implementation for Applicability

Section 110 of the HCDA applies the DBRA prevailing wage requirements to construction funded in whole or in part by the CDBG-DR program. Whether the state or territory contracts directly for construction work¹ or makes a sub-grant to a

¹ To the extent that a state or territory uses CDBG-DR grant monies to perform construction activities "in-house" with its own employees, DBRA prevailing wage standards would not apply to such activities. See U.S. Dep't of Labor, Wage & Hour Div., Field Operations Handbook, Ch. 15, § 15b06 (2010), available at http://www.dol.gov/whd/FOH/FOH_Ch15.pdf. Construction activities performed by state government employees are not generally subject to Davis-Bacon labor standards because governmental agencies and states or their



local government agency or non-profit organization which in turn contracts for the construction work, the contractor's laborers and mechanics would be performing construction work financed in whole or in part by the CDBG-DR program, and the DBRA prevailing wage requirements would therefore be applicable to that work.

Condition	Response
If all construction work on a project was performed and completed prior to the date of the referenced CDBG-DR grant agreement between HUD and the recipient state(s) or territory, and CDBG-DR grant funds are used to reimburse those project costs.	<p>Does this condition apply to your Contract Scope?</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If Yes, Davis Bacon requirements will NOT APPLY. Provide documented evidence including pictures of completed work to substantiate.</p>
Construction work on a CDBG-DR-funded project that began after the date of the referenced CDBG-DR grant agreement between HUD and the recipient state(s) or territory. GA 1 September 20, 2018 GA 2 February 28, 2019	<p>Does this condition apply to your Contract Scope?</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If Yes, Davis Bacon requirements will APPLY.</p>
If construction work on a project began prior to the CDBG-DR grant agreement but was still ongoing as of the date of that agreement.	<p>Does this condition apply to your Contract Scope?</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If yes, Davis-Bacon requirements will apply prospectively from the date of the CDBG DR grant agreement between HUD and the recipient state(s) or territory, but not retroactively to pre-agreement construction work.</p> <p>Proceed to complete the calculation of Pre agreement construction work/ post agreement construction work to exclude from applicability of scope the preconstruction work completed prior to agreement date.</p>



Calculation of Construction Work Applicable to Davis Bacon

This section below is to accompany the responses to the above table in identifying the amount of construction work subject to Davis Bacon applicability.

Please be sure to attach additional supporting documentation to substantiate.

Amount of construction work completed to date:

Amount attributable to Pre-Agreement date:

Amount attributable to Post-Agreement date:

Program Area Completed information

Name/Signature

Title

****Please note that after completing this exercise you will have to use the contract checklist to ensure your contract is compliant with the requirements for DBRA.**

****Please note that after completing this exercise you will have to also use the wage determination checklist to ensure your procurement or contract contains the correct federal wage determination.**

Davis Bacon Analyst Reviewed Information provided

Name/Signature

Title