

## ANSWERS TO QUESTIONS SUBMITTED DURING THE JUNE 10, 2010 DAVIS-BACON ACT WEBINAR

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## Applying the Davis-Bacon Act downstream

- If a homeowner hires the contractor, does the contractor need to adhere to Davis Bacon Act (DBA)?

Answer: No, the DBA requirements of the Recovery Act do not apply to individual homeowners and their contractors would not need to adhere to the DBA requirements.

- I'm still a bit confused as to whether Davis Bacon applies to our City's Weatherization Program. We are providing assistance to individual homeowners for energy efficient gas furnaces, hot water tanks and/or insulation. All contracts will be between the contractor and homeowner. The City will be putting the contracts out to bid and managing the process. Contracts may be over \$2000 depending what is done. Does Davis Bacon kick in? (I was under the impression that contracts with individual housing units weren't an issue unless there were more than 8 units in the project).

Answer: The Department of Labor (DOL) has indicated the \$2,000 threshold for DBA is based upon the grant the city receives. As a result, the grant is subject to the DBA and all work under the grant is subject to the DBA, unless an exception/exemption applies to the program. The program you have described will be subject to the DBA. The city may develop a list of contractors that the individual homeowners may choose from and allow the homeowner to contact contractors from the list and have two or three bid on the energy upgrades and then choose from those bids. However, if the city puts out the work for bid and manages the process then the city and the contractors will be subject to the Davis-Bacon Act requirements. Individuals are not subject to DBA, but where the recipient or subrecipient becomes involved in the contracting process DBA will attach to the project.

- We're planning to offer rebates for residential home weatherization by home owners (most will be rental properties rather than owner inhabited). How do I determine whether DBA applies?

Answer: Regulations regarding implementation of Recovery Act Section 1606 (Davis-Bacon wage rate requirements) make clear that the requirements discussed therein – particularly the requirements applicable to recipients and subrecipients of Recovery Act funds do not apply to individuals. Therefore, given that individuals cannot be considered either recipients or subrecipients of Recovery Act funds to whom Section 1606 requirements would apply, the individual homeowner would not be subject to DBA requirements when making energy savings improvements to his own house or the houses that he rents to others. Please Note: This answer assumes the entity making the rebate to the individual has determined that the individual owns all the homes in his/her individual name and not as a business entity.

- If Grant money is used to pay incentives to homeowner does DBA apply?

Answer: The DBA requirements applicable to recipients and subrecipients of Recovery Act funds do not apply to individuals; therefore, a program that uses the Recovery Act grant funds to pay incentives to homeowners would not be subject to the DBA.

- If a City will be using some of their EECBG funds to subsidize residential energy audits, are the energy auditors subject to the DBA if the resident chooses the auditor?

Answer: The DBA applies to laborers and mechanics employed at the work site. Energy auditors, inspectors, and other personnel not performing physical or manual work at the site of the work are not covered by DBA.

- My agency is planning to subgrant a portion of its EECBG funds to a local utility that will use those funds to provide rebates to homeowners for energy improvements to their residences. Does DBA apply?

Answer: The DBA requirements applicable to recipients and subrecipients of Recovery Act funds do not apply to individuals; therefore, a program that uses the Recovery Act grant funds to provide rebates through a local utility to homeowners for energy improvements to their residences would not be subject to the DBA.

- We have a rebate program for solar and wind turbines for residential and commercial. The rebate amount is a percentage of the installed cost. Would these rebates be subject to the Davis Bacon Act?

Answer: DBA requirements would not be applicable to a rebate program for solar and wind projects for individuals. However, DBA requirements would be applicable to rebates to commercial entities because the equipment requires installation to complete the project.

- We are a government agency that is using EECBG funding to purchase the materials for energy upgrades at local not for profits. Are we required to provide DBA on the contractors that are being hired directly by the not for profits to install the materials?

Answer: Yes, the government agencies providing Recovery Act EECBG funding to assist projects are responsible for ensuring that the DBA requirements are complied with by the contractors hired by the local not-for-profit entities.

- We (a municipality) will be retrofitting and replacing streetlights for energy efficiency. Our local electric delivery provider owns the actual streetlights and poles. We will be contracting with them. They

will perform the work and provide the new lights. The contract rate they quoted us is per light and is set by our state's Public Utilities Commission. Is this still considered a "public work" and subject to DBA.

[Answer: No. See answer below.](#)

- I am concerned that our energy upgrade project may be stymied by the DBA as we are dealing with a monopoly power utility as a partner in a project to upgrade street lighting to LED efficiency. Under the project the utility is a partner in a test to ascertain if LED lights will eventually be offered for use in service by the utility. The EECBG block grant funds, which our Town is receiving as a sub recipient of our County's block grant, will solely and only be used to purchase the LED street light fixtures. The only labor activity involved is the utility installing the lights on the utility poles that they own, there is no choice as to what entity will do the installation as they own the poles. No EECBG block grant funds will be used to install the lights. The entire scope of this project is to obtain the light fixtures. We have a Partnership Agreement with the utility to install the lights, but they are not our contractor as both entities are partners in the pilot project and providing certain components of it. Does the DBA apply under these facts?

[Answer: No. See Answer below.](#)

- The City EECBG project is to retrofit and replace mercury vapor streetlights with high-pressure sodium streetlights. The streetlights/poles are owned by the local electric delivery provider. The utility will be purchasing and installing the new lights and bill us for the work. The rate they quoted us for the work is regulated by the Public Utilities Commission. Will payments to the utility by the City be subject to the Davis Bacon Act, regardless of who owns the streetlights/poles and regardless of who sets the rates?

[Answer: Public utilities that are regulated by the State Utility Commission have an exemption from DBA. This exemption is available only where the public utility is using its own equipment and employees, the utility is in effect extending or upgrading its own utility system, and ownership of the equipment remains with the utility. In these examples, the municipality is essentially providing a grant to the utility to perform the work of upgrading its own utility system. The lights and poles are the property of the utility and will remain the property of the utility; as such, this work is not subject to the DBA. However, if the utility contracts out such work then the work is covered by DBA.](#)

### Building Categories (e.g., Residential vs. Commercial, # of Units, etc.)

- I'm confused about using residential for the construction type on DOL's site to find the required wage and benefits. Our EECBG projects are not residential. I've noticed that the rates are lower for construction type residential than for construction type building.

Answer: Do not use the residential construction classification unless the building meets the definition of a residential building. For all work on buildings other than residential, the “building construction” classification must be used.

- What if it is a one story office building - do we use "residential"?

Answer: No. A one story office building is not a residential building. The residential construction category is only used for buildings meeting the definition of a residential building. For a one story office building, the proper construction classification is “building construction.”

There are four construction classification types: building, highway, residential and heavy. The following provides a brief overview of each type:

**Building Construction** includes construction of sheltered enclosures with walk-in access for the purpose of housing persons, machinery, equipment or supplies; all construction of such structures; the installation of utilities and of equipment, both above and below grade levels; as well as incidental grading, utilities and paving. Such structures need not be “habitable” to be building construction. Also, the installation of heavy machinery and/or equipment does not generally change the project’s character as a building.

**Highway Construction** includes construction, alteration or repair of roads, streets, highways, runways, taxiways, alleys, trails, paths, parking areas, and other similar projects not incidental to building or heavy construction.

**Residential Construction** includes the construction, alteration or repair of single-family houses, and multi-family apartment or condominium buildings of no more than four stories in height. This includes all incidental items such as site work, parking areas, utilities, streets, and sidewalks. For residential multi-family buildings over 4 stories in height, use the Building Construction classification.

**Heavy Construction** includes those projects that are not properly classified as either “building”, “highway”, or “residential.” Unlike these classifications, heavy construction is not a homogenous classification. Because of this catch-all nature, projects within the heavy classification may sometimes be distinguished on the basis of their particular project characteristics, and separate schedules may be issued for dredging projects, water and sewer line projects, dams, bridges, and other projects.

For additional and more detailed guidance, please refer to DOL All Agency Memorandums (AAM) 130 and 131. All Agency Memorandums may be found at: <http://www.wdol.gov/aam.aspx>.

- The recent guidance about not using the Weatherization Assistance Program wage determinations has confused me. I am administering an EECBG grant for a county. It consists of an energy audit of the County Courthouse, resulting in upgrade to the HVAC and lighting systems. I have been using the Building Davis Bacon wage decision. This is not a WAP project, but I guess it could be “weatherization type” work as mentioned below in the guidance. If I interpret the guidance literally, I should be using the Residential wage rate. I don’t feel this is right though. Can you help me out?

Answer: The guidance you referenced is applicable only when an EECBG program grant is being used for residential weatherization projects that would be identical to the weatherization activities performed under the Weatherization Assistance Program (WAP). When performing work on the county courthouse, you should use the DOL Building Construction wage decision for your county in your state.

- We’re planning to offer rebates to for residential home weatherization by home owners (most will be rental properties rather than owner inhabited). How do I determine whether DBA applies?

Answer: The Office of Management and Budget (OMB) regulations regarding implementation of ARRA Section 1606 (Davis-Bacon wage rate requirements) make clear that the requirements – particularly the requirements applicable to recipients and subrecipients of ARRA funds – do not apply to individuals. Therefore, given that individuals cannot be considered either recipients or subrecipients of ARRA funds to whom Section 1606 requirements would apply, the individual homeowner would not be subject to DBA requirements when making energy savings improvements to his own house or to other houses that he/she owns and rents to others. **Please Note: This answer assumes the entity making the loan to the individual has determined that the individual owns all the homes in his/her individual name and not as a business entity.**

- Does DB apply to second units in an owner-occupied duplex?

Answer: DBA is not applicable to individuals. In this example, the owner is an individual who owns both units of a duplex and rents out one unit. The DBA would not be applicable to the rental unit,

because the individual owner is receiving the grant, rebate, or loan to make the energy saving improvements.

- I'm still a bit confused as to whether Davis Bacon applies to our City's Weatherization Program. We are providing assistance to individual homeowners for energy efficient gas furnaces, hot water tanks and/or insulation. All contracts will be between the contractor and homeowner. The City will be putting the contracts out to bid and managing the process. Contracts may be over \$2000 depending what is done. Does Davis Bacon kick in? (I was under the impression that contracts with individual housing units weren't an issue unless there were more than 8 units in the project).

Answer: The \$2,000 threshold for DBA is based upon the grant the city receives. As a result, the grant is subject to the DBA and all work under the grant is subject to the DBA, unless an exception/exemption applies to the program.

The program you have described will be subject to the DBA, because the City is putting the contracts out to bid and managing the process. The city may develop a list of contractors that the individual homeowners may choose from and allow the homeowner to contact contractors from the list and have two or three bid on the energy equipment and upgrades, and then the individual chooses from those bids who they want to perform the work or provide the equipment. However, if the city puts out the contracts and manages the process then the city and the contractors will be subject to the Davis-Bacon Act requirements. The city could set up a voucher system where the homeowner obtains a voucher from the city and after the work is done signs the voucher over to the contractor. The contractor could then submit the voucher for payment to the city. However, based upon the information provided, it appears the city is doing the contracting rather than the individual. The DBA will be applicable to the program when the recipient or subrecipient enters into a contract to provide installation services.

The only exception/exemption from DBA for contracts with regard to individual housing units is where the individual owner is receiving the rebate, grant, or loan. If a business owns the individual housing units – even where there are less than 8 in a project – the DBA is applicable.

### **Contractors Who Own the Business but also Perform Labor**

- Does a self-employed contractor need to complete and submit DB payroll forms weekly, indicating on them that he has paid himself at least the prevailing wage? If so, what happens when the contractor is

part way through the project and realizes that he under-bid, and his policy is to not change the contracted amount. In other words, he guarantees that he will only charge \$xx for the job, no matter how long it takes him. Now he is not compliant with DB for the remainder of the project.

Please see answer below.

- If the owner of a private company is self-performing labor, on an EECBG project & public building, are they required to pay themselves prevailing wage?

Please see answer below.

- What about a small business owner who owns the business and also does the work.....Do they pay themselves based on the Davis Bacon rates?

Answer: A **business owner** who is the contractor and works with his/her employees, is not required to pay him/herself DBA wages. Bona fide owners who are exempt pursuant to Department of Labor regulations, found at 29 CFR Part 541, are not laborers and mechanics and are not subject to the DBA. DOE recommends that owners of a business who also perform construction work list themselves on the certified payroll and under the column for "Work Classification" insert the word "owner." The owner does not have to put in his/her hours or wage rate.

If the business owner is a **sole proprietor**, the contracting entity must determine that the person they are contracting with is truly a bona fide sole proprietor of a company. The contracting entity must maintain a record of the company Federal Tax ID number and a copy of the business license in the contracting file. Additionally, prior to awarding the contract, ask whether the sole proprietor plans to hire anyone to assist with the work – as those hired workers will be subject to the DBA. If the sole proprietor is not going to hire anyone, the owner is exempt from DBA and there is no requirement for certified payrolls.

Workers classified as **independent contractors or “1099 workers”** are covered by the DBA and must be paid the DBA wages and listed on the contractor’s certified payroll record. **NOTE: If the grantee/subgrantee hires an individual who is “self-employed”, but not a “sole proprietor”, the grantee/subgrantee must pay the independent contractor the DBA wages and complete the certified payroll.**

- Individuals are not subject but a corporation/partnership would be? Since both of these would be considered a legal entity?

Answer: Individuals who receive Recovery Act funding and subsequently contract for energy savings improvements are not subject to the DBA requirements. All other legal entities such as



corporations/partnerships who receive Recovery Act funding are subject to the DBA when they enter into a contract for construction.

- Did you say the 1413 goes out to all sub-recipients and sub-contractors?

**PLEASE NOTE: The requirement to complete the 1413 is not applicable to SEP and EECBG program grants.** DOE required a written assurance from the EECBG applicants that they would comply with Davis Bacon and it was included in all EECBG applications.

- When you say digital signatures are you talking about adding a digital signature in a completed pdf form of WH-347 or the electronic payroll form?

Answer: A digital signature is only available through an electronic payroll system. If you complete the WH-347 on line, it must be printed out and hand signed. Once the Wh-347 is in paper form, then it remains in paper form and the original certified payroll must be sent to the recipient of the grant.

- We are in the process of conducting workshops regarding our SEP/ARRA program's Solar Installation Grants. As you can imagine, we have received numerous questions regarding the application of DBA. We are uncertain of the answers to the following questions: (1) Primary Contractor is a solar company with two owners. Subcontractor is an electrical contractor with two owners. The only labor used on the job is the 4 owners. The owners are not considered employees. Their income level is completely dependent on the profitability of the company. As a result they might not even get a regular paycheck. Since they are not considered employees, it is our understanding that the owners are not required to pay themselves DBA wages. Is that correct? If so, must the company still generate a weekly certified payroll? (2) If a Contractor / Subcontractor does not typically provide his employees fringe benefits, will he/she be in compliance with DBA as long as the cash equivalent of the required fringe benefits is paid? See 29 CFR 5.5 - Contract provisions and related matters.

Answer:

- (1) A business may have more than one owner. When those two owners perform all the work they are not required to pay themselves DBA wages. Bona fide owners who are exempt pursuant to Department of Labor regulations, found at 29 CFR Part 541, are not laborers and mechanics and are not subject to the DBA. Where the two owners perform all the work, there is no requirement for completing the certified payrolls. NOTE: It is the responsibility of the grantee/subgrantee hiring the owners to have information in the file showing that the workers on the project are actually bona fide owners of the business. This can be shown through the Articles of Incorporation or Business Registration documents.

(2) A contractor/subcontractor is not required to offer employees fringe benefits. The fringe benefit requirement is met when the contractor/subcontractor pays the employee the required amount of fringe in cash.

- What if the individual is a farmer and is getting money to upgrade his farm and doing some of the work himself and hiring contractors for the other portion?

Answer: An individual farmer receiving Recovery Act funds to make energy efficiency upgrades to his farm is not subject to the DBA and the contractors the individual farmer hires are not subject to the DBA.

## Dating of Wage Rates and Contract Signing Dates

- You should clarify that if contracts are already in place, that the DBA wage that was applicable at that moment in time may still be used.

Answer: A contract that is currently in effect and subject to the DBA should be using the DBA wage determination that was current on the date the contract was signed.

- What contract date locks in the DOL wage determination? Is it the grantees contract with DOE, the grantees contract with the sub-grantee, or the sub-grantees contract with the contractors? Will all contracts under the grantees contract be held to the same wage or will it constantly be changing with each new job that starts?

Answer: **For SEP grants**, the DOE contracting officer has amended the grants with the States and attached a wage determination to those grants. The wage determination attached to the SEP grant with the State is to be used for all contracts and subcontracts awarded under the State's SEP grant. The wage determination should not be changing with each new job start.

**For EECBG program grants**, the date the grantee or sub-grantee contracts with a contractor will be the date that the DOL wage determination is locked in for that contract. The wage determination may change with each new project and contract start."

- If the project lasts for some 'length' of time, is the original WD in effect for the entire project length or are we obligated to update the WD on some periodic basis?

Answer: The Wage Determination (WD) attached to the contract is effective for the entire project length and there is no requirement to update the WD.

- If a new wage determination is issued while out to bid, what is the guidance for issuing an addendum to include the new wage determination? In other words what is the cut off for including a new wage determination in a bid package that is out to bid, how many days? When does the wage determination "lock in"?

Answer: See answer below.

- When it comes to Wage Decisions, a Wage Decision is placed in the Bid Document and the DOL website indicates that as long as the Contract is awarded within 90 days of Bid Opening, then the Wage Decision in the contract is valid. What I heard was that the Wage Decision in effect on the day of Contract Award was the valid one. Please advise.

Please see answer below.

- It was stated yesterday that the wage rates in effect when contracts are awarded shall be used by sub contractors. I had been told previously that the wage rates in effect 10 days prior to the bid opening are the rates that need to be used. These are the rates that I have provided to the subs at our pre-construction meetings. Please confirm. In the County's case, the bids were opened say in March, but were not awarded at a Commissioners meeting until April, and finalized contracts just went out last week.
- Answer: The DOL Regulations provide the following information at 29 CFR 1.6(c)(3):

All actions modifying a general wage determination received by the agency before contract award (or the start of construction where there is no contract award) shall be effective except as follows:

- (i) In the case of contracts entered into pursuant to competitive bidding procedures, a modification, notice of which is published less than 10 days before the opening of bids, shall be effective unless the agency finds that there is not a reasonable time still available before bid opening, to notify bidders of the modification and a report of the finding is inserted in the contract file. A copy of such report shall be made available to the Administrator [of Labor] upon request. No such report shall be required if the modification is received after bid opening.
- (ii) If under paragraph (c)(3)(i) of this section the contract has not been awarded within 90 days after bid opening, . . . any modification, notice of which is published on WDOL prior to award of the contract or the beginning of construction as appropriate, shall be effective with respect to that contract unless the head of the agency or his or her designee requests and obtains an extension of the 90-day period from the Administrator

Therefore, if a modification occurs between the 10 day point and the opening of the bids you will be required to make a determination as to whether there is reasonable time to notify the bidders of the modification so that they may adjust their bids. If a decision is made there is no time, put a report into the contract file. After the bids are opened, the wage determination in the Bid request remains in effect - providing the contract is awarded within 90 days from the date of bid opening.

- If contract was set before ruling that weatherization wages could not be used for EECBG, can weatherization rate be used?

Answer: No. The contractor/subcontractor must retroactively pay the workers the proper wages using the residential building wage determination that was effective at the time the contract was executed. During the time DOE was working with DOL to see if the Weatherization Assistance Program (WAP) Wage Determinations (WD) could be used for SEP and EECBG program weatherization projects, DOE repeatedly told grantees that DOL was continuing to hold onto its position that the WAP WDs could not be used for SEP and EECBG weatherization projects.

- We have contractors that did work within the pre-award period but finished before the award date. Does DBA apply? If so, what date of wage determination should be used and what needs to be done to conform with DBA after the fact?

Answer: The DBA is applicable to the contract. The wage determination in effect on the date the contractor(s) started construction should be used to determine the proper wage rates. The contractors must provide payroll information indicating all the information that would be required on a WH-347. Additionally, the week that the contractors make the adjustment to the wages the employees were paid, the employer must complete a certified payroll showing the adjustments to wages and indicating payment to the employees. If the contractor paid more than was required, so that adjustments are not necessary, the contractor may provide the payroll information, a statement explaining how the employees were paid and what they were paid, along with the DOL required “Certified Statement.”

- When a wage changes, regardless if it is in the middle of a project, the payroll should reflect the rates immediately. Correct?

Answer: No. Once a Wage Determination is incorporated into a contract the wage determination remains effective for the entire length of the contract even when DOL subsequently revises its general wage determinations.

## Documentation of Davis-Bacon Compliance

- Why must the state collect the original certified payrolls--don't those belong to the sub-recipient with the sub-recipient sending a copy to the State?

Answer: The certified payrolls do not belong to the subrecipient. The regulations require the contractor submit certified payrolls to the agency, because the agency is required to enforce the DBA. The DOE has delegated the receipt and maintenance of those payroll records to the State/Recipient through the Recipient Functions clause. The Recipient also has responsibility along with DOE to assure DBA compliance. The DOL has told the DOL that the Recipient must maintain the original for enforcement purposes.

- How aggressive do we need to be about "checking the math"? A lot of times the number of hours of DB work does not easily correlate to gross wages, because the workers have worked on other DB and non-DB jobs in the same week.

Answer: The primary thing is to check the math on the form and make sure there are no errors, that only legal deductions are taken, and that everything computes properly. If the employee worked DB and non-DB covered jobs, look at overtime payments. Look at the number of hours of DB covered work and the gross paid for DB work and subtract that number from the total gross wages, does it appear that the employee is being paid properly or would the amount left be low for an individual working 40 hours? If there are questions, contact the contractor for additional clarification.

- Where has requirement for semi-annual reporting been referenced? Not in DOE guidance or award letter.

Answer: All SEP and EECBG program grants provide the following in the Davis Bacon Act and Contract Work Hours and Safety Standards Act clause:

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this Contract.

Pursuant to this clause all grantees must comply with all requirements contained within 29 CFR parts 1, 3, and 5.

DOL regulations, 29 CFR 5.7(b) provides:

(b) Semi-annual enforcement reports. To assist the Secretary in fulfilling the responsibilities under Reorganization Plan No. 15 of 1950, Federal agencies shall furnish to the Administrator by April 30 and October 31 of each calendar year semi-annual reports on compliance with and enforcement of the labor standards provisions of the Davis-Bacon Act and its related acts covering the periods of October 1 through March 31 and April 1 through September 30, respectively. Such reports shall be prepared in the manner prescribed in memoranda issued to Federal agencies by the Administrator.

As a result of the requirement in 29 CFR 5.7, made applicable to grantees pursuant to the DBA clause paragraph (8), all SEP and EECBG recipients/grantees must provide the information to the DOE for incorporation into the Agency's Semi-Annual Enforcement Report.

- You mentioned the semi-annual report. Is there a template for this report?

Answer: The template for the report may be found at: <http://www.wdol.gov/aam/AAM189.pdf>. Approximately one-month prior to the date due, project officers will request the information from recipients/grantees. Please note that Recipients will not be required to report the number and amount of contracts and grants awarded during the reporting period. DOE will only request the information in items 1 and 4-10 on this template. The Project Officers will request this information from Recipients beginning approximately 30 days prior to the date due to DOE.

- Is record retention required for 3 years after the "project completion date" or the "grant period completion date"? Some of these projects will only take a few months and will not last for the duration of the grant period.

Answer: Contractors must retain the payroll records and all supporting documentation for a period of 3 years after the project completion date. Grantees must maintain DBA records pursuant to OMB Circular A-110/10 CFR 600.242. Even though the Department of Labor regulations provide the records are to be kept for 3 years from the end of the contract, the DOE grant award terms tell the grantees to follow 10 CFR 600.242 (by reference), which requires the grantee to maintain all supporting documentation for 3 years after the submission of the final cost report - usually 90 days after the end of the Grant Project Period. Since contracts/sub-grants fall within the overall Grant Agreement Project Period, the recipient would need to maintain the DBA payroll records for the potentially longer period of the Grant award and not just 3 years after the contract/subgrant ends.

- Can you explain the Form 1413 a little more? Do we need to have one of these on file for every sub-grantee AND every contractor and sub-contractor that they are using?

**PLEASE NOTE: The requirement to complete the 1413 is not applicable to SEP and EECBG program grants.** DOE required a written assurance from the EECBG applicants that they would comply with Davis Bacon and it was included in all EECBG applications.

- Contact information requested for employees of the DOL please.

Answer: For the local office nearest you, please use this website for contact information:  
<http://www.dol.gov/whd/america2.htm>

- Is documentation required if grantee and contractor determine that D-B wages do not apply to the project?

Answer: The only authorized person to make a determination as to whether DBA applies to a specific project under a Recovery Act-funded grant is the DOE Contracting Officer. The grantee and contractor are not authorized to make such a determination. For a decision as to whether DBA is applicable to a specific project, contact

- It is my understanding that Line 16 on the SF-1444 should be signed by an employee working in the Job Classification that is being requested. Is this your understanding?

Answer: Yes. If present, employees or their designated representative **must sign block 16** noting their concurrence or disagreement with the contractor's proposed wage and benefit rate. If the employee indicates disagreement with the contractor's proposal, he must provide a statement supporting a recommendation for different rates. ("Designated representative" is generally a union. It cannot be the contractor's personnel officer or other contractor representative.)

- If a contract is funded through both State and ARRA funds, does the grantee need to maintain two copies different files on prevailing wages?

Answer: You should be able to use one prevailing wage rate. In most states, but not all, the requirement is that the higher of the two prevailing wages should be used. In some states, the prevailing wage law specifically states that where there is Federal funding, then the DBA should be used. Please review your state prevailing wage law to determine whether to use the DOL or State prevailing wage determination. The DBA requirements are usually followed by the states, so the same records should suffice for both the state prevailing wage and the DOL prevailing wage requirements.



- There is a lot of information here. Much of this was not realized by us. Is your sense that other states are hiring internal people just to manage DBA requirements for EECBG and SEP? Thanks.

Answer: States have hired additional personnel to manage compliance with all the DBA requirements, including review of certified payroll records and contractor employee interviews. DBA compliance costs are allowable costs under the grants. SEP and EECBG program funding may be used for such administrative expenses. Please contact your Project Officer to determine the most appropriate way to charge such costs.

- What do we do if we are conducting labor interviews and several of the workers provide the exact same home address?

Answer: If that situation occurs, please contact the local DOL wage and hour division. To find the closest office of the DOL wage and hour division, please use this website:  
<http://www.dol.gov/whd/america2.htm>.

- Does DOE have a standard employee interview form (like the HUD-11 form)?

Answer: DOE has no standard employee interview form like the HUD-11 form and neither does the DOL. DOE has posted an example of a form on the website with these answers to the webinar questions. The form is in word format, so you may use it or change it to fit your needs. There is no requirement for a form or how the interview should be set up. When completing the employee interview, only ask the employee for the last four digits of his/her Social Security Number.

- Is the subcontractor sufficient to sign for his workers or does it have to be each person individually?

Answer: The subcontractor should sign the certification that the subcontractor paid his/her employees the wages as set forth in the form. are unable to provide an answer, because we do not understand the question.

- On the newest WH-347 block 1 no longer requires the address of the employee. Are the contractors no longer responsible to report employee's addresses?

Answer: Contractors are no longer responsible for reporting the employee's address on the certified payroll. On December 19, 2008, the DOL issued its Final Rule, 73 FR 77504, entitled, *Protecting the Privacy of Workers: Labor standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction*. This Final Rule (the Rule) revised its regulations issued pursuant to the Davis-Bacon and Related Acts and the Copeland Anti-Kickback Act to better protect the personal

privacy of laborers and mechanics employed on covered construction contracts. The effective date of the Rule was January 18, 2009, and changed the regulations at 29 C.F.R 5.5(a)(3)(i), (ii). The DOL decided that weekly certified payrolls no longer require complete social security numbers and home addresses for individual workers and that not including such information would better protect the personal information of the workers.

As a result, 29 CFR 5.5(a)(3)(ii)(A) specifically provides that the submission of the certified payroll "shall set out accurately and completely all information required to be maintained under 29 CFR 5.5(a)(3)(i), **except that full social security numbers and home addresses shall not be included on weekly transmittals.** Instead the payrolls shall only include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number)." However, the contractor must maintain a record with the full social security number and home address, should an audit become necessary, but that information is no longer to be submitted on the weekly certified payroll.

- What about projects that have already been completed (June 2009) before EECBG was awarded...do we need to go back to contractors and get information???

Answer: The DBA is only applicable to Recovery Act-funded EECBG and SEP projects. If work was completed prior to an EECBG award, the DBA is not applicable. If a contract is ongoing and the recipient adds Recovery Act-funded EECBG or SEP grant money, the DBA requirements attaches at time of the award of Recovery Act funds.

- When visiting the sites should we verify the posting of the Davis-Bacon materials on the work site? What if the work site is simply an A/C or lighting install?

Answer: When making a site visit do verify the posting of the DBA required poster and the wage determination. If it is an installation, the contractor may have the information in the company truck. If the poster is in the truck, verify the employees have seen the poster and the wage determination. Contractors may provide each employee with a copy when they begin a job and then maintain one in the company truck.

- My understanding is that the person signing the compliance form is the one who did the payroll. Is there another form to appoint the signer, Fed Form 105 or 106?

Answer: The DOL regulations require that the "Statement of Compliance" be signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the person employed under the contract. The DOL has stated that the authorized agent should be an officer or manager of the company with authority to sign on behalf of the contractor or subcontractor. This signature is the

“certification” because the person signing the report is guaranteeing that the information being reported is accurate and correct.

- So if government agency obtains a grant, then does the agency need to do anything specific for compliance with DBA requirements other than obtaining Certified Payroll from the contractors and does routine random check of the employees of contractor for compliance, etc.?

Answer: The local state government agency that receives an SEP or EECBG program grant must make sure that the Davis-Bacon Act clauses are incorporated into the contracts with the appropriate wage determination for the work that is to be performed. Once the work begins, the contractor will submit the certified payrolls to the local state agency and that agency must make sure that the wages have been paid properly. The local state agency is required to assure that all supporting documentation is submitted by the contractor for fringe benefits or for apprenticeship/trainees. Additionally, the local state agency is expected to perform some site inspections and employee interviews. If the certified payrolls contain mistakes, it is the responsibility of the local state agency to notify the contractors and have the corrections made and any back wages paid to the workers, if necessary. You can find additional information on the EECBG/SEP FAQ website:

[http://www1.eere.energy.gov/eere\\_faq/default.aspx?pid=10&spid=1](http://www1.eere.energy.gov/eere_faq/default.aspx?pid=10&spid=1).

- We have a prevailing wage ordinance, which is based on State DOL. We require all projects to comply. But, we don't collect weekly payrolls. However, with the HVAC installation issue (no building modifications, duct work), how much is 'incidental'? If some duct work, but not a lot, do we still have to collect the certified payrolls?

Answer: Recipients and subrecipients must comply with State and Federal DBA requirements. The contractor/subcontractor must complete weekly certified payrolls and submit them to the recipient/subrecipient. The recipient/subrecipient is required to collect and maintain the weekly payrolls.

Each specific contract/loan/grant must be reviewed on a case-by-case basis for a determination as to whether the installation of equipment is covered by the Davis-Bacon Act. The Davis-Bacon Act includes “altering, remodeling, installation (where appropriate) on the site of the work of items fabricated off-site.” 29 C.F.R. 5.2(j)(1)(i). Where a Recovery Act-funded grant includes funding for both the purchase of equipment and installation, and installation requires substantial amounts of construction, reconstruction, alteration, or repair work (as compared to being incidental to the purchase of equipment), the DBA would be applicable. Factors to be considered in determining whether installation requires substantial amounts of construction include the extent to which structural modifications to buildings are needed to accommodate the equipment (i.e., widening entrances,

relocating walls, or installing electrical wiring), and the cost of the installation work - either in terms of absolute amount or in relation to the cost of the equipment and the total project cost. For a definitive decision on whether the DBA would apply to the installation of the HVAC equipment, please contact the Contracting Officer or Contracting Specialist listed on the recipient's grant.

- In our weatherization program, the homeowner selects the contractor from our approved list, and submits the invoice to us when the work is done. We then pay the invoice. Do we have to collect certified payrolls?

Answer: No, you will not have to collect certified payrolls in this situation. The program is set up such that the individual homeowner contracts with the contractor to perform the work and receives the invoice from the contractor. This program is not subject to DBA, because individuals are exempt from the Recovery Act DBA requirements.

- Is it acceptable for the contractor weekly payroll to be bundled and provided to the grantee on a monthly basis?

Answer: No, it is not acceptable to bundle payrolls. A contractor bundling the weekly payrolls and forwarding on a monthly basis would be in violation of the DBA requirements. The DOL Regulations at 29 CFR § 3.4 specifically state: “(a) Each weekly statement required under § 3.3 shall be delivered by the contractor or subcontractor, within seven days after the regular payment date of the payroll period, to a representative of a Federal or State agency. . .” The DOE through contract clause has designated the Recipient of the grant as the entity to receive the original weekly payrolls.

- Where do we get form 1413? Can't find it on [www.wdol.gov](http://www.wdol.gov).

**PLEASE NOTE: The requirement to complete the 1413 is not applicable to SEP and EECBG program grants.** DOE required a written assurance from the EECBG applicants that they would comply with Davis Bacon and it was included in all EECBG applications.

- It is my understanding that Line 16 on the SF-1444 should be signed by an employee working in the Job Classification that is being requested. Is this your understanding?

Answer: If present, employees or their designated representative **must sign block 16** noting their concurrence or disagreement with the contractor's proposed wage and benefit rate. If the employee indicates disagreement with the contractor's proposal, he must provide a statement supporting a recommendation for different rates. (“Designated representative” is generally a union. It cannot be the contractor's personnel officer or other contractor representative.)

- I am concerned that what was just said about spot checks on payrolls, aren't subgrantees responsible for any infractions therefore would have to verify ALL payrolls are reviewed and found to be correct? Aren't ALL payrolls subject to audit? Also wouldn't regular, for instance monthly, onsite Labor Interview be required to provide sufficient oversight and monitoring as indicated by the requirements?

Answer: Subgrantees are responsible for assuring the contractors and subcontractors properly comply with DBA. Subgrantees should check each payroll for errors. Once checked, the original is forwarded to the recipient/grantee who should spot check the payrolls and keep available for review by the DOL and DOE. There is no requirement to perform employee interviews on a monthly basis. A decision as to how often to perform onsite labor interviews is left to the subgrantee. If the subgrantee believes there is reason to perform monthly interviews, then subgrantee should take the initiative to take such action as the subgrantee believes is needed to fully comply with DBA.

- When a wage changes, regardless if it's in the middle of a project, the payroll should reflect the rates immediately. Correct?

Answer: No, once a Wage Determination is incorporated into a contract the wage determination remains effective for the entire length of the contract even when DOL subsequently revises its general wage determinations.

- Is it a requirement to conduct employee interviews? I saw that it was mentioned in the webinar this morning.

Answer: It is a recommendation, not a requirement. The subgrantee should perform at least one onsite visit per contractor to assure that the contractor/subcontractor is properly complying with the DBA requirements.

- I have been working with the DBA for 14 years and have always been told that OT is paid after 8 hours/day. In today's morning webinar, Eva said OT kicks in after 40 hours/week. Can you get clarification?

Answer: The Department of Labor (DOL) regulations require only that overtime (OT) be paid after 40 hours in a week. State law may require payment of OT after 8 hours in a day, but DBA has no such requirement.

## Federal vs. State/Local Prevailing Wage Rates

- Does the Davis Bacon rate rule over State Prevailing Wages? What if Davis Bacon rates are less than State Prevailing Wage rates?

Answer: See below.

- You mentioned that if the state has a higher prevailing wage rate, that rate should be paid for the work performed under the EECBG. It's always been our understanding that the wage determination is based on the funding source - federal or state.

Answer: The Davis-Bacon Act prevailing wage laws do not preempt State Prevailing wage rates. The recipients/subrecipients must comply with both Federal and State laws. In most states, but not all, the requirement is that the higher of the two prevailing wages should be used. In some states, the prevailing wage law specifically states that where there is Federal funding, then the DBA should be used. Please review your state prevailing wage law to determine whether to use the DOL or State prevailing wage determination. The DBA requirements are usually followed by the states, so the same records should suffice for both the state prevailing wage and the DOL prevailing wage requirements.

- DBA vs. State Prevailing Wage - Example DBA for Millwright in Montgomery County, Ohio, Rates are \$26.95 and Fringes are \$15.39 for a total of \$42.34 while Ohio prevailing wage rate for Carpenter Millwright Rates are \$28.40 and Fringes are \$14.40 for a total of \$42.80. How do we handle this? Does DOL look at total or rates and fringes individually?

Answer: DOL will look at the total; however, Ohio is one of the states where the state prevailing wage law provides that if Federal funding is involved, then the DBA wage rates (as set by the DOL) are to be used.

- As a municipality, we pass a prevailing wage ordinance based on the State determined prevailing wages. All our contracts and specs include prevailing wage clauses. Our grant is for windows replacement and lighting upgrades in Village owned buildings. Nothing residential... will our prevailing wage requirements satisfy DBA?

Answer: The wage ordinance requirements may satisfy the DBA, but a specific answer cannot be provided without reading the municipality's wage ordinance and comparing it to the DOL regulations implementing the DBA. The recipient/subrecipient must comply with the State and Federal prevailing

wage laws. Additionally, the State/Municipality wage rate may not be used unless it is higher than the DBA wage rate set by the DOL.

- If State Prevailing Rates are higher than DBA, are there any reporting requirements?

Answer: The only reporting requirements are those required by the DBA. A statement to that fact may be included in the contract file. The DBA wage rate is a minimum that can be paid to the laborers and mechanics on the construction site, the contractor may pay more than that minimum, but not less.

- Regarding the Conformance request, if a State has a PW rate for a classification can that rate be used or do we still have to submit a conformance request to the DOE.

Answer: A conformance request must be submitted if there is no DBA wage rate for a specific classification. The State wage rate may be suggested as the correct wage rate and until the DOL responds to the conformance request, that wage rate may be used. If, however, the DOL returns the conformance request with a higher wage rate, then an adjustment must be made retroactive to the date the individuals in that classification began work on the project. Always make a comparison between the DBA and the State prevailing wage rates (unless the State prevailing wage law defers to the DBA) to make sure that DBA-covered workers are paid the appropriate wages.

- I understood the presenter to say that if the Davis-Bacon prevailing wage rate is lower than the State's prevailing wage rate for the same classification - that we should be paying the State's prevailing wage. I've worked with grants for more than 20 years and have always been advised that the prevailing wage rate is dependent upon the funding source. Federal funding requires federal prevailing wage rates; state funding requires the federal prevailing wage rates. And, if there is a combination of funding (federal and state funding) - our state has advised that the federal prevailing wage is to be used. In an effort to make sure we have no audit issues, could you provide me with some guidance for this grant?
- If you are in a state where the state prevailing wage law specifically defers to the DBA wage rates when the Davis-Bacon regulations apply to a federally funded project, then the recipient/subrecipient should use the DBA wage rates set by the Department of Labor.



### Financial Products (e.g. Loan Loss Reserve, Revolving Loan Fund, etc.)

- With individual home owners exempted from the DBA, what about businesses that receive a revolving loan for energy efficiency from the grantee?

Answer: A business that receives a revolving loan for energy efficiency improvements is subject to the DBA requirements. The business will be required to flow down the DBA requirements to its contractors/subcontractors that perform the improvement work and to forward the certified payrolls to the grantee/subgrantee.

- If the energy auditors and the retrofit contractors are independent contractors paid by the building owner and NOT ARRA funds - up front - BUT the loans are backed by an ARRA loan loss reserve fund, do DBA requirements apply to the auditors and contractors?

Answer: The DBA applies to laborers and mechanics employed at the work site. Auditors, inspectors, and other personnel not performing physical or manual work at the site of the work are not covered by DBA.

A loan loss reserve fund, where the proceeds are neither loaned nor used to “buy down” interest rates, is not subject to the DBA. The funding for the project is provided by a third party entity. Therefore, in this example the contractors paid by the business/building owner would not be subject to the DBA because the Recovery Act proceeds are not being used to fund or assist the energy savings/renewable energy project.



## Form 1413 Questions

**PLEASE NOTE: The requirement to complete the 1413 is not applicable to SEP and EECBG program grants.** DOE required a written assurance from the EECBG applicants that they would comply with Davis Bacon and it was included in all EECBG applications.

- Do contractors and subcontractors contracted to provide the work have to also sign the 1413 form?
- In the 1413 form, in the case of documenting a sub-sub contractor, which company would be the contractor? The prime or the sub?
- Getting back to the recent question on the Form 1413 - who all needs to sign the form? The State, its contractor, the subcontractor? How far down does this go?
- Can you explain the Form 1413 a little more? Do we need to have one of these on file for every sub-grantee AND every contractor and sub-contractor that they are using?

**PLEASE NOTE: The requirement to complete the 1413 is not applicable to SEP and EECBG program grants.**

- Is a 1413 form required if Davis-Bacon is not applicable such as city staff or professional services contracts?

**PLEASE NOTE: The requirement to complete the 1413 is not applicable to SEP and EECBG program grants. The form would not be required if DBA were not applicable to the contracts.**

## Interviewing Contractor Employees for Davis Bacon Compliance

- Is it a requirement to conduct employee interviews? I saw that it was mentioned in the webinar this morning.

Please see answer below.

- How many interviews should we conduct per contractor and subcontractor and with what frequency?
- Answer: Conducting employee interviews is not an absolute requirement; however, the DOL will conduct site interviews and it is important that recipients/grantees know what is going on before the DOL finds a problem. The subgrantee should perform at least one onsite visit per contractor to assure that the contractor/subcontractor is properly complying with the DBA requirements.
- What happens when several employees indicate the exact same home address when we are conducting labor interviews?

Answer: If this occurs, please contact the local DOL wage and hour office. To find the office nearest your location you may use this website: <http://www.dol.gov/whd/america2.htm>.

- Does DOE have a standard employee interview form (like the HUD-11 form)?

Please see answer below.

- Maybe I'm not looking in the right place but I have searched for an employee interview form that does not say "HUD" on it over the course of the last month or so and have not been successful. It is clear in the EECBG FAQs that use of HUD forms is not allowed. Can you provide me a copy of the acceptable form for the interviews? Or direct me to where on the DOL website I can find one? As I mentioned I have searched their site.

Answer: DOE has no standard employee interview form like the HUD-11 form and neither does the DOL. DOE has posted an example of a form on the website with these answers to the webinar questions. The form is in word format, so you may use it or change it to fit your needs. There is no requirement for a form or how the interview should be set up. When completing the employee interview, only ask the employee for the last four digits of his/her Social Security Number.

### Specific Job Descriptions—does Davis-Bacon apply?

- How is "laborer" defined, and how do we distinguish "laborers" from "non-laborer" workers?

Answer: The DOL defines “Laborer or mechanic” at 29 CFR § 5.2(m) as follows:

“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, trainees, helpers, . . . 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 part 541 of this title are not deemed to be laborers or mechanics. Working foremen who devote more than 20 percent 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 so spent.”

- How do you get a wage classification if the wage determination doesn't have a particular wage classification, i.e., HVAC technician?

Answer: You must go through the conformance process using Standard Form (SF) -1444. The process is set forth on the DOL website at: [http://www.wdol.gov/db\\_confirmnce.aspx](http://www.wdol.gov/db_confirmnce.aspx).

- Does Davis-Bacon apply to the installation of HVAC that doesn't include any construction or building modifications at all?

Answer: It is possible, where there is no construction or building modifications at all, that the installation would be incidental to the purchase of the HVAC unit. However, a determination of DBA applicability must be made on a case-by-case basis by the Contracting Officer.

- We have lots of grantees doing insulation installation work in municipal buildings and schools, but there is no classification for "insulation installer" within the building construction category in any county in our state. What to do??

Answer: Initially try to find out whether there is a local practice that a particular classification – other than insulation installer – performs this type of work. If not, then you must go through the conformance process using Standard Form (SF) -1444. The process is set forth on the DOL website at: [http://www.wdol.gov/db\\_confirmnce.aspx](http://www.wdol.gov/db_confirmnce.aspx).

- Because I don't see it identified on the Wage Decision, are computer programmers who work on the site making final configurations/adjustments considered a laborers or mechanics?

Answer: Computer programmers are not laborers or mechanics and are not subject to the DBA.

- Just to clarify, DB Act only pertains to labor/mechanics on a construction/renovation work site. It does not pertain to an engineer doing design work before construction begins. Correct?

Answer: Yes, correct. Engineers performing design work whether before or during the construction are not laborers or mechanics and are not subject to the DBA.

- Does prevailing wage pertain to consultants, architects or engineers?

Answer: The DBA does not apply to energy auditors, consultants, architects, or engineers working on a project.

- Do professional and technical expertise vendors or subrecipients fall under Davis Bacon? Ex: A non-construction organization helps implement part of an ARRA funded transportation trip reduction program?

Answer: The DBA does not apply to professional and technical expertise vendors or subrecipients.

- Does DBA apply to non construction work? i.e. subcontractor is developing a plan for an energy efficiency building retrofit program (for all types of buildings – residential, commercial, etc).

- Answer: The DBA does not apply to individuals developing an energy efficiency building retrofit program.

- Does this wage apply to the auditors as well as the weatherization workers?

Answer: The DBA does not apply to energy auditors or other auditors. The DBA does apply to the weatherization workers.

- Is it true that a driver of a contractor's truck delivering equipment to a DBA jobsite is covered under DBA? What if the truck delivering equipment to jobsite is not owned by the contractor?

Answer: The DBA requirements apply to laborers and mechanics employed on the site of work. Time spent at the home office, picking up supplies, traveling to the work site, etc., are not DBA hours. A

truck driver who only delivers equipment to the work site and who spends a minimal/incidental amount of time at the site is not covered by DBA.

Material suppliers are not DBA-covered if they spend only an incidental amount of time performing work at the weatherization site.

- We have a cooling tower that we (City) purchased (with EECBG funds), but we will hire a contractor to install this piece of equipment. Installation will require a crane. Duration of work is about 15 days. Would this selected contractor be required to comply with DBA requirements? Or is this considered “incidental”?

Answer: Installation of a cooling tower would be covered by the DBA and the contractor will be required to comply with all DBA requirements.

- How does the DBA apply to labor performed by local government employees? For example, does the DBA apply if Town or City employees are doing the installation of a solar array?

Answer: Local units of government are not considered by DOL to be contractors or subcontractors, and their workers are not covered by DBA. Any contracts awarded by the local government, however, must include the DBA labor clauses and applicable wage determination(s) for the contractor’s employees.

- If our EECBG grant is for purchase of materials to replace street lights, and we use our own city employees, does Davis-Bacon apply to the city as recipient?

Answer: Local units of government are not considered by DOL to be contractors or subcontractors, and their workers are not covered by DBA. In this example, the work the employees of the Town or City perform replacing the street lights are not subject to the DBA. Any contracts awarded by the local government, however, must include the DBA labor clauses and applicable wage determination(s) for the contractor’s employees.

- If a local government funds a project from a nonprofit organization and acts as an intermediary to hire workers for the project by taking on workers as independent contractors, are these independent contractors then considered employees of the local government and hence exempt from the DBA requirements?

Answer: These independent contractors must actually be employees of the local government, not just “considered” to be employees to be exempt from the DBA. If the “independent contractors” are not

treated as and receive all the benefits of all other local government employee, then the independent contractors would not be employees of the local government and not exempt from the DBA. Contractors of the local government or the nonprofit organization are subject to the DBA.

- In our City in California, we have a Youth Build program and wanted to put the youth (ages 17-24) to work on the DOE Weatherization grant but must we pay the State's Prevailing Wage or DB/DBRA for them? (not YB-TAP) If the State and local cities are exempt from DB if they employ the students does that apply if the stream of \$ is federal? Last question... We also have another pre-apprenticeship program for adults, do the same rules apply?
- Answer: If the Youth program or the adult pre-apprenticeship program is not approved through the State of California or the Department of Labor, the Davis-Bacon wages must be paid. The California prevailing wage must be paid if the California wage is higher than the DOL prevailing wage rate. DOE cannot provide advice to you on City or State employment requirements or whether hiring the students as temporary city employees would be permissible under City or State law. Employees of the city that perform work under the grant are not subject to the DBA requirements.
- Can you address free/volunteer laborers? We've heard subgrantees will be using volunteer laborers in order to get around reporting/applying DB wages. Can you address this?
- Answer: The subgrantee is required to pay the "volunteers" the prevailing wage rate. The Department of Labor states in its Field Operations Handbook (§15e23): "There are no exceptions to Davis-Bacon coverage for volunteer labor unless an exception is specifically provided for in the particular Davis-Bacon Related Act under which the project funds are derived." The Davis-Bacon Related Act in this case is the American Recovery and Reinvestment Act of 2009 (Recovery Act) and it is silent on the subject of an exception for volunteer labor. Therefore, on Recovery Act-funded projects subject to Davis-Bacon coverage, the grantee/subgrantees must pay all workers the prevailing wage.
- I am a sub-recipient of the EECBG program in Pennsylvania. We are a 501 c 3 Non-profit performing arts center. Are there any exceptions to the DBA for Non-profits? I am assuming that if I require contracted services, such as a licensed electrician for minor installation work that his/her company would be subject to DBA. But what about internally? For example, part of my grant is paying for the purchase of energy efficient spiral fluorescent light bulbs that we will use to replace older incandescent ones. This is normal work of my maintenance staff. I don't see how DBA applies here. Does it?

Answer: There are no exceptions from DBA requirements for a 501c3 Non-profit entity. You are correct, if you contract for a licensed electrician for installation/repair work that work would be subject to the DBA. However, in the case where all the work that is required is replacement of incandescent

bulbs and that is normal maintenance work that activity would not be subject to the DBA. The DBA is not applicable to routine servicing and maintenance work.

- Do AmeriCorps volunteers need to have Davis-Bacon wages or be registered as apprentices or should they be exempt as they're government employees?

Answer: The DBA provides that it does not supersede or impair any authority otherwise granted by Federal law to provide for the establishment of specific wage rates. The authorizing statutes for the Youth Conservation Corps, 16 U.S.C. 1703(a)(3), and the Public Land Corps, 16 U.S.C. 1726, for example, specifically require the Secretaries of Interior and Agriculture to set the rates of pay or living allowances for the Corps' participants. Other youth programs, such as the American Conservation and Youth Service Corps (AmeriCorps), 42 U.S.C. 126551, and Volunteers in Service to America (VISTA), 42 U.S.C. 4955, specify in the statutory language the living allowances and other benefits that must be provided to each participant. Therefore, since these Federal youth programs have established specific compensation to be paid to participants, such participants would not be covered by Davis-Bacon labor standards.

To determine whether any other Volunteer Organizations may be exempt, a written request for a determination should be accompanied with appropriate supporting documentation and must be sent to Mr. John L. McKeon, Deputy Administrator, Wage and Hour Division, 200 Constitution Avenue, N.W., Room S-3502, Washington, D.C. 20210.

- Does DBA apply to weatherization programs using trainees as the labor? I represent a non-profit with a contract with a local city government using ARRA funds to subsidize weatherization work on residential buildings. Our employees are trainees in a weatherization training program. It doesn't make sense to pay the trainees DBA wages - they are trainees.

Answer: Under the Recovery Act, the DBA applies to laborers and mechanics employed by contractors and subcontractors at a DBA-covered construction work site. The weatherization program uses Recovery Act funds to subsidize the weatherization work on residential buildings and would be subject to DBA. Students/trainees/ apprentices in a program approved by a State apprenticeship agency or DOL's Office of Employment and Training may be employed on the project in accordance with the hourly wage contained in the approved program, expressed as a percentage of the DBA wage. If the training program is not a DOL or State approved training program, the trainees/students must be paid the full DBA prevailing wage while performing the residential weatherization activities.

## Minimum Thresholds that Trigger Davis-Bacon

- Is there a minimum threshold in project costs that would trigger DBA? For example, state awards a \$35,000 loan for small business energy retrofits. Materials/supplies account for \$33,000; installation labor is \$2,000. Does DBA apply to labor in this case?

Answer: DOL has told DOE that the \$2,000 threshold for DBA is based upon the grant the Recipient receives. As a result, the grant is subject to the DBA and all work under the grant is subject to the DBA, unless an exception/exemption applies to the program.

In the example, the installation is only \$2,000, which at that amount would be considered as incidental to the total cost of the equipment which is \$33,000. For a definitive decision on whether DBA applies to a specific project, please contact the DOE Contracting Officer or Contracting Specialist listed on the Recipient's grant.

- If we are using EECBG funds only for supplies or the labor is less than \$2,000, does Davis Bacon wage rates need to be followed for other funds used in the project for labor?

Answer: DOL has told DOE that the \$2,000 threshold for DBA is based upon the grant the Recipient receives. As a result, the grant is subject to the DBA and all work under the grant is subject to the DBA, unless an exception/exemption applies to the program. Where the labor on a project is less than \$2,000, depending upon the cost of the equipment, it is probably that the construction is only incidental to the purchase of the equipment; however, the overall funding would need to be reviewed and a decision made by the DOE Contracting Officer or Contracting Specialist listed on the Recipient's grant.



### Projects that Span Multiple Cities and/or Locations

- What if the project site is located in various locations? For example replacement for streetlight bulbs.

Answer: Where a project spans various locations, the same wage determination can be used for all locations within a specific county. When filling out the WH-347, the contractor/subcontractor would simply indicate “various locations within xxx county.” If the work location moves to another county, the contractor/subcontractor must pay the applicable wage rates for the county where the work is being performed.

## Notifying Contractors of Davis-Bacon Related Items

- I was told that 10 days prior to opening bids an addendum to all plan holders needs to be issued advising of which wage determination general decision number will apply to the project. Can you please tell me where I can find this 10 day requirement?
- Answer: The 10 day requirement applies where the wage determination incorporated in the Invitation for Bid or Request for Proposals changes between the time the competitive announcement was made and 10 days prior to the opening of the bids. The DOL Regulations provide the following information at 29 CFR 1.6(c)(3):

All actions modifying a general wage determination received by the agency before contract award (or the start of construction where there is no contract award) shall be effective except as follows:

- (iii) In the case of contracts entered into pursuant to competitive bidding procedures, a modification, notice of which is published less than 10 days before the opening of bids, shall be effective unless the agency finds that there is not a reasonable time still available before bid opening, to notify bidders of the modification and a report of the finding is inserted in the contract file. A copy of such report shall be made available to the Administrator [of Labor] upon request. No such report shall be required if the modification is received after bid opening.
- (iv) If under paragraph (c)(3)(i) of this section the contract has not been awarded within 90 days after bid opening, . . . any modification, notice of which is published on WDOL prior to award of the contract or the beginning of construction as appropriate, shall be effective with respect to that contract unless the head of the agency or his or her designee requests and obtains an extension of the 90-day period from the Administrator

Therefore, if a modification occurs between the 10 day point and the opening of the bids you will be required to make a determination as to whether there is reasonable time to notify the bidders of the modification so that they may adjust their bids. If a decision is made there is no time, put a report into the contract file. After the bids are opened, the wage determination in the Bid request remains in effect - providing the contract is awarded within 90 days from the date of bid opening.

- Does the Public Agency have to post the wage rate in the Invitation for Bid or simply list the link to the DOL? Is it the Public Agency's responsibility or the Contractors?

Answer: The Public Agency must inform the potential bidders that the work will be subject to the DBA and may either attach the wage decision in the bid documents or incorporate it by reference to the appropriate website ([www.wdol.gov](http://www.wdol.gov)).

- Did you say the 1413 goes out to all sub-recipients and sub-contractors?

**PLEASE NOTE: The requirement to complete the 1413 is not applicable to SEP and EECBG program grants.** DOE required a written assurance from the EECBG applicants that they would comply with Davis Bacon and it was included in all EECBG applications.

- When you say digital signatures are you talking about adding a digital signature in a completed pdf form of WH-347 or the electronic payroll form?

Answer: A digital signature is only available through an electronic payroll system. If you complete the WH-347 on line, it must be printed out and hand signed. Once the Wh-347 is in paper form, then it remains in paper form and the original certified payroll must be sent to the recipient of the grant.

## Project-Specific or Technology Specific Questions

- We are installing ground source heat pumps, what classification does that fall under? Heavy? Or building?

Answer: Please contact your local DOL wage and hour division for a construction classification determination. You can find your local wage and hour division at the following website:  
<http://www.dol.gov/whd/america2.htm>.

- If you are exempting homeowners from DB, what about using block grant funds for county buildings?

Answer: The Office of Management and Budget (OMB) Recovery Act implementing regulations exempt individuals from the DBA requirements. The use of a Recovery Act funded EECBG program grant for energy efficiency/energy saving improvement work on a county building is subject to the DBA.

- If your grant is being used for building a public trail how do you determine wage rate?

Answer: For assistance in determining a wage rate, please contact your nearest DOL wage and hour office. To locate the nearest DOL wage and hour office you may access this website:  
<http://www.dol.gov/whd/america2.htm>

- Does DBA apply for Energy Audits - Residential or commercial (NOT RETROFITS).

Answer: DBA is not applicable to energy auditors; therefore, energy audits are not subject to DBA.

- It mentioned that Routine Maintenance is not subject to DB. Are lighting retrofits considered to be routine maintenance?

Answer: In most cases lighting retrofits that require exchanging ballasts or fixtures would not be considered routine maintenance. An exchange of an incandescent bulb for a new energy efficient bulb would be considered routine maintenance. If you have specific questions with regard to whether your project is covered by the DBA, please contact your Contracting Officer or Contracting Specialist listed on the recipient's grant.

- We have two pre-apprenticeship green energy program one designed for Youth (Youth Build ages 17-24) and another similar program for adults. Our programs are not registered as YB-TAP or otherwise. Is there any way around paying them Davis Bacon Wages? Do we need to be certified? Or if we employ our students as City employees but pay them with federal dollars does that nullify our DBRA exemption as a state or local city?

Answer: If the Youth program or the adult pre-apprenticeship program is not approved through the State of California or the Department of Labor, the Davis-Bacon wages must be paid. The California prevailing wage must be paid if the California wage is higher than the DOL prevailing wage rate. DOE cannot provide advice to you on City or State employment requirements or whether hiring the students as temporary city employees would be permissible under City or State law. Employees of the city that perform work under the grant are not subject to the DBA requirements.

- In California, the Wage Determination for WAP on the DOE site expired 3/6/2010. Do we submit a request on form 1444 to reinstate this determination? Or do we have to pay journeyman wages to everybody on the job (none of them are registered apprentices). This is killing us because it will cut in more than half the youth we can put to work now.

Answer: The Weatherization Assistance Program (WAP) wage rates have not expired. **Please note, however, you can use those wage rates only for projects funded through the low income WAP.** The effective and expiration dates that appear on each of the revised WDs are dates established by DOL and only apply to the Dept. of Energy in the case of the project wage determinations for Weatherization. The DOE Contracting Officer (CO) is required to amend the grants by the expiration date on the Wage determination – and for that program the CO did amend California’s grant prior to the expiration date on the WD.

The DBA wage rates are the minimum rate that must be paid to DBA covered employees. If the pre-apprenticeship program is not approved through the State of California or the Department of Labor, the Davis-Bacon wages must be paid. The California prevailing wage must be paid if the California wage is higher than the DOL prevailing wage rate.

- I am an Efficiency Grant recipient, upgrading old incandescent stage lights as well as building lighting. The first part of my question involves the replacement of the stage lighting portable equipment. These arrive ready to use with no installation required. Our unionized stagehands place them as needed for each performance. I do not see where DBA applies to these units. The others need to be electrically installed. For that we are contracting a licensed electrician who will be contractually obligated to meet the DBA. Have I missed anything?

Answer: Your analysis is correct. Where equipment is purchased that needs no installation, DBA is not applicable. Where the equipment is purchased and needs to be installed, the DBA is applicable to the installation and the contractor must comply with the DBA requirements.

- I have a question about the Federal prevailing wage laws: I am working on two residential class projects in Ipswich and Hamilton, both recipients of Federal ARRA funds. Each project is a single family home that has been extensively gutted leaving the exterior shell. We are looking for a definition for the carpenter new construction and the carpenter other class, we believe that our work is classified as new construction because of the extent of new construction involved within, adjacent, or on top of the gutted building shell, are there definitions that would help us clarify our selection. For example, we completely removed 100% of the roof structure and built a new roof with new sheathing and new trusses.

Answer: Please contact the local DOL wage and hour office nearest you. To find the office nearest your location you may use this website: <http://www.dol.gov/whd/america2.htm>.

- HB is pursuing 4 activities under the pending amended assistance agreement.

1. Feasibility study, environmental reviews and design to bridging documents for large-scale municipal solar projects – 100% professional services and city in-house staff time

2. LED Streetlight retrofits – 100% in-house (city) labor

3. GIS streetlight audit – 100% in-house (city) labor

4. Energy efficiency retrofits – performance contract – subject to Davis-Bacon and HB has a plan for compliance.

In the interest of spending the money in a timely manner I have already proceeded on activities 1-3 and am finalizing the contracts on activity 4 this month.

Based on my public works contracting experience activities 1-3 are not subject to Davis-Bacon prevailing wages. Here are my rationales for the 4 activities:

1. Solar feasibility (technical services) – this is a professional services contract for engineering and architecture services and not subject to Davis-Bacon (no mechanics or laborers).

2. LED streetlight retrofits (LED streetlights) – all labor is provided by city staff and not subject to Davis-Bacon.

3. GIS streetlight audit (technical services) – all labor is provided by city staff and not subject to Davis-Bacon.

4. Energy efficiency retrofits performance contract – subject to Davis-Bacon and HB has an existing compliance plan.

However, I am requesting confirmation from DOE that my interpretation of Davis-Bacon certified payroll requirements for HB's activities is appropriate.

Answer: The Contracting Officer has confirmed that your interpretation of the DBA requirements is correct.

### Projects that are only Partially Funded with ARRA Money

- There has been some confusion as to whether a project that is only partially being funded with stimulus money is subject to Davis-Bacon if the grant money is only going to pay for equipment and not labor.

Answer: The Recovery Act provides that "all laborers and mechanics on projects funded directly by or assisted in whole or in part" with Recovery Act funding are subject to the DBA. Where the project includes the assistance of Recovery Act-funded equipment, the DBA will apply to the project. If the project is part of a larger project, the entire project is subject to DBA. This is especially true where the Recovery Act-funded work is done in conjunction with the non-Recovery Act-funded work, so that all the work is ongoing at the same time. If, however, the work can logically be segregated into two separate and distinct projects, the Recovery Act-funded grant provides equipment purchase funding for the one specific project, work is not performed together (i.e., the work using non-Recovery Act funds is completed prior to or after the Recovery Act-funded work and the work crews are not working together) and separate contracts are used for the two separate projects, the non-Recovery Act funded work would not be subject to the DBA.

- For Weatherization programs where partial funds are being subcontracted, how do we apply Davis Bacon for wage determination if the EECBG funds directed to the effort are not directly used to fund wages? In other words, we have subcontracted \$250K to a Weatherization program to enhance the Weatherization efforts. However, the funds will be used to procure materials and supplies that were otherwise limited in the state-funded program. The Weatherization program's wage rates were never part of the initial discussion.

Answer: On projects where the materials and supplies purchased through the EECBG program grant are used, the DBA will apply to those projects.

- For a non-residential project where we are able to isolate the energy grant funded portion, do DBA prevailing wages need to be paid on the entire project or just the energy grant funded portion?

Answer: If the work can logically be segregated into two separate and distinct projects, the Recovery Act-funded portion into one specific project, the work is not performed together (i.e., the work using non-Recovery Act funds is completed prior to or after the Recovery Act-funded work and the work crews are not working together), and separate contracts are used for the two separate projects, the non-Recovery Act funded work would not be subject to the DBA.

- We are doing lighting replacement for our grant and it is combined with a remodel project under one contract. Is the lighting portion only subject to Davis Bacon, or would it be the whole project because it is all in one contract?

Answer: In this case the entire project will be subject to DBA because it is all being performed under one contract.

- If my EECBG grant indicates (or is amended to indicate) that all DOE funding (other than funding for Parish salaries or other local administrative costs) will be used to purchase a product, then I believe the DBA will not apply to locally funded installation costs. Please confirm or address.

Answer: The Recovery Act provides that "all laborers and mechanics on **projects** funded directly by or **assisted in whole or in part**" with Recovery Act funding are subject to the DBA. Where the project includes the assistance of Recovery Act-funded equipment, the DBA will apply to the project. If the project is part of a larger project, the entire project is subject to DBA. This is especially true where the Recovery Act-funded work is done in conjunction with the non-Recovery Act-funded work, so that all the work is ongoing at the same time. If, however, the work can logically be segregated into two separate and distinct projects, the Recovery Act-funded grant provides equipment purchase funding for the one specific project, work is not performed together (i.e., the work using non-Recovery Act funds is completed prior to or after the Recovery Act-funded work and the work crews are not working together) and separate contracts are used for the two separate projects, the non-Recovery Act funded work would not be subject to the DBA.



## Solar Installations

- Does Solar Panel installation fall under DBA?

Answer: Yes, solar panel installation would be subject to the DBA.

- Is DOL planning on releasing wage rates for PV installers?

Answer: DOE has not received any indication from the DOL that it is planning on performing wage surveys for the new classification of PV installer. However, if this becomes a much requested classification through the SF-1444 Conformance process, it may be possible that DOL will update its current classifications to include a PV installer.

- We are having a contractor install Solar PV panels. Is there a special worker classification for Solar PV installer, or is this under the classification of Electrician?

Answer: Currently there is no special worker classification for Solar PV installer. All individuals performing this work should be paid at the most appropriate classification, possibly depending upon local code, as to qualifications for solar installation (carpenter, electrician, etc.), in accordance with the applicable residential or building construction wage determination.

### Grantee and Contractor Classifications (e.g. vendor vs. subrecipient)

- Can the speakers distinguish the difference between a vendor and subrecipient? Is a vendor also a subrecipient? The differences are very confusing. Please give us examples. Thank you!

Answer: A vendor is the entity providing a service or product associated with the project you are undertaking. An example of vendors would be Home Depot® and Lowes® and they provide products for use at the project site. On the other hand, the recipient is the entity who actually receives the Federal grant and is responsible for implementing the agreement and meeting any performance goals associated with the grant.

- In the 1413 form, in the case of documenting a sub-sub contractor, which company would be the contractor? The prime or the sub?

**PLEASE NOTE: The requirement to complete the 1413 is not applicable to SEP and EECBG program grants.** DOE required a written assurance from the EECBG applicants that they would comply with Davis Bacon and it was included in all EECBG applications.

## Working with DOE

- How do we determine who our DOE Contract Officer is?

Answer: Your assigned DOE Project Officer can tell you. Please contact your Project Officer directly or through your grantee.

- You have used a lot of acronyms - can you define these: SEP, WAP, EERE, etc.

Answer: SEP is the DOE State Energy Program; WAP is the DOE Weatherization Assistance Program; EERE is the DOE Office of Energy Efficiency and Renewable Energy; DBA is the Davis-Bacon Act. For additional information, please visit the DOE web site at:  
<http://www1.eere.energy.gov/wip/index.html>

- Who should determine the laborers needed for a project?

Answer: The most appropriate person to make such a determination is the contractor/subcontractor. It is possible that the project planner or project manager could assist with such a determination.

- Please repeat where we can see the payroll seminar.

Answer: Please visit the DOE web link at: [http://www1.eere.energy.gov/wip/davis-bacon\\_act.html](http://www1.eere.energy.gov/wip/davis-bacon_act.html)

- Can teaching contractors how to do proper payrolls and providing technical assistance on how to comply with all of this be considered EECBG Program Costs?

Answer: Yes, this is an allowable cost under all OWIP Programs, WAP, SEP and EECBG. Please contact your respective Project Officer to determine the most appropriate category to charge these cost.

- On the Q&A, can you start putting a date so that we can go on daily and just look up the new Q&A's?

Answer: We will work with our IT personnel to determine the best method of tracking these questions by the date they were answered and posted.

- How can grantees get a hold of more updated "prevailing wage reports" to include in our contractor agreements? I just have the original report included in my grant agreement (from 9/09) and have heard that we are required to use the most recent versions.

Answer: Please go to the DOL website at: [www.wdol.gov](http://www.wdol.gov) to obtain the most recent prevailing wage determination for your state and county.

- Where can grantees find SEP and EECBG terms and conditions to include in solicitations?

Answer: The approved labor standards clauses are located on the DOE web site at:  
[http://www1.eere.energy.gov/wip/davis-bacon\\_act.html](http://www1.eere.energy.gov/wip/davis-bacon_act.html)

- Where will the contractor guide to the DBA be posted? OGC or DOE website?

Answer: The guide is completed and posted at: [http://www1.eere.energy.gov/wip/davis-bacon\\_act.html](http://www1.eere.energy.gov/wip/davis-bacon_act.html)

- Do you have standard language for the labor standards clauses that we can include in our agreements with subgrantees?

Answer: The approved labor standards clauses are located on the DOE web site at:  
[http://www1.eere.energy.gov/wip/davis-bacon\\_act.html](http://www1.eere.energy.gov/wip/davis-bacon_act.html)

- Do you have a sample of a solicitation document and contract for a Design Build project and how it all works with Davis-Bacon?

Answer: Please check with your DOE Project Officer, Contracting Specialist, or Contracting Officer.

- Are there standard contractor rates that we can refer to as a reference when comparing bid submissions from contractors? This would be helpful for organizations that have never been involved in bidding out EECBG residential retrofit projects.

Answer: DOE has no standard contractor rates. The organization should start with the required DBA wage rates as the minimum rates.